**HOUSE OF REPRESENTATIVES**

*Friday, May 12, 2000*

The House met at 10.30 a.m.

**PRAYERS**

[MR. SPEAKER *in the Chair*]

**ORAL ANSWERS TO QUESTIONS**

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, can I ask for questions Nos. 61, 62, 63 to be deferred for one week? We could answer question No. 60 but the Member is not here.

**Dr. K. Rowley:** Mr. Speaker, could we defer question No. 60 for one week? And I would like to ask for questions Nos. 61, 62, 63 to be deferred to the first sitting in June.

*The following questions stood on the Order Paper:*

**Terms of Contract**
**(Mr. Geoffrey Robertson, QC)**

**60.** Could the hon. Attorney General and Minister of Legal Affairs state:

(a) Is Mr. Geoffrey Robertson, QC, retained by way of contract with the Government of the Republic of Trinidad and Tobago?

(b) If yes, what are the terms of the contract and could the Attorney General state the full amount of the fees or retainer to be paid to Mr. Geoffrey Robertson, QC, for his services as Legal Counsel to the Commission of Inquiry established to enquire into the administration of justice? *[Mr. F. Hinds]*

**Self-Help Water Project**
**(Haig/Abbe Poujade Street)**

**61.** Could the Minister of Local Government state:

(a) With respect to the Haig/Abbe Poujade Street Self-Help Water Project, could the Minister state the total amount of URP funds expended on the project and the number of gangs which were involved during each month for the period June 1999 to April 2000?

(b) Would the Minister further state by what specific document did the Self-Help Commission give its approval for the expenditure of funds on the resurfacing of roads and the purchase and outfitting of a pumping station in Carenage, and could he state the date of this approval? *[Dr. K. Rowley]*

**Diego Martin Regional Corporation**
**(Allocation of moneys)**

**62.** Could the Minister of Local Government state:

(a) How much money was allocated in the Development Programme in the current budget for the Diego Martin Regional Corporation and how much of that allocation has been made available as at April 15, 2000?

(b) Would the Minister indicate the sums of money from the Road Improvement Fund that have been available to the Diego Martin Regional Corporation in 1996, 1997, 1998-99, 1999-2000 to date? *[Dr. K. Rowley]*

**Distribution of Teak Fields**
**(Government's Policy)**

**63.** Could the Hon. Minister of Agriculture, Land and Marine Resources state:

(a) What is the Government's policy which guarantees fair and equitable access for all licensed sawmillers to the teak resources of the state?

*(c)* Did the Minister make any recommendations with respect to the distribution of teak fields and if so on what basis were certain sawmillers selected and fields allocated to them whilst others were excluded from the process? *[Dr. K. Rowley]*

*Questions, by leave, deferred.*

**ARRANGEMENT OF BUSINESS**

**Mr. Speaker:** We will proceed, first of all, with Bill No. 2, which is the DNA Bill. Yesterday or last night on the Second Reading of the following Bill, which was in progress when the House was adjourned, we indicated that we would have completed it today. So that the debate will now resume on an Act to provide for DNA Forensic Analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters, that it be now read a second time.

*Agreed to.*

**DEOXYRIBONUCLEIC ACID (DNA) IDENTIFICATION (NO. 2) BILL**

[Second Day]

*Order read for resuming adjourned debate on question* [May 11, 2000]:

That the Bill be now read a second time.

*Question again proposed.*

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I am very happy to make a contribution to support this Bill to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other matters.

Mr. Speaker, before I make my contribution may I say how indebted we are to the hon. Member for Barataria/San Juan for the expertise he shed last night when he explained this concept. From what he said, it was quite clear that this DNA typing identification has been proven to be very important in the fight against crime. And it is important for the criminal justice system. This DNA typing has, as a means of identification, been established internationally as a very important and secure method of identification.

As one knows, when someone commits a crime, having regard to the adversarial system that we have in the Commonwealth, the person who is charged is presumed innocent, and it is the duty of the state to establish the guilt of that person beyond a reasonable doubt. In order to establish guilt, the state must provide and make evidence available so that a court or a jury can be sure in their minds as to the guilt of the accused.

The prosecution or the state cannot go and say that we believe this person is guilty, or we suspect this person is guilty or he must be guilty; the prosecution has to adduce evidence in order to establish the guilt. Mr. Speaker, eye witnesses' evidence which consists of oral evidence, that is to say, a person who has seen the commission of the crime, would give evidence of that and he would be cross-examined. Evidence can also consist of documentary evidence. That is to say, if a person writes a letter, or if there is some written documentation, either directly, or, on the basis of circumstantial evidence to connect him with the commission of the crime. So there are eye witnesses' evidence and documentary evidence. Then there is a category of evidence known as expert evidence, which is normally adduced in order to support identification of the person.

Under the present system without DNA, let us say that a person is charged for a criminal offence, and when the police went to the scene they would have found blood stains; the police would have found hair; if it is a rape the police would have found some evidence of semen. What happens is that there is a situation where, if the crime is a sexual offence—so there is the victim and the alleged accused person or the accused person—the accused person is saying that he did not commit the crime, he was not there; and the victim would be saying that he committed the crime.

So sometimes there is conflicting evidence; one person is saying one thing and the other person is denying it. A jury or a court faced with that situation sometimes will have to determine who is speaking the truth. Therefore, the jury would have to look at the demeanour and sometimes witnesses might be speaking the truth, but they may give very inconsistent evidence; because the witness box is not a place in which you can properly give consistent evidence even though you are speaking the truth. Because you may say something which may be regarded as inconsistency and then the judge has to put all these inconsistencies to the jury.

At the end of the day, without independent supporting evidence, what is called in law, real evidence, the jury or the judge can be in doubt because the judge has to be sure, beyond a reasonable doubt. If the judge or the jury is not sure, the direction or the law is that you must give the benefit of the doubt to the accused persons.

**10.40 a.m.**

What has been happening with these cases and with police investigations, is that although they have a witness and they have, let us take, for example, blood found, without DNA, all the evidence would show is whether it is blood type A or another type of blood. Now, there are several persons in the world who have that type of blood. So what happens is that, when the forensic person comes into the witness box, the lawyer on the defence side will ask him, "You are a recognized expert. You are aware of this book, Forensic Science. You are aware of the chapter, which says that blood has different groupings. You are also aware that there are several hundreds of thousands, even millions of people with this type of blood".

In Trinidad and Tobago there are several other thousands of people with this kind of blood so that at the end of the day, Mr. Speaker, even though the accused person and the blood, which was found on the scene, are both shown to be blood type A, it does not necessarily mean that the blood connects the accused to the

commission of the offence. The judge will have to warn the jury that that is not the case because it does not lead conclusively; it is not like a chain with all the links leading to that conclusion. The same thing happens if, for example, there was spermatozoa found in the vagina of the victim. All that can happen is the evidence will be that spermatozoa is found, but there is nothing that could be done without DNA to identify that with the accused person.

So that there is a situation where the present forensic system which operates in certain countries, including Trinidad and Tobago, is really backward with respect to the fight against crime and as far as detection of persons involved in criminal activity. The same thing happens with hair. If, for example, a few strands of hair are found on the scene of a crime, all that can be said now is that it appears to resemble the hair of the accused person. So what DNA typing can do, Mr. Speaker—and the hon. Member for San Juan/Barataria explained this last night with all the biological conclusions and all the expertise that he has given—is that, for example, the examination of the blood which is found on the scene, when compared with the accused's sample can point conclusively to it being the blood of the accused. The same thing applies to the semen and the same thing applies to other aspects. [*Interruption*] Sorry, Mr. Speaker. So, Mr. Speaker, what the DNA typing does really is that it is a means of providing conclusive proof as to identity.

DNA typing is therefore a powerful tool for the purpose of identification of persons involved in the commission of crime. Since its forensic introduction, it has been instrumental in securing convictions in thousands of cases throughout the world. It has also helped to eliminate suspects as being involved in the commission of crime, even in the face of very damning allegations. Mr. Speaker, as you would know from your experience in the law, there can be situations where the overwhelming perception would be, whether in a village or in a community or from what has been said, that Mr. A has committed this crime. When, however, the evidence is looked at, there is doubt.

What DNA typing has produced, on a forensic basis, is machinery for eliminating whether particular suspects have been involved in the commission of crimes. It has also led, this DNA typing, to cases in which persons have been convicted and sentenced. It has also been able to show that some persons have been innocent and have led to their exoneration and release from custody. This has happened, Mr. Speaker, in the United States of America and in other parts of the world where this particular forensic tool has been used. There has been no doubt at all that this DNA typing is of great importance to the criminal justice system.

So when the hon. Minister of National Security said last night that this was an important tool in the fight against crime, what he was, in fact, saying is that at the present time in Trinidad and Tobago there would be situations in which, if the police can have this tool, they would be able to detect crime in instances where, before, they would not have been able to detect crime. He was also saying that even where a person is prosecuted in relation to a particular crime, the DNA typing would be able to assist the prosecution in establishing conclusively that these persons are guilty. What he was also saying is that in respect of the criminal justice system it was a means whereby innocent persons could be prevented from being convicted of crimes.

Mr. Speaker, that is basically what it is about. This does not introduce new substantive law. What it does is, it introduces a new procedural law. It provides the legal framework whereby these samples can be taken and, when taken, compared with the samples of the suspect or the accused persons and there can be comparison in order to determine whether the person either should be prosecuted or whether or not the person is guilty. So it involves the comparison of the biological samples of suspect persons against biological specimens taken, either from the scene or in relation to some aspect of the investigation which can connect the accused or the person with the commission of the offence. As the Minister said last night, this could be semen, saliva, skin, blood and all these matters. So, Mr. Speaker, this typing does not only provide evidence where there is no evidence of identity, it also provides corroborative evidence in order to show conclusively that the accused person is guilty.

I should mention also that it has been used in a very important area of the law, that is, to determine the paternity of children. As you know, Mr. Speaker, in several aspects of the law, in several jurisdictions, there are situations where the issue of a child's paternity is in question. What we have found with DNA typing is that this method can be used to establish the paternity of children. There would always be, in any kind of evidence, whether under the present system or under any reform system, the question of how the samples were taken and whether they were taken in a way in which there was contamination of the samples.

Those of us who watched the O. J. Simpson trial from time to time, would have seen that much emphasis was placed on the taking of the samples and how they were taken from the scene. The reason for that is that, for example, even at the present time—let me see if I could compare it with what happens in Trinidad and Tobago. Mr. Speaker, if under the present system blood is taken from the scene but it is not taken carefully, let us say this expert goes there but does not

give evidence that the object with which he took this blood—scraped it up or took it up—was an object that was clean, in custody, was purified, had no other stains on it and there could be a possibility of contamination from another source and his report reaches the court, lawyers can cross-examine him to show that he did not use care in order to ensure that the object, or whatever he used to take that sample, was a clean instrument and that he did not take precautions after taking it to ensure that nobody could have interfered with it.

For example, Mr. Speaker, if the forensic expert took this blood, he left it at a centre and he did not leave it secured, he left it and there was no proper identification and the situation was that it could be taken by anybody, it could be mixed with any other exhibit, then the whole question of the reliability of this evidence taken comes into question. So that, even under the present system with any kind of evidence like this, this kind of real evidence, there can be a situation where the taking of the evidence, the storing of it, the identification of it and what happens to it from the time the tests are taken to the time they are produced in court would be very important.

This also applies to DNA evidence. What has happened is, it is not that the DNA typing is unreliable. What can be unreliable is the machinery which is used to take the sample, to take the piece of evidence from the scene and to do the matching, the storage and the comparison. Those matters, just as any other piece of evidence now, can be very important to show that the DNA typing cannot be relied upon to identify the conclusion with the accused.

**Mr. Hinds:** Hon. Attorney General, thank you kindly for giving way. Am I to understand the Member as saying that, from a scientific standpoint, DNA typing is 100 per cent accurate?

**Hon. R. L. Maharaj:** Mr. Speaker, I think I forgive the hon. Member because last night he was not here. We did not say that it is 100 per cent. As a matter of fact, the Member of Parliament for San Juan/Barataria, Dr. Fuad Khan, said it was 80 per cent accurate or whatever percentage. However, Mr. Speaker, as everyone knows, with the exception of somebody above us, nothing in the world is perfect. So the situation is that the international community has recognized that this is the most secure way of identification. What I was saying is that even though it is the most secure way of identification, if steps are not taken to ensure that the manner in which clues are taken, that is to say, the manner in which the piece of evidence is taken from the scene of the crime, or wherever it is, to be matched with the sample, and if care is not taken to have the clues stored properly and to have the test done in a way in which contamination can be

eliminated, this secure method of investigation or of identity can be undermined and can facilitate persons who are guilty because they may be able to show that it is unreliable.

**10.55 a.m.**

Mr. Speaker, I think the hon. Minister of National Security was recognizing in his contribution that although this typing is reliable, steps would also have to be taken to ensure administratively that everything would be put in place to eliminate any ways and means in which contamination can even be alleged or even if it is alleged to show that there was no contamination.

Mr. Speaker, this Bill has a history in Trinidad and Tobago. A Bill was introduced in the Senate, and the original Bill was introduced and after, there was a joint select committee to examine the Bill and it was found that the Bill, which the Government introduced needed substantial amendments in that, there were provisions of the Bill which it was felt that Trinidad and Tobago was not ready for at this time.

Mr. Speaker, what happened is that the joint select committee looked at what the Government had—when I say the Government, I mean the Law Commission and there were several different models such as: the British model; the New Zealand model; and the Canadian model. They looked at the several models and decided that what they should do is favour a model for Trinidad and Tobago. What they did from their report—and if I may read from the report of the Special Select Committee of the Senate. I am sorry, it was a Special Select Committee of the Senate appointed to consider and report on a Bill entitled an Act to provide for DNA forensic analysis, to include a DNA report as evidence, to provide for the use of DNA testing to determine parentage, and other related matters.

Mr. Speaker, the Members of that committee were: Brigadier Joseph Theodore, Chairman; Miss Carol Cuffy Dowlat, Member; Mrs. Agnes Williams, Member; Professor John Spence, Member; and Mr. Danny Montano, Member. The report says that it was evident during the debate on the DNA Bill at sittings of the Senate held on Tuesday, February 17, and Tuesday March 3, that Members favoured the use of DNA typing in scientific criminal investigation.

Mr. Speaker, Members however felt that because DNA typing is a powerful tool used in determining the culpability of a suspect by linking him through scientific evidence to the scene of the crime, there was need to ensure that proper safeguards would be put in place for the collection, storage and delivery of

evidentiary samples, and that only qualified persons using approved international procedures would be performing the tests and analyzing the samples.

In an effort to ensure that proper provisions would be made to take care of the concerns expressed by Members, and mindful of the fact that in order for DNA evidence to stand up in court, counsel and judges must be confident and the jury convinced that proper procedures would be adopted, the committee examined the legislation from the United Kingdom, New Zealand, Australia, and Canada; DNA literature from other countries; invited persons with knowledge in the field to appear before the committee; and placed advertisements in the daily newspapers inviting the public to submit comments and make suggestions.

The committee held about eight meetings and what happened is, at the end of the committee's report Members agreed that there was need to amend the Bill which was based on the British model. That model differentiated between an intimate sample—which could only be taken by consent, and a non-intimate sample which could be taken by police authorization in order to strike a balance between the right of the state to fight crime and the individual's right to privacy.

Mr. Speaker, the committee rejected the British model and agreed to follow the New Zealand model, along with elements from the Australian and Canadian models. The proposed amendments seek to reflect a unique model in keeping with our local needs. Essentially the new model allows the tissue sample to be taken by consent, failing which, a court order must be sought to take it only from a suspect.

The role of the police service is restricted to collecting, storing and delivering DNA packages for testing by the Forensic Science Centre. Procedural safeguards, more numerous than those in the Bill, are proposed in order to protect the integrity and privacy of the individual, whilst allowing the state to use this new scientific tool as a means of fighting crime. The report went on to say what are the clauses of the Bill that were amended.

Just to give an idea as to what the committee did. The committee, for example, in the original Bill, deleted clauses 3 to 23 and inserted new clauses from 3 to 55. What they did really was, to substitute a lot of what they consider to be—recognizing, that it may be at some stage the Government could go with the full ambit, but in order to start, it should start with safeguards in which there would be the intervention of the court in order to make some of these orders.

Mr. Speaker, I thought it was necessary in effect, to do this, this morning because I think Members could have gotten the wrong impression that this would mean that the right to privacy would be invaded; and that it would be a situation

where people would not have any safeguards in the taking of these samples. That is not the case and it may be that they were confusing it with the original Bill which was introduced. The original Bill went along with the British model and recognizing that is probably for a different kind of society, this committee looked at all the models and came up with this model. As the Minister of National Security said last night this is what is considered to be the model for the time being in Trinidad and Tobago.

Mr. Speaker, I want hon. Members to appreciate that no justice system is infallible. There are times when the state is confronted with situations. Apart from DNA typing being important before conviction and during the appeal processes, there are times when the state can be confronted with situations in which you would have oral evidence being produced after trial and conviction and saying, if the person did not get the opportunity to have these witnesses; and if they had these witnesses this is what the witnesses would be saying, that they would be innocent.

Although there is machinery now for those matters to be reconsidered, you still depend upon what "he say" or "she say" if I may use that expression; you still depend upon oral evidence; and you depend upon alleged eyewitnesses. Therefore, if a state has a machinery like DNA scientific evidence, which is produced showing that a person who was convicted should not have been convicted based on DNA typing, then obviously, that would be very strong evidence for a state to consider acting in the matter. All states welcomed this kind of forensic evidence in order to ensure that its legal and criminal justice system does not imprison innocent people or convict innocent people. The whole purpose of the criminal justice system is to punish the guilty and to free the innocent; to ensure that the guilty is not exonerated; but also to ensure that the innocent is not prosecuted or convicted.

**11.05 a.m.**

[MR. DEPUTY SPEAKER *in the Chair]*

Mr. Deputy Speaker, it is my view—and I speak without trying to, in any way, boast about any experience that I have at the courts but, as a lawyer who has been in the criminal courts, the civil courts and who has been able to see the law on several sides—that from what has happened in other jurisdictions, it is quite clear that it will be a great asset to Trinidad and Tobago if the police can be able to get this machinery to use in its investigation as a very powerful forensic tool, and it

will be very important if the state can have it as a very important forensic tool in order to determine at times whether people were rightly or wrongly convicted.

Mr. Deputy Speaker, I thank you.

**Dr. Keith Rowley** *(Diego Martin West)***:** Mr. Deputy Speaker, I rise to do two things. One is to support the initiative, but to raise a flag with respect to the intended implementation and introduction of this method into our criminal justice system.

Mr. Deputy Speaker, there is no gainsaying the fact that the potential for DNA use is a powerful tool, since it has the ability—the use of the technology can identify and, therefore, associate a suspect with a scene or with a body part or body fluids at a crime scene. That can help tremendously in removing doubt, because as the Attorney General said, most of what happens in court ends up with decisions being taken within the parameters of reasonable doubt.

Mr. Deputy Speaker, I do not want to go into the detailed science of DNA and what it is and what it means. I simply want to point out that it is a very complex item and it requires a very high level of training to be able to reach the point where one can use DNA as an expert in legal matters. It is from that standpoint that I said that this Bill can only be, at the moment, an intention, because if we proceed to pass this legislation now, and proceed to attempt to implement it within what is now Trinidad and Tobago, I have no doubt in my mind that it would be a nightmare in the courts.

When one looks at the level of compliance that is required within this Bill to ensure that there is no abuse of the process of sample taking, securing and identification, and when one understands how court processes go—the Attorney General made reference to the O. J. Simpson case. Any person who observed that case would have seen that even with the high level of technology available in the United States, the vast pool of experts available to the U.S. government and its agencies, the public sector and private sector experts, in fact, the DNA in that case was the peg on which the defence hung their hat and, in the end, if anything, assisted in reducing the weight of other evidence. It was the detailed examination of the DNA in that case that largely resulted in the acquittal on what many believed to have been an open and shut case of brutal murder.

Mr. Deputy Speaker, let me give an example of what I am talking about. To have DNA being used in our legal system without questions, that can result in a number of cases being thrown out because of faulty handling. The first thing we have to have in this country is at least one good laboratory which meets

international standards. I am not aware that we do have that. If we do not have that and we attempt to use DNA in the criminal justice system, all that we would do is create loopholes for defence lawyers to raise queries in the court and on technical procedures put criminals on the street. Insofar as it is our intention to attempt to use this leading edge technology to assist us in our criminal justice system, it has to be a given that the state is committing itself to funding and operating in this country, at least one high quality laboratory.

Mr. Deputy Speaker, if one looks at the laboratories that exist in Trinidad and Tobago today, one will observe that the one thing for which they stand out is poor staffing and poor funding, resulting in extremely poor service. Let us take the Forensic Science Centre. Basic resources, such as forensic pathologists, in the centre, were not being made available, even after we agreed that a forensic science centre is a useful tool in the criminal justice system. We reached the point in this country where there was a time when there was not a single forensic scientist in the centre and then, the state took the decision to train people to ensure that such a development never happens again.

Mr. Deputy Speaker, I happen to have raised in this House on more than one occasion, the situation with respect to the state's attempt at training two persons, and I refer to Dr. Des Vignes and Dr. Burris who were trained specifically at great cost to the country to make available to the criminal justice system, not leading edge technology, but standard forensic scientist skills.

We know what happened with Dr. Des Vignes. He was humiliated in the court; his contract was not renewed; he was almost driven crazy; his father died a broken man seeing his son being disgraced in the court. Dr. Burris is in Tobago, having not served one hour in the Forensic Science Centre, and as we are hearing now, Dr. Chandu Lal, who is of questionable qualification, is having his contract renewed for the "enth" time because there is nobody else.

I make these points to show that even when this country had to deal with non-leading edge technology in the one lab that we have which is supposed to provide scientific support to the criminal justice system, our performance has been dismal. That is why I am concerned that if we introduce DNA in our legislation and begin to take samples of hair and bodily fluid, and so forth, and introduce them in the courts, we will soon find that the defence lawyers would be laughing all the way to the bank and the criminals would be heading back on to the street, because this state of Trinidad and Tobago has not demonstrated any ability to deal with science in the criminal justice system. *[Desk thumping]*

I look at clause 41 which talks about a DNA board that will monitor and certify the lab. Look who is required to be on the board:

> "not more than five members, including a molecular biologist, a population geneticist, a forensic scientist, a pathologist and a member of the legal profession…"

I dare say, Mr. Deputy Speaker, the only member of this five that can be easily had in Trinidad and Tobago today is a member of the legal profession.

When we cannot find a forensic scientist to staff a longstanding institution like the Forensic Science Centre, where are we going to find one to put on this board, by law? I do not mean put one today and not have one in six months time and then not have one in a year's time, because once DNA is in the system and one is taking samples, this has to be continuously available. There can be no break in the support for that aspect of the law, and we have seen what has been passing here from the state with respect to the supply of forensic scientists to the centre.

I am not sure how easily a Minister of Government will find a molecular biologist, because molecular biologists, even in developed countries, are not people one can pick up off the streets. It is a very highly specialized area, as you will know, Mr. Deputy Speaker and, in Trinidad and Tobago I dare say there are very few people available to claim in the court, as expert witnesses, to be molecular biologists.

As for the population geneticist, I do not know that we have any of those, because anybody can call themselves experts. We have a Minister of Government calling himself an architect. He has no qualification, but he is designing bridges. If he dares go to the court and sits down in the box as an expert witness and the defence lawyer begins to ask him who authorized him and which university qualified him, he would have to eventually admit under cross-examination, that he is not a qualified architect.

Therefore, when one talks about using DNA and putting experts in a position to identify themselves and be supported in the court as experts, we are not talking about child's play, we are talking about proper certification and support systems. Even if one has a molecular biologist, he or she cannot operate on his or her own by giving him or her a job with a nice salary and perks and putting them in a room. They require a tremendous support base of technicians to work with them, to ensure that that lab is of a certain standard. Those technicians cannot be trained overnight. The equipment that they have to use is not equipment one can go to Standards or Courts and buy and say "This is a nice piece of equipment" and

begin to use it. It is equipment that one has to procure and have one's staff trained with them.

I want to go back to how this country has viewed science, because we talk a lot in this country, but when it is time to deliver, one gets the impression that many people do not know about what they are talking. I remember when the NAR was in office and Minister Clive Pantin was the Minister of Education—a man for whom I have the highest regard—he came up with a plan which said that national scholars must be confined to studying in Trinidad and Tobago.

It was that which told me that the regard I had for him needed to be reviewed, because clearly, here he was talking about quality education as against quantity. He was very critical of the system that existed up to that point when we were dealing with quantity, and he was the Minister who was emphasizing quality. I was shocked to think that a person like him who had been in the education system, and whom one may give the title of "intellectual", could not understand that there was tremendous value in allowing our brightest students to go out into the world, meet with and mix and learn and study among the world's best. That is how one gets the best from one's best. Not to confine them to UWI!

**Mr. Assam:** Did you not write him and tell him he destroyed your high regard?

**11.20 a.m.**

**Dr. K. Rowley:** I spoke to him in the Parliament from this same position.

What he was saying is that by sending our students abroad, we were casting aspersions on the University of the West Indies (UWI). Nothing was further from the truth but, UWI as a university, is extremely limited in what it can expose our students to. If every year you can send eight, ten or a dozen of your best students abroad, what in effect you would eventually build up is a pool of people, some of whom will come back here, some of whom will stay abroad and become even better, and one day be able to serve their country even from abroad. It was tremendously shortsighted for a Minister to say that national scholars must not be allowed to go abroad and study. I thank God that that system has changed. But, of course, he is still the expert for this Government on education.

Mr. Deputy Speaker, how do you know that if we had sent some people abroad or, I would eventually say, if we need to find a molecular biologist today in Trinidad and Tobago, we will have to advertise abroad. If we keep that advertisement in Trinidad and Tobago, chances are you may not get one applicant. *[Interruption]*

**Mr. Assam:** But we have at the university.

**Dr. K. Rowley:** Even if you have at the university, do you think because you offer him a job he will leave the job up there? *[Interruption]* I am saying he or she may not be available or may not be willing to. I am going further down the ladder, I am saying not just the board, what about the people who are going to use the equipment to do the match. *[Interruption]*

Mr. Deputy Speaker, they are telling me about being trained. I take it with a pinch of salt. This is a Government that refused to train even Geography teachers. *[Desk thumping]* This is a Government that acknowledged that we have a shortage of Geography teachers in our schools, and they took a decision at Cabinet to train five Geography teachers. They selected the people to train them and when they came up for training—qualified people standing by to go on scholarship—that Member for Tabaquite said: "I am not sending you for training because you stayed home on TTUTA day. That is what this Government has done. A government that publicly refuses to train Geography teachers wants me to believe that they are training people to deal with DNA testing and identification of DNA elements.

Mr. Deputy Speaker, that is why I am saying that even if this Bill is passed in this House, it can only signal an intention. It will have to be kept; it cannot be brought into force until all the support systems are in place. I cannot see this Bill being assented to, to become law in the present climate, because you do not train a DNA technician overnight.

Mr. Deputy Speaker, the Attorney General talked about which laws we looked at. I was very pleased to hear that. We looked at the United Kingdom, New Zealand and Australia; all these are developed countries with a long history in operating high quality laboratories. We do not have that in this country. We are a country equivalent to the size of a very small city in the United States. While we aspire to using this tool of DNA, we must acknowledge that we may not have amongst us the support systems, and we have certainly demonstrated that we do not have the will or the understanding to provide and maintain those support systems in place.

Until such time as I see the mundane being taken care of in this country, I cannot but be hopeful when we talk about the leading edge. Look at Eric Williams Medical Sciences Complex. Mr. Deputy Speaker, Eric Williams Medical Sciences Complex was a vision. This country had a vision for operating a high quality hospital which would provide to the citizens leading edge technology to treat with

ailments which, otherwise would have confined you to death and destruction and to provide within our hospital system, that location where the best equipment, the best staff and the best service would be available. Of course, it does not come cheap to build, staff and equip the hospital, so it does not come cheap; although people were led to believe that it was a waste of money and it could be run for cheap.

Having said that, the bottom line is, whatever we want to say, Eric Williams Medical Sciences Complex cannot be now viewed as a success, given the vision that we had in the beginning. Because right now, as I speak—*[Interruption]* You hear? "Whose fault is that?" I am not talking about fault; I am talking about reality. The reality is as a country, we have not been able to operate Eric Williams Medical Sciences Complex as it was intended to be. If there is any blame to be shared, there is enough to share and go all around. Because this Government at least met it functioning at a certain level and, one thing for sure is that it has fallen considerably below that level since they came into office. That is for sure. *[Interruption]*

I am not talking to them, Mr. Deputy Speaker; I am talking to you. I am not debating with them; I am talking to you. *[Interruption]* They will say that. You go out there and talk to the public, the staff, the doctors and the nurses; Eric Williams Medical Sciences Complex today is the worse that it has ever been.

**Miss Nicholson:** The Deputy Speaker could tell you that too.

**Mr. Deputy Speaker:** The Standing Orders say you are not supposed to bring the Chair into your argument.

**Dr. K. Rowley:** I am not getting involved in any debate with them. We will debate their performance outside on the streets but, as I am here today, I am telling you, Mr. Deputy Speaker—and I do not want you to answer, I do not want you to come into the debate—you only have to read the newspapers, talk to the doctors, talk to the nurses—*[Interruption]* Yes, I believe them since you left there.

Mr. Deputy Speaker, it is common knowledge that the funding and the support levels for the Eric Williams Medical Sciences Complex have left a lot to be desired. It is common knowledge that major pieces of equipment are malfunctioning or nonfunctional up there. I saw staff members telling the press that they have been cannibalizing certain pieces of equipment to keep other pieces running. I went on the site, and asked them: "Why is it like this?" Look at the building, drive past and you will see the rails rotting and falling off. It is

symptomatic of what is going on inside. I know very many people of high qualification who came here to work in that institution, and at short notice had to leave because they could not be paid in some instances, or the circumstances were too bad for them to carry out their trade. I know that, Mr. Deputy Speaker, and those who are there are holding on under very difficult circumstances.

When that is the case with normal type technology, what are we to expect when we venture into leading edge technology? When you are dealing with DNA, Mr. Deputy Speaker—I know professionally, you know what I am talking about, but I am talking here for the record—you are dealing with microns, micro units, very high precision instruments with very narrow levels of tolerance, systems that require technicians who are trained to the very highest level. One little mistake could be the difference between positive and negative signals when you are looking for a match, because that is what happens. You have the sample from the crime site and you take a sample from the criminal and you set out to match the DNA; to see whether they match.

**11.30 a.m.**

What is required to make that match is a whole plethora of support systems and personnel. So when the person ends up in court saying the match shows statistically, it is 1 in 500,000,000 people who can give this match and this fella has to be very unfortunate to be so matched having alleged to have been on the site of the crime. It is the nature of the match that determines how useful that can be. That is why all these questions have to be asked about the nature of the sample. How was it sampled, how was it stored, was it degraded, what kind of reagents were used, is the handler qualified, is the technician qualified?

Defence lawyers would not question the board, or the biologist: they question every person along the chain and every person has to account for his or her involvement. That is why every person who is going to be involved in the system from the policeman to the constable at the lowest level, right up to the person who reads the DNA on the machine, to the person who takes the sample, every single one of them can find himself in court answering a question. A defence lawyer trying to find out if you are in fact trained and qualified, and if that is not in place, this is simply going to be another loophole for criminals to escape. If it is in place, then it becomes a powerful tool that the system can use, it is going to be a tool that will be constantly under challenge.

Mr. Deputy Speaker, in fact, the coming of DNA and the effect it has or could have on the criminal justice system, one can equate it with the coming of

fingerprinting. It is that kind of quantum leap in identification, but it will be under attack throughout the process and that is why it is extremely important that the Government does not rush into putting this on the law books without having impregnable support systems in place.

I hear my friend from Nariva who does not seem to understand much in this House. He is shouting: "They have people training." He thinks that is what it is all about. If you train someone and they return qualified and go to the court, the training has to be verified, then they start asking you questions about your experience. What experience do you have in this matter? And you say none. The defence lawyer makes an issue of that. So it is not a question of training people, it is a question of having people who have been trained and can stand scrutiny to their training. I hope the Member for Nariva could see a distinction between those. There is a distinction.

**Hon. Member:** Just as there is a distinction between a politician and a journalist.

**Dr. K. Rowley:** Mr. Deputy Speaker, it would be good if we could have this on the books. It would be good if we could have the support system because again, I think the country can afford it, but I want to put the Government on notice. To use this tool in the court will cost us. It will be an expensive system to support. The system in New Zealand, Australia and wherever, many of these systems develop out of national laboratories or university laboratories that are very well-funded, have long history of support systems and there are larger communities that can support.

While in the court we will be doing the same thing that the Australian lawyer and judge will be doing, behind the Australian lawyer, are a large number of universities, the national laboratory and a deep pocket. Behind the British lawyer, the British judge and technician and a series of university labs all of the highest standards provide the support. We do not have that support system in Trinidad and Tobago.

If we are going to have it, the Forensic Science Centre at Federation Park will have to be upgraded to a much higher level than it is operating at the moment. It cannot be an institution where you have staff today, and you do not have tomorrow; or you have persons of questionable qualification today and you do not have tomorrow; or you have equipment that is functioning today and not functioning tomorrow. It cannot be like that, because once this is introduced on the law books, you have entered into the realm of continuous high science

support. So far, I regret to say that we as a people, as a country, as a government have not been able to operate at forensic science level to the highest.

I recall recently I saw in the newspaper something about many cases not being determined because there is no document examiner at the Forensic Science Centre. There are many cases that require to have documents examined and they rely on the experts from the Forensic Science Centre. If we have not been able to take steps to ensure that we have on staff document examiners, how can I be confident that we will have the equivalent technicians to do DNA work?

Mr. Deputy Speaker, do you see the basis of my concern? It is not that I do not want us to go in that direction. It is not that I do not want us to have this tool. It is that we are far from ready to use this tool, and if we jump in to use it, we might end up creating more problems than we would solve. I am cautioning the Government to take steps before to upgrade our laboratories.

Recently there was an uproar in this country, a release from one of our better laboratories, CARIRI, which did some work on bottled drinking water. Mr. Deputy Speaker, up to now that matter has not been satisfactorily clarified. What I do know is that the information released by CARIRI, which caused consternation among many businesses and users of the product, was challenged immediately, and I dare say the one thing you did not see in that debate when people started threatening lawsuits was a confident CARIRI spokesman coming out and saying: We stand by what we have done and are prepared to be examined by anybody. There was silence from CARIRI. We saw statements by Government spokesmen, we saw a return to the status quo, and a hiding of the information which determined in the beginning that some of the water was of questionable quality. I did not make this up, this happened a few months ago at one of our better labs. If that is water, you could imagine what would happen with DNA because water is a very simple compound, very easy to determine whether it is pure or not, but DNA, when you start matching—

**Mr. Assam**: Mr. Deputy Speaker, I want to clarify a statement which the Member for Diego Martin West just made which is not correct. There was no obligation at CARIRI to make any statement. CARIRI undertook tests requested by the Ministry of Consumer Affairs, so there was no obligation to defend what they did.

Secondly, the Minister of Consumer Affairs called a press conference and indicated the results.

Thirdly, the manufacturers of bottled water were given all the indications and standards expected of them and those who fell below those standards were the ones who were named.

Fourthly, they were given an opportunity to rectify their position which was subsequently authenticated by that institution, so I am not sure the Member is making a correct statement and, therefore, he is raising unnecessary alarms and concerns in the society.

**Dr. K. Rowley**: Mr. Deputy Speaker, I am not going to debate this with the Minister because you know and I know what happened with the testing of water in this country a few months ago. The point I am making, I am expressing my own opinion on the matter. I am saying that I did not see a confident position from CARIRI which told me that they are in a position to, or are prepared to stand up and have their work examined in the highest quarter. Whether they wanted to or not is not the point. I am saying that was my impression. The bottom line is that for a long time the public was not clear and still is not clear what went on in that situation and the Minister is simply a public relations person for the issue. The point I am making is if we can have questions in this country, raised in the way they were raised when we talked about the quality of bottled water—

Mr. Deputy Speaker, if the FBI laboratory issues a report tomorrow saying that the water quality in Maryland, Virginia, or California in certain locations falls below a certain standard, do you expect the business and public in America to question the quality of the testing in the lab? Do you think anybody in America will say the FBI lab says the water is not clean and question the lab? No. They will not because they have confidence in the lab. They have confidence in the staffing and the arrangement. What they will do is ask the people what they are doing to meet those standards.

The point I was making on CARIRI is that the minute the information became available to the public, the first thing that came up was the questioning of the quality of the work that was done.

**Mr. Assam:** That is not true.

**Dr. K. Rowley:** You could say what you want, there are other persons in this House who know otherwise. The first thing that came up, people were questioning.

Mr. Deputy Speaker, the bottom line is, we do not have labs in this country which would meet the standards required by this legislation. Not at Mount Hope,

not at the Forensic Science Centre. Where do they have them? If we do have labs then tell us because we do not know where they are. Port of Spain General Hospital, Sangre Grande, Couva, Tobago? I am saying it again and I want the Minister to enter the debate and tell me I am wrong, the same way my friend from St. Joseph is telling me I am wrong. I am putting it on record: We do not have any laboratories in this country that will meet the scrutiny of the highest standards required by this legislation. Until such time as we have those laboratories operational, this ought not to be made law, otherwise we would be creating loopholes for defence lawyers to allow criminals to go back on the streets. That is all I am saying.

I am hearing a murmuring from that thing from Arima saying, if you do not have one, develop one. You do not develop one by passing laws and creating a requirement knowing that you cannot service the law. That is not how you develop it. You develop it by supporting the Eric Williams Medical Sciences Complex to create the expert base and to have the equipment in place. You develop it by ensuring that the Forensic Science Centre at Federation Park is operated at peak, properly staffed, properly funded, properly equipped and the people become experienced in the matter. That is how it is developed. It is developed by creating a new laboratory, or build on the ones you have and by having connections with other laboratories that can support you because many of these labs have interconnections both with respect to personnel and equipment. We do not have that in Trinidad and Tobago. If we pretend that we have it and we pass this into law, we would create more problems than we are going to solve.

Mr. Deputy Speaker, I am not going to belabour this point. I will end by saying that this Bill should remain an intention. We should pass it, but I am warning the Attorney General that on passage, it ought not to be assented to in the very near future. A lot of good work has gone into creating the legislation. We have what is called the Trinidad model here, yes. I have no problem with the legislation *per se*, but I crave your indulgence, from the Member over there.

**Mr. Deputy Speaker:** Order please.

**11.45 a.m.**

**Dr. K. Rowley:** Mr. Deputy Speaker, what I am saying is that some serious attempt has to be made with respect to upgrading and supporting our existing research and scientific bodies to make sure that they reach that standard. It is only when they reach that acceptable standard, should we assent this into law. I say no more. It was the Attorney General himself who described the forensic science

centre as backward. That is the word he used this morning. Backward. To move from backward to acceptable requires resources, personnel, equipment and time. Until such time as we move from the label of backward to acceptable, modern and properly serviced, this piece of legislation should only remain an intention.

I thank you, Mr. Deputy Speaker.

**Mr. Fitzgerald Hinds** *(Laventille East/Morvant):* Mr. Deputy Speaker, I sat here this morning and listened to the Member for Couva South and perhaps for the first time I found myself, not in total agreement, but I found that he presented his case in an apolitical manner. And he impressed upon us that this was not a partisan issue, this was a matter that was being sought to improve the circumstances of the criminal justice system and other systems in our country.

We are not seeking to make this any political issue and to attack the Government and they must, in return, attack the Opposition. That is not the point. I was in admiration of that. I then listened to the Member for Diego Martin West, whom I thought made some very, very useful and accurate submissions. The Member for Diego Martin West is not an attorney-at-law, he does not practise in the courts but the points he made gave a clear indication that he is, at least, mindful of a lot that is happening in the system. And I suspect that the Attorney General and Member for Couva South spoke as he did, because he is very much aware of the realities and the vagaries of the circumstances as they exist in the criminal justice system. And I must give wholehearted support, not simply because he is on this side. As I say, this is not a matter that we are going to create any divides over, but for the strength of the submissions by the Member for Diego Martin West, I give support to those.

It is almost as if we will be embarking on a situation where the mind will be making appointments the body cannot keep. We are Parliamentarians; we make laws, but we must be mindful of the fact, as the Member pointed out on diverse occasions past, that when we put in place legislation and say "the police shall" and "the Board shall" and all of that, these are commands at law, and persons cannot be compelled to do things under law if they are not given the facility in order to do them. It is as simple as that.

And I listened to the Member—well I heard him described as the "thing" from Arima—I would say "the Member from Arima." I heard him making some interventions from across the floor and he was invited by yours truly across the floor as well to participate. He has an opportunity to speak. If he takes intellectual, philosophical or a legal difference with what a Member on this side is

saying, it is open to him to stand up like a Parliamentarian; stand up like a man and defend his position. *[Desk thumping]* But he is either unable, afraid or ashamed!

So he seldom speaks in this honourable House. We know why, but we will deal with that outside. But in the meantime, if the hon. Member wants to say something he can do like the hon. Member for Diego Martin West; the Member for Laventille East/Morvant and others and stand up and speak! I heard someone say that he must have gotten his degree from the same university as the Dr. Chandulal whom we heard about. We do not know. But let us test it in here. Come and speak.

The business of DNA forensic analysis typing and testing will take us a long way. I sat and I observed the way investigating authorities in the United States of America, Canada, New Zealand, Australia and England conduct enquiries into serious offences. And they approached that—because in those countries as we know, the law provides for the use of DNA typing, testing, and analysis.

I remember a particular case where there was a series of rapes/murders in a particular locality somewhere in the North of England. This went on over a period of about three months. There were about eight rapes/murders and the police, of course, were trying to find the attacker or attackers. With the full knowledge of the use of this kind of facility behind them, they took a systematic approach and eventually they found the culprit. What they did, first of all—and Members may find this interesting—because in Trinidad and Tobago, as the Member for Diego Martin West was saying, I do not know if we have the capacity, the skill, the thoughts about approaching things in this way.

When they looked at the areas in which these crimes took place, the police set up a unit in that area, and from the description of the attacker, they formed the view that it had to be somebody within a certain age group—like say 18 to 25. The police painstakingly went to every single house knocking door to door within that area that they had marked off, enquiring as to whether there were any young men between that age group living there. So by the end of that collection exercise they had a fair idea of how many young men of that age lived in the particular area. They were confident that it was somebody who had local knowledge that was doing it, because on two occasions the escape route could only have been known by someone who lived locally. They surmised that.

They then embarked upon inviting persons—as this Bill provides—to come in voluntarily and offer samples for DNA testing. So they were able to eliminate from

the list of those who were known to be living in the area those who came and offered themselves. Those who did not, they paid particular attention to them. This exercise took weeks but they were there with the technology that was at hand.

It became obvious to some of the detectives waiting in that outpost with the DNA analysts and so on, that on one occasion, they saw a young man who came in and gave a sample. Two days later the same young man came back to give another sample. So one of the observers found it strange and pulled him in and wondered, of course, why would he come on two occasions. It turned out that he was a bit of a half-wit—I would not say like one of my—*[Interruption]* Someone is saying like the Member for Arima but I would not say so, even if I am inclined to believing it.

**11.55 a.m.**

But, Mr. Deputy Speaker, when he was, to use a colloquialism, pulled in, and questioned about his coming, it turned out, half-witted as he was, that the perpetrator of the crime sent him on the second occasion with his, the perpetrator's name. So that if he had gone, he, not having committed the crime, and his sample was tested, it would have appeared to be clean, insofar as that crime was concerned, and he went on the second occasion with the name of the criminal, the murderer. So he was able to assist the police in finding the person and the crime was solved.

Why did I make those points? Because, in order to give effect to this legislation it requires, as the Member said, quite seriously and properly, a tremendous amount of training and expertise. Sometimes we see police officers on a crime scene. We may see a dozen or a dozen and a half of them kneeling in coveralls going through the room searching. They might use an adhesive paper or something like Scotch tape and pick up hair, for example, human hair, and dead skin cells from around the bed in which the crime or the murder may have taken place, and it requires a tremendous amount of detailed analysis.

The Attorney General told us that the system is 80 per cent accurate. In fact, I am informed that the system is even better than that. The probability of error is a lot better than 80 per cent, but at any rate, once we conceive that there is some error, that is the case. However, the Attorney General also said that the largest area of flaw does not come from the actual testing but from the collection and the handling of the materials, the evidence that is to be tested. Therefore, to throw this at a police service today, limited as it is in terms of its expertise in this area, is a recipe for confusion.

The point the Member for Diego Martin West made, is that when you do that, first of all, we will now have a law that cannot be effectively implemented, so the law is brought into disrepute by causing people to see that we have a law on the books that is not being observed or practised. You attack law when you do that and the Attorney General should understand. All laws, however trifling they may appear, whether it is about spitting on the pavement or parking on the wrong side of the road, to the most serious laws, all laws in a society ought to be observed and practised otherwise, failing to do that, that itself brings law into disrepute. People lose confidence in law. So that, the point the Member was making is indeed a serious point. If the Member for Arima takes umbrage at that, then we must question his state of affairs.

Mr. Deputy Speaker, at the present moment, the police service is absolutely unable to cope with the implementation of this legislation. That brings us right back to the question of preparing them. When the Member for Diego Martin West got up, I must tell you, I agreed, because before we give effect to this legislation there is a whole host of things to be put in place. We will naturally have to send many more police officers abroad or arrange for them to be trained locally in the handling of evidence for DNA typing and testing.

Recently I was involved myself, Mr. Deputy Speaker, in a murder trial and one of the reasons the accused was exonerated, I suspect, was because the knife that was supposed to have been used in the murder was not tested, not even for fingerprints. The police officer who was directed to the knife that was supposed to have remained on the scene after the crime, he went, he took up the knife after it was brought to his attention, he took it to the police station in question and he gave evidence that after he got to the station he showed it to the inspector who was investigating the murder and the next thing he did is to wrap a masking tape around the handle of the knife and to mark the date and the initials of the person who was the subject of the inquiry.

That is the way the police are presently trained. That was for the purposes of showing the court that, “This knife was the knife I found on such and such a date in respect of investigation concerning the police and D. R.”, or whatever would be the initials of the suspect. However, in so doing he did not have the knife itself tested for fingerprints and it was put to him that maybe by putting that masking tape around the very handle he covered and destroyed evidence that could have assisted the police in determining whether the knife was really in the hands of the accused or whether it may have, in fact, been in the hands of the victim, the deceased, whom it is suggested was involved in a confrontation with the accused.

I make that point to demonstrate the incapacity, not because the police do not have the mental and the other capacity for this but they need to have the right training. So we are a long way off.

Again, while the Member for Diego Martin West was speaking, a measure of sadness came upon me. True. It is a measure of sadness that I experienced last week when we discussed the amendments to the Motor Vehicles and Road Traffic Act because it is in that debate I took pains to point out that today it appears as if Trinidad and Tobago—and this is not being partisan—sadly, is unable to deliver in the way that we are expected to deliver. The Licensing Authority, I pointed out, appears not even to be able to cope with properly monitoring the amount, the use and all that goes with vehicles on our roads.

I pointed out that I know of three cases, in which I am involved, where certified copies were obtained from the licensing department, stamped and signed by the Transport Commissioner and they turned out to be bogus, and turned out to be documents you cannot rely on. The person from whom the vehicle was transferred last does not exist. So that the person who now owned the vehicle, relying on a document he or she got from that state department, finds himself or herself in a fix. So perhaps there are, in the very licensing office, those who are putting strange bits of information into the computer, so we cannot even rely on that.

In the banking system in this country it became known recently, and I also am involved in two cases, where bank officers electronically deposit money in so called accounts. So some bank teller simply goes into the bank's computers and deposits a half a million dollars in the account of X. X now, participating in the crime, goes to the bank. When he asks for a banker's draft or a manager's cheque, the teller he approaches goes to the very computer to see what is the state of his account. When he or she goes he or she sees $500 million so the teller goes ahead and makes a manager's cheque for $250,000. That has happened. There are such cases before the court right now. Then the person goes with the manager's cheque and pays it to some unwitting vendor or lender, and so it went. They will eventually be found out when the person tries to cash the cheque, but by then, the person is gone.

That is the reality. I cannot blame the Government for that. I cannot blame the Government for the dishonesty of an individual operating in the bank or in the licensing office, but what I can say is that this Government has created a climate in this country that makes that kind of thing more likely. [*Desk thumping*] I will

support that at a later stage. So we have a long way to go before we could give meaningful expression to the legislation.

I observe that the Member for Diego Martin West did not go further and make a call. I am asking the Minister of National Security to find the strength and the independence of thought to go back to his Cabinet and tell them, "Having had the benefit of what was discussed in the Parliament today and last evening, we should reconsider passing this legislation. It is good in principle and it will advance the state of affairs in Trinidad and Tobago but if we put this legislation in place, unprepared as we are, the Member for Diego Martin West is right, it will give an opportunity for lawyers to have a field day and again bring the law into disrepute". Because the police will become utterly demoralized. The judges and the magistrates will become absolutely demoralized if we have implemented a system and the police are incapable of doing what they have to do, the forensic department being what it is.

The Member talked about document examiners. I filed a question, the answer to which I have not yet gotten. They have postponed the answer. I do not know what they are trying to do. I asked the question. It is before us all. What is the state of affairs in respect of document examiners, handwriting experts? Matters are falling down by the wayside. The police take time and trouble to investigate, no document examiner, bam the case falls, the criminal feels vindicated in his wicked ways, the police and the judges feel demoralized and everyone walks away. The law is yet again brought into disrepute. Is this what we want for our country? We do not want the mind to be making appointments the body cannot keep. So it is a serious point, serious matter. It affects morale, it affects so many things, so we need to be careful.

We should not just pass laws. This is an election year, yes. You had 50-something bills on the Order Paper so you come within the last three weeks, Parliament three days a week, bam, bam, bam, ram, "down the road we gone", just to pass bills to enhance your resumé so that you can go on the advice of Mr. Carville and tell the nation, "We passed X number of pieces of legislation". Is that the way Trinidad and Tobago wants to proceed or are we serious? [*Interruption*] I do not want to hear about anyone in the past, you know. You are the Government today. [*Desk thumping*] Many of the bills that you say we did not put in place and now you are putting in place we probably did not because we recognized that while we are ambitious, while we would like to take Trinidad and Tobago upwards and forwards, the circumstances are not sufficiently proper and healthy for that.

Mr. Deputy Speaker, today if there is an applicant, if a mother goes to the Magistrates' Court and advises the court or wants the court to order that Mr. "X" or Mr. "Y" is the father of that child, we rely today on the antiquated system of blood testing. Blood testing, as you know very well professionally, Mr. Deputy Speaker, does not tell us who the father is. It shows the broad blood group and it shows who the father cannot be. It is exclusionary but it cannot, in a pinpoint sense say who the father is. DNA typing and analysis is much more able to do that.

The question is, today in the courts, if someone told the court, "I am not the father of that child and therefore will not pay maintenance for it", the court is obliged to ask the mother of the child and, of course, both parties, to arrange for their blood tests at one of the state institutions, Mr. Deputy Speaker. That is now two years off schedule. In other words, if the court ordered that today, the next appointment for a blood test at the Port of Spain General Hospital can be—do not be surprised—in the year 2002, long after these gentlemen have demitted office. [*Desk thumping*] So DNA testing, we appreciate, will assist in that. What about the costs? There are many people who are unable to meet the cost of a blood test if they decided they want to do it privately. That is true! It may surprise you but that is true.

**12.10 p.m.**

Mr. Deputy Speaker, well I am told that commercially it would cost about $3000 to have DNA testing at the moment. I am told that it might very well be available in Trinidad and Tobago but privately, and it will cost something like $3000. So that if it is costing $3000 and the state embarks upon this system the cost would not change, so it would cost the state as well, $3000. Have we made the requisite investment—this is the point the Member was making—to improve the technology to train the people to bear the cost? The cost is tremendous, it is no fun.

We saw with the Legal Aid and Advice Bill, the Government told us it cost $9 million to implement it and to increase the fees for lawyers, under the legal aid system. It took the Government about seven months trying to find $9 million before it had the legislation proclaimed. Has the Government tried to work out the cost of this? It was easier to work out the cost for the lawyers because we could see if the Legal Aid and Advice Bill was "X" amount in 1998, and you are increasing it to $10,000 per case or whatever, it was easy to calculate. Has the Government taken the time to put a price to this, to value it? I am sure the Government has not. So it is a *vaille-qui-vaille* thing. The Government is just

coming down the road; want to sound good; want to look good; because elections are in the offing.

Mr. Deputy Speaker, we have had problems and we still have problems—as the Member mentioned—with pathologists. There was a pathologist here years ago called Dr. Bhotra. It turned out that he was a bogus doctor and left this country hurriedly and in disgrace. Today, we are stuck with another one who gets his contract renewed over and over not because people are not aware of his circumstances, because his circumstances were published in this House unanswered. We are stuck with that for the time being. We have heard it. The question was asked: where is Dr. Burris for whom the Government paid money to train? Operating today in Tobago I am told, but not operating in the realm of forensic pathology and nothing is being done.

Mr. Deputy Speaker, one would have thought that when these issues were brought to the fore a year and a half or so ago, when Dr. De Vignes was humiliated, the Government would have done something since then. What has the Government done since that time? Dr. Burris is still outside the realm of forensic pathology working in another sphere in Tobago. We are advised that no new persons have been sent for training. So that the situation under the UNC Government is no better today than it was a year and a half ago when these problems where raised in this Parliament. It arose out of a real problem in the court. The Attorney General boasted about how much he had done for the improvement of the system of justice in this country. The Government is joking; it is not serious.

Let me look more specifically at a couple of the clauses in the Bill. I want to draw our attention to clause 36 of the Bill in Part V and it reads:

"Where a person, who is serving a term of imprisonment, has—

(a) not given a tissue sample; and

(b) exhausted all avenues of appeal or the time to file an appeal has expired,

a tissue sample shall be taken from him and the State may use reasonable force to take it."

In effect, this is saying that where a person in prison and has exhausted all his measures or avenues for appeal and so forth, "a tissue sample shall be taken from him" and the state may use reasonable force to get it. Immediately one envisages a situation where a man is in prison, prison officers walk in the cells, strap him down if he is very unwilling and extract a sample from him.

**Mr. Assam**: He is dramatizing the thing.

**Mr. F. Hinds**: My friend from St. Joseph is telling me it is about drama and dramatizing. But you see, fortunately for him, he has conducted his life in a dignified manner and never had the—well not the opportunity—bad experience, but if the Member continues in the company that he is keeping he may have it.

**Mr. Manning:** Very soon he may have it. *[Laughter]*

**Mr. F. Hinds:** But he has not had that horrible experience and, fortunately, yours truly has not had that experience as well. But that is not drama. This is probably the reality about four strong men who come and hold you and turn you upside down and strap you down and extract whatever sample they wish. I am not so sure whether this clause contemplates, or should contemplate, that and then there is another question.

Mr. Deputy Speaker, I would like to know specifically, when we talk here about serving a term of imprisonment, are we speaking about any term of imprisonment? So that if the man is in jail for an offence of wounding and the man is serving 5 years, but he was a suspect in a rape offence and he is in prison for wounding, does this clause permit the Government because the man is in prison to take a sample from him even though he is not consenting and use reasonable force in order to take it? I would like the Minister who piloted this legislation to tell us whether this clause is contemplating imprisonment for any other offence or is it the subject of the offence for which he may be the subject of a police enquiry. That is important otherwise this could give rise to tremendous abuse and it must be said.

Mr. Deputy Speaker, this Government must be reminded. It takes a little courage to say what I will say now, but I will say it nonetheless. A lot of people in this country take this Government for granted. I am sure in Nazi Germany many of the people before 1939 and 1940 took that Government for granted. Many people laugh and have fun with various issues in this country, but these things do not come upon us overnight, they creep on. When we are told by the Attorney General that if we agree in principle we should not debate the Bill, and if we agree, forget it we agree, that is an expression of a kind of dictatorship. *[Desk thumping]* When we stand here and speak and the Member for Couva North jumps up and says we want to violently overthrow his Government—just because we stand here—that is an attempt at dictatorship.

When we see today that the *Newsday* finds it necessary on the front page on every single newspaper to publish for the first time in the history of this country,

the importance of the constitutional right, freedom of the press—that was never put on the *Newsday* before or any other newspaper—it tells us something. They know that they are under threat and still there are some journalists who laugh, talk, and write on not so serious issues. A serious threat is facing us in this country. When I speak today about dictatorial tendencies I remember Nazi Germany; I remember it creeps up upon us; I remember the tendencies and the conduct of some Members on that side and I do not take it lightly. I am very serious.

Mr. Deputy Speaker, a well-known lecturer, Dr. Selwyn Cudjoe—his home was attacked a few nights ago in this country. Well, I will not be so reckless and irresponsible to blame any individual for it. *[Interruption]* I will leave it up to the police to find out. I will not say who. *[Interruption]* I do not know who. What I do know—*[Interruption]* Mr. Deputy Speaker, I need your protection. *[Interruption]* I do not know who did it, but you all are getting flustered as soon as I speak about it; you gettin' "jijiree" like you have cocoa in sun.

**12.20 p.m.**

**Mr. F. Hinds:** What I know is that this is not a laughing matter. A citizen of this country, for no apparent reason, there was no intention to rob, because the occupants of the house said no attempt was made to dislodge or take any item of value. It was a clear act of intimidation and threat. I remember Mr. Ken Gordon reporting to the then Commissioner of Police that he was under threat. He felt seriously under threat and he has written a book giving clear signals as to where that threat came from.

**Mr. Sudama:** What has this got to do with the Bill?

**Mr. F. Hinds:** Mr. Deputy Speaker, the Member for Oropouche wants to know what it has to do with it. Let me tell him that when I see a clause as wildly and widely drafted as this with that Government, I have problems. I would like that to be made clear.

Let us go on to clause 37(1) which says:

> "A police officer shall ensure that between the time when he collects a DNA package from a qualified person and the time when he delivers it to the Forensic Science Centre, that it is properly stored."

You see those two words that end that clause? They sound good. The meaning is quite clear. No person who reads the legislation will have trouble understanding what it means, but how do we give effect to it in practice? This is the point we

are making. Today, in every police station in this country there is what is called a "property room".

**Mr. Assam:** And they are beautiful now. Did you see them?

**Mr. F. Hinds:** I know you would know about beauty. You had the benefit of seeing beauties for one night at the cost of $81 million. *[Desk thumping] [Interruption]* Mr. Deputy Speaker, I will not be detained by the Member for St. Joseph. I will ignore him. He too is invited to join the debate. He could do that.

The property room in the police station is a little room with a few boxes and there is a property keeper. When they find guns, drugs, items of clothing, anything that the police collect during the course of investigation and is capable of being kept in a room is thrown in there.

I want to tell you, Mr. Deputy Speaker, that oftentimes in the courts, officers come to court without exhibits, as those items are then called, because sometimes the property keeper is not there and sometimes they cannot find it. The system of recording and the system of keeping is very troubling. Could one imagine one is going to throw DNA samples inside of that, when the Attorney General tells us that the largest potential for difficulty is not the testing itself—and we accept that—but the procurement and the storage and the handling of this evidence? So, before we talk about "it must be properly stored", have we provided the police service with an opportunity to properly store it? No. Or the forensic department or wherever, for that matter? It is a serious matter.

I told them already about the experience with the knife and how it aided the acquittal of a man, because the jury wondered about matters such as that. We need to look at that.

Clause 39 talks about a DNA database. It is a good thing. Beautiful in logic and in principle, but again, for the reasons I have explained earlier, horrible, shortsighted and ugly in practice. I spoke about the Licensing Office and what is happening down there. Until the people of this, or indeed any country—but let me confine myself to this country—are sufficiently motivated…

I was reading about the history of the great PNM recently and the contribution that the PNM made and about Dr. Eric Williams. I want to tell you, that the writer—not a PNM member, a political analyst—looking back at some of his efforts said that one of the greatest things Dr. Eric Williams achieved was to motivate the entire nation towards a sense of nationhood and purpose where every single person felt they must work hard and diligently for the sake of the nation.

[MR. SPEAKER *in the Chair]*

**Mr. Speaker:** I think we are in danger of moving away too far from the Bill under discussion. Please.

**Mr. F. Hinds:** Mr. Speaker, I am most grateful to you. I was saying that if we have a DNA data base, it has to be reliable. The persons who put the information in and monitor those records must be sufficiently motivated and inspired to know that they are making a positive and serious contribution to Trinidad and Tobago, and must understand that morality, honesty and integrity must be their watchwords. I know we cannot achieve that in all cases. There will be deviants in many ways, but I fear that Trinidad and Tobago has become more populated with deviants than people who mean well. That is the point.

I do not know what is happening, but I feel sorry, as I said, for Trinidad and Tobago for those reasons, and I am not sure, based on the example that I had given in respect of the certificates coming out of the Licensing Office, stamped and signed by the commissioner. They have proven to not even be reliable. This DNA database is important. That is the point I am making, and that is what took me into our beautiful history and my prayer that we will one day enjoy those beautiful moments again. That is only possible after this Government is democratically dislodged and seen the back off.

Mr. Speaker, I wish to conclude my short contribution to this debate. I wish simply to reinforce the points we have made. We consider the implementation, the establishment of DNA testing in our system of justice to be very important. We consider it to be a very good thing, and we support it for that reason. We are simply, sensibly saying that it appears that mother Trinidad and Tobago is, at this point, unable to cope with the burden that this responsibility will carry, and we simply call on the Executive, the Government of the day, to ensure that foolishness is not made of this or any other legislation and get the right elements in place first, otherwise we will be wasting all our time.

I ask the Government—the Member for Diego Martin West did not go so far—to stop, think closely about this, forget the political mileage they might get from it. Think about mother Trinidad and Tobago in a serious way and then we can come back when we have put other things in place and proceed all for the benefit of Trinidad and Tobago.

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

**Member of the Public:** Good day, Mr. Speaker!

**Mr. Speaker:** No, please. You have been in this House often enough to know that you cannot do that.

**Member of the Public:** *Inaudible.*

**Mr. Speaker:** You have been in here in this House sufficiently often to know that you do not try that with me.

**Member of the Public:** I want to say something. I just want to say—

**Mr. Speaker:** No! You will keep quiet please! Just keep quiet! Whatever you are!

Hon. Members, the sitting is suspended until 2 o'clock.

**12.30 p.m.:** *Sitting suspended.*

**2.02 p.m.:** *Sitting resumed.*

**The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore):** Mr. Speaker, I have noted the concerns of a number of hon. Members. What comes out is that the main matter of importance seems to be the ability of the Forensic Science Centre to carry out the tests, whether they have the staff and equipment, and the concern about the police. The concern about the police seems to be somewhat mislaid, because it was suggested that the police would be taking certain action in getting samples. But the Bill was careful to explain that only qualified persons can take these samples.

The police take the role of identifying the suspect, taking the suspect to the place where the sample would be taken, receiving the sample from the qualified person and taking that sample to the Forensic Science Centre. One of the points made earlier had to do with the handling of the sample. It was mentioned by the Member for Laventille East/Morvant, that there is this property room in police stations. He gave the impression that the samples would simply be thrown in the property room and left there and not found when required. But the same clause 37(1), to which he referred, reads:

> "A police officer shall ensure that between the time when he collects a DNA package from a qualified person and the time when he delivers it to the Forensic Science Centre it is properly stored."

He significantly ignored subclause (2) which says:

> "The police officer shall deliver the DNA package to the Forensic Science Centre within five days from the date he collects it."

This is deliberate to ensure compliance, and to ensure that the DNA package does not go astray, or that there is minimum risk of it being identified as having been tainted or falling into the wrong hands.

**Dr. Rowley:** Is the Minister aware—just to take up that point on the time, because I do not think enough is made of that—that during the celebrated O. J. Simpson trial, one of the points made was that the policeman who had the sample, the inspector, took it to the forensic area in a matter of hours? He did not go by the most direct route and, in fact, went by a roundabout route, and that was sufficient to cast some doubt on the possible tampering. Now we are saying five days.

**Sen. Brig. The Hon. J. Theodore:** If any of the Members on the opposite side feel that the time should be shorter, at the committee stage, we can certainly look into it.

There is the matter of the Forensic Science Centre, which I think I ought to deal with right now, because many concerns were expressed. I would like to assure this honourable House that neither the Forensic Science Centre, nor the Ministry of National Security, was waiting for this Bill to come to the House before starting preparations. Unlike what may have occurred in the past, the Forensic Science Centre is, continually being equipped and we have been training personnel. Yes, we had a problem with highly trained personnel leaving for richer pastures and for other jobs. We cannot deny that. It simply shows that the quality of training that these people have received, is required elsewhere.

There is a question, in the House, that was asked by the Member for Laventille East/Morvant, which deals with that. When the time comes, in answering the question, I would address that issue. What is important is that the Forensic Science Centre has been continuing to train and to conduct tests. They have acquired, over the last two years—1997 to now, we can say three years—the equipment for DNA testing. To those who are more technologically inclined, you might be able to understand just what this equipment looks like. There is the PCR system, a thermalcycler, a hot shaker, a PCR workstation, a minus 20 degree and minus 60 degree ultra low freezers, a rocker, a nutator, a transilluminator, life technologies power packs and electrophoretic systems, Polaroid photographic systems and incubators.

A question arose about how the testing is done. The Member for San Juan/Barataria made it abundantly clear last night—I owe him my thanks for educating all of us and making us enlightened as to how the DNA process goes on

and why it is so important in fighting crime. He gave us a very good step-by-step idea, which in fact is what was required, and I thank him for that.

The Member for Couva South, this morning, gave the perspective from the legal standpoint; the courthouse, the matter of evidence, which removes the reliance on witnesses. I believe the Member for Laventille East/Morvant also pointed out the dependence on witnesses. If a witness does not turn up, or for any reason the witness may not be available, the case falls down. It has been admitted by all present that this is an important tool and it is an excellent scientific system to ensure the reliability of evidence.

We come to the issue now of taking the evidence. Over the last two years, I think Members would recall when the young man called Clint Huggins was found in a burnt out car, the car was surrounded by civilians and curious people. There the issue of crime scene investigation came up.

**2.10 p.m.**

It was brought to the attention of the police that you have to keep the crime scene sterile so that what is there is not tampered with. Since then, a number of police officers have gone abroad to attend classes on crime scene investigation. If a crime occurs in an area where you may have gone, you will see tape is now being used to isolate the area. There are crime scenes, where, depending on the nature of the crime, like a murder scene, you will find that the officers from the Forensic Science Centre will also be invited to attend.

I know there are several cases where people can point to badly carried out investigations. This is fine. We have learnt from it and we are trying to correct the problems, but I do not think we should live in the past and continue to decry the police service and suggest that they can never learn and they will never be able to properly investigate a homicide. We are moving in that direction and this is the tool which will give them perhaps not only the ability, but the impetus and the incentive to improve their situation.

To deal with that, we will find that in the Bill there are many very detailed instructions. As I said last evening, these instructions virtually resemble what would be contained in regulations and it was felt by the committee which comprised a number of specialists from the university, that not only should the sample be taken by a qualified person to avoid this problem of a police attempting to take a sample, but we have limited the activities of the police to virtually transporting a package.

One of the things that came up earlier on is that even the person who receives the package shall complete the prescribed form stating the name, rank and service number of the police officer who delivers the package. The date on, and time at which he receives the package, the information on the label attached to the package, a statement that the seal of the package is not broken, opened or tampered with, his name and signature and any other relevant information.

This is deliberate because we acknowledge and I share the concerns about the—

**Dr. Rowley:** I thank the Minister for giving way, I was hoping to intervene before he got to this point, but in the same way you have limited the police to transporter, I wonder whether the Minister will agree that it is easier to obtain the list of equipment that he has called out. They are very highly specialized equipment and I wonder what the ministry is doing with respect to ensuring that after the equipment is owned by the Forensic Science Centre Unit that technical staff is available for maintenance because in most instances, it is the maintenance aspect of these equipment that will determine their usefulness and longevity. Also, it is easy to obtain such service from some local people, but then you may find that it is only your unit which had been bought from that company and it may not be economical for the company to have technical persons available to service this one item in the country, and that is one of the concerns we have.

While I am on my feet, may I ask the Minister what has happened with the commitment given to this House that by September of 1997, Dr. Burris who was trained as a forensic scientist would have been working at the department on conclusion of negotiations which were about to end? What has happened with that commitment?

**Sen. Brig. The Hon. J. Theodore:** Mr. Speaker, the only comment I could make is that from that time, I was advised that negotiations were taking place between Dr. Burris and the Chief Personnel Officer, and this has been handled by the Ministry of Public Administration. What seems to have happened is that Dr. Burris is either reluctant, or not interested in coming to Trinidad. I hope this is not the case because the offer is still open, and we still would like her services.

As pointed out earlier, she was away for a number of years receiving training for the Forensic Science Centre, but because the state trains somebody, we cannot force them to work. The doctor is working for the Government, she is a District Medical Officer and the final decision rests with her. I cannot go any further because I do not know what is her disposition, or what may be the problem in the

negotiation, but I can say that the offer is still open. Nobody is denying her a contract.

Since her return, she has been resident in Tobago and has not been available to the Forensic Science Centre in Trinidad and this is a matter that is of concern to us, but one has to negotiate and go along. The doctor cannot be coerced and told: We gave you a scholarship so you have to work in the Forensic Science Centre. We know that was the intent, so this is all I could contribute at this stage.

**Miss Nicholson:** Thanks, Mr. Minister for giving way. Mr. Minister, even though Dr. Burris has not accepted coming to work in Trinidad at the Forensic Science Centre, is she working in Tobago from that particular perspective? When there are cases like that in Tobago, does she address those cases?

**Sen. Brig. The Hon. J. Theodore:** I am aware of more than one instance where she has conducted autopsies in Tobago, but I am not sure under the Ministry of Health how it is done, because there are other pathologists in Trinidad and Tobago who do autopsies and not all of them are done at the Forensic Science Centre because there are different levels, people die from different causes. It may be simply something that is not contentious or maybe not of a criminal nature, but when murder takes place, the bodies go to the Forensic Science Centre. Again, the intention is to try to maintain at least two forensic scientists at the lab, there are two there right now, Dr. Des Vignes and Prof. Chandu Lal.

Mr. Speaker, I would like to continue with the issue of the preparedness of the Forensic Science Centre. The centre at this time is able to conduct DNA analysis. Over the last three years, they trained two individuals who were stationed there, they are still there working and they were able to do courses and they are capable of conducting DNA analysis. Both have been trained—and maybe the Member for Barataria/San Juan may understand what this means—in the DQAIPM and the STR systems of DNA analysis. Both are holders of Bachelor of Science and Masters of Science degrees in biology and other forensic sciences related to the field.

The capability to do DNA analysis training has therefore been an embellishment on their previous experience, they both attended courses at Life Codes Connecticut from November 10—24, 1997 and also at the California Institute of Criminalistics in Sacramento from October 27—31, 1997.

What one has to look out for is to retain the services of these people and I know the question asked is addressing that and if mechanisms are being put in place in the short term and in the long term to keep qualified staff.

**Dr. Rowley:** Mr. Speaker, I thank the Minister for giving way. I think he is missing the point I was making. The people who are going to use the equipment to do the DNA reading are not the ones about whom I am concerned. I am concerned about the technical people who are required to maintain the equipment. That batch of equipment which you have outlined would require a significant body of highly skilled persons to make sure that those pieces of equipment can function as per their tolerances. Have we been training people? Because if we are not, after you have bought the equipment, you have just bought trouble, and my colleague from Barataria/San Juan could explain that.

**Sen. Brig. The Hon. J. Theodore:** I will take your point. I know there is a maintenance contract. In fact, it is one of the few organizations under the Ministry of National Security that actually has a maintenance contract for equipment. I cannot say with certainty how far it goes, but your point is well taken that the on-going maintenance and suitability of the equipment be addressed. This is something that in the medium term to the long term will have to be addressed.

I do not know if one is conscious of what is required and based on the sale of the equipment, what is the back-up service, the follow-up service, and the maintenance contract with the supplier. I am not going to debate on this, but I think it is important to note that, once we make a start. Look at what could happen here. We have this equipment for three years, it is deteriorating, it is not working because we are waiting for the legal premise to carry out this DNA testing. All we are saying to ourselves is we are not ready so do not bother we would not start. You get a chicken and egg situation, where, because you do not start, you cannot get the experience. It is like telling a young graduate: "I cannot hire you, you have no experience, you have not been practising." The person will turn to you and ask, "Where am I going to get this experience if nobody wants to hire me?" A decision has to be taken that at some point the available staff and support personnel are there to get the system going because there is always the possibility that by deferring and putting things off, the incentive to start will become less intense and the chances are that one may put it off and decide to try something else or say that what we are doing is good enough. But what we are doing is not good enough and if we are going to give the law enforcement agencies the tools to get the job done, and we put safeguards in place, as we go along, there can be adjustments, measures that have come to our attention can be dealt with, but the fact is, they do have something laid down which will be their guide and which they will be required to observe.

For instance, as I say I do not want to belabour the point, but I want to re-emphasize what the role of the police is and how much has been done to ensure that the police do exactly what they are told to do. Again, the question is maybe in the past they may not have done something absolutely correctly, therefore, do not give them this to do. I am not sure if in a progressive nation like ours—in fact, our Forensic Science Centre is identified by the United Nations as the training centre for technicians in the Caribbean. We train people from our neighbouring territories.

Here you are asking about the quality of the lab we have here, the lab is recognized as the centre for training. It is not done in Barbados, it is not done in Jamaica. Now, they are upgrading their services, and soon we are going to be left behind and all the emphasis is going to shift to one of these territories because Jamaica has already passed its legislation. I am not saying because they have passed it, we ought to pass it. All I am saying, as a fact of life, we who were number one in the Caribbean are shifting further back and it is really for law enforcement.

Look at what happens in the court. It was mentioned earlier about paternity, a simple matter. Here a purported victim could suggest that she was raped by a particular individual either out of spite, or by mistake. This will give the individual a chance to either clear himself and stop being a suspect, or see whether or not the police should look further. The chances are, they may stick to him because he is being identified, he ends up going to court and ends up in jail for a crime which he may not have committed.

**2.25 p.m.**

So the innocent would benefit. The matter of paternity came up last night, that there was a member of the Rolling Stones who was accused of having a child with a lady in Argentina. He said no, it was not his child and the DNA test proved— *[Interruption]* Exactly. So there we go. This is what this does. And there is a high degree of certainty which removes the doubt and the delays that could occur. Again, the attorneys-at-law would know that in cross-examining a witness one could lead this witness into himself, creating doubt. Because you ask him: Are you absolutely sure? The man might not be absolutely sure—so he says, "no". And here you are. Doubt has been created, therefore, the accused gets off. But the important part is as well, it will improve the performance of the police service; it will make sure that the evidence can be put to the court, with the scientific backing that is required to make it acceptable and to assist in proving the case that has been made.

It was said earlier as well, that it would also eliminate those who are not suspected. It can be done with fingerprints; it can be done with blood tests; but one of the problems with DNA testing that we are insisting a qualified person does it, is with the method of storage. When we were doing the—I heard stories of samples being stored in soft drink bottles that were washed out; you put the sample in there and put a cork on it.

Now the containers for DNA samples are available in Trinidad at the Forensic Science Centre, and those are the containers the police would use. They will not be permitted to take their own container. As luck would have it, it might be a jam bottle or something, and they would figure that they could wash it out and carry it and take the sample. Immediately, the sample is of no value, because that is grounds for the defence to suggest that the sample has been tainted, and the reading cannot be foolproof.

The purpose of the Bill is to deal with law enforcement and to ensure that the evidence that goes to the court can be regarded as more reliable. It removes this dependence on a witness having been there especially in matters like incest and rape. This is not a public thing. This does not happen in the road where there are witnesses. This is private. This happens indoors, especially when the so-called "uncles" attack these young girls. That is where forensic science comes in, to put those people away, because they are a threat to the youths of this country.

Here is a young child. How is this girl going to grow up? Here is this man she is calling "uncle"—she respects this fellow—he violates this child and then gives her $5.00 and says "do not tell anybody". Then has the temerity to go back and do it again. This is the problem. So these people have to be dealt with to preserve our young women; and they are the nicest people. I cannot guarantee that I have ever come across any of them, but for what it is worth, from what I have read, it does put a lot of pressure on a young woman who can grow up with, not only the stigma, but this psychological problem. And it will affect her adult life, her marriage, her whole future because of the selfishness of some men who show little respect for the youths of our country.

Then he has access to the home. This is the problem. He is in the house; the girl goes to sleep he gets up and goes to her bedroom at nights. I mean you read about it all the time. And these people get away—do you know why? Either it is not reported; they say that the little child is lying—she does not know what she is talking about—*[Interruption]* Again, we have to take it from cases that have occurred. The mother would say, "well, do not bother, nah, you know he is taking care" and so on. Perhaps you made a mistake and so on. The child is intimidated.

I read, just recently, that it was on the 12th occasion, this child got up enough nerve to reveal to a teacher or somebody how she was being abused repeatedly. Now that fellow, I think, depending on how much evidence they have, there is always a possibility that this man may get off. But what I am saying is that the forensic evidence will narrow it down. As the Member for Barataria/San Juan said last night—if other samples like semen, blood and so on, could be matched, and you get more than one match, it makes the sample more positive. Again, it reduces the risk of error.

As the Member for Laventille East/Morvant pointed out when we were saying that it could be 80 per cent and 20 per cent, he admitted that it could be even less. Accuracy, 90 per cent; error, 10 per cent. So we have to move along, learn, improve, add better systems, get better-qualified people—and I fully accept that we have to continue the training; we have to train people to fill these roles. We have to make sure that the wherewithal is there; the money is there to buy the equipment; the money is there to pay these technicians and scientists who are performing this valuable function. But I am not sure that the need to get the assurance that this would be done is reason enough to turn down this Bill at this time.

This Bill has come at a very interesting time in our development, where most other things in Trinidad and Tobago: our banking sector; our communications sector are all being regarded very favourably in the region. Here we are when it comes to drug testing and DNA, this is where our Forensic Science Centre must once more retain its position as the top and the best one in the Caribbean, where other people would come to us to do their tests for them.

A comment was made about finding the qualified people who would be on this board. It may be if it is found that the emphasis is too much on highly qualified people who may not be available, we can look at it, but I would like to just give the qualifications of the technical people who advised the committee. We had, for example, a Professor Duncan who is a Plant Scientist with interest in plant biology technology, and this involves knowledge of genetics and anything related to genes and DNA. He has done work in Germany in plant tissue culture and co-ordinates the work of the Bio-Technology Unit with two experts on DNA. These two experts referred to here, Dr. Umaharan and Dr. Felicia Hosein were also two of the specialists who advised us.

In Dr. Hosein's case, she has her degree in Applied Molecular Biology, Bio-Technology at the University College, London. She has done her Ph.D in

molecular biology, at Wye College, University of London. These people are here in Trinidad. I am not saying that there are many of them but we did find four, and if it is that these people are at the university—I have heard it said on more than one occasion that the university must get more involved in what is going on in the country and contribute to what is happening here. We need the university to contribute to the proper level of science in this country.

This person is also a lecturer in Molecular Biology and Bio-chemistry. There is Dr. Umaharan. He is a Lecturer in Genetics and he did his Ph.D work in genetics, and has since done work on molecular genetics. I am not trying to suggest that this will solve the problem, but I am saying there is a wealth of talent in this country, and our reluctance to be innovative and implement the science and technology that is taking place in the world today will only keep us back. We will remain in the dark ages. We have to go forward. And this is one area; this is one mechanism which will show that Trinidad and Tobago is among the leading nations, if not, the leading nation in the region.

Basically, I am of the view—and I would like to put it to the Members of this honourable House and seek your support in having this Bill accepted today, because the staff at the scientific centre have shown that they have been making efforts. I will read one paragraph from my notes, which I did last night to show what has been going on. It states:

> "The Forensic Science Centre has so far been engaged in proficiency testing on samples submitted to the centre by Collaborative Testing Services Incorporated of Virginia in the United States of America."

**2.35 p.m.**

They cannot take samples. We do not have the law. However, they were sent samples from the point of view of the testing and they have carried out tests. These samples would go back and the results would be verified by a laboratory which does this and has a high rating as far as the scientific community is concerned. Again, the centre has also been stockpiling equipment and chemicals in preparation for the commencement of DNA analysis.

Too often we find that after the law is passed, a year later people would then start putting things in place. I would like to suggest, this is not the case. In anticipation, knowing the value of this science, knowing the need for it in our country, the Forensic Science Centre took the liberty to start preparing themselves and so too have the police—because making up this technical team were members of the police service and they were told by the scientists how they should treat a

sample and how they should conduct themselves when receiving and transporting samples.

Again I must confess, Mr. Speaker, there will be errors but we are not perfect and maybe it is from the errors we learn and we become better but, without errors people become complacent and think they have got it all right until something very wrong happens and then it becomes embarrassing. So we will go along one step at a time but we must take that first step. The centre has acquired all the reagents, chemicals and physical equipment necessary for the DNA typing of blood or body fluids using the PCR method of analysis. With the passage of the Bill the centre will carry on with its efforts.

So, Mr. Speaker, I would certainly like to give the assurance to this honourable House that steps have been and are being taken to prepare the Forensic Science Centre for DNA testing. The police have been sensitized, the necessary containers are available and I think the procedures, while they may seem somewhat laborious, are necessary at this time to ensure a minimum of mistakes when the samples are taken, to ensure their veracity and correctness when they go to court as evidence against perpetrators. Mr. Speaker, I beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*House in committee.*

*Clauses 1 to 35 ordered to stand part of the Bill.*

*Clause 36.*

*Question proposed,* That clause 36 stand part of the Bill.

**Mr. Hinds:** Mr. Chairman, in respect of clause 36, during the course of the debate I had raised the question of the meaning of "serving a term of imprisonment" and I had asked for some specificity in respect of it. I would like to hear whether the Minister has considered the point that I had raised. That is to say, leaving it as general as it has been drafted here can imply any other offence and therefore it might work an injustice against a citizen.

**Sen. Brig. Theodore:** Mr. Chairman, this was designed, I am advised, for a term of imprisonment in excess of one year and the purpose of having this

database is to be able to identify repeat offenders, just as you have a fingerprint bank, and to ensure that convicted people, should there be a further problem, one would be able to use that database to either exclude or find out whether that person is, in fact, the perpetrator. This is the intent. Is there something that you think we should put to clarify?

**Mr. Hinds:** But we know it would mean more than one year because, from the definition section we are talking about indictable offences or summary offences where the sentence is more than a year. But what we are saying here now is that, once a person is arrested for an offence, with this legislation in place they will be fingerprinted normally so, in addition to being fingerprinted, if they are imprisoned for more than a term of one year, will they be made to give a sample involuntarily and will that too be kept on record?

**Sen. Brig. Theodore:** Yes. You see, if we destroy all samples, just like fingerprints, when several suspects come before the panel for identification, there is a way where, through elimination, one can say that these people are not involved, and the same principle will apply as far as the DNA sample is concerned.

**Dr. Rowley:** Mr. Chairman, I would just like to ask the Minister if he would consider making the board a little less restrictive because you see, Mr. Minister, experience has shown us that when legislation requires such specific appointments, sometimes it is difficult at the time when the appointment is made to find the people to meet the requirements. So I would suggest, for a start I think the board should be a seven-member board, and if we say "including a molecular biologist, population geneticist, forensic scientist", it leaves you with an ability to find a quorum, but again, if the law requires that the board be made up of these people, if one vacancy is there then the board cannot function.

For example, a person with a Ph.D. in cell biology could be equally as effective as a person with a degree or Ph.D. in molecular biology. So I wonder if you can accept "or a similar discipline". If we categorize each category here and define it by saying, "or similar discipline", it will allow you the opportunity to appoint a person in a—[*Interruption* ]

**Mr. Assam:** What about, "similar or equivalent discipline"?

**Dr. Rowley:** Well, if it is equivalent, then it has to be—equivalency means they have to match. Whereas, if it is similar, it allows you to decide if you accept the person. Because you can have a person who is skilled in genetics without being a population geneticist.

**Mr. Assam.** That is why I say "equivalent".

**Dr. Rowley:** It would not be equivalent. It would be acceptable.

**Mr. Assam:** Well, a population geneticist and a person who is skilled in—like for instance, Dr. Duncan is a plant biologist.

**Dr. Rowley:** I think somebody like him would know enough to be able to contribute positively on this board, but under the law he will be excluded.

**Mr. Assam:** But I am saying that is not similar, that would be equivalent.

**Mr. Chairman:** The Minister has a response to that.

**Sen. Brig. Theodore:** I accept expanding the board but would, "similarly trained" be okay with you?

**Dr. Rowley:** No. The point I am getting at is the definition. If you say "similarly trained" the question would arise, similarly trained in what?

**Sen. Brig. Theodore:** Well, in whatever he is going to replace, like a population geneticist or a forensic scientist. I am having the drafter look at it.

**Mr. Chairman:** Okay, shall we defer 36 and come back to it?

*Clause 36, by leave, deferred.*

*Clauses 37 to 41 ordered to stand part of the Bill.*

**2.50 p.m.**

*Clauses 42 to 45 ordered to stand part of the Bill.*

*Clause 36 reintroduced.*

**Mr. Chairman**: We will now return to clause 36.

**Mr. Valley:** Mr. Chairman, I wonder whether we could restrict the application of clause 36 a bit. It really gives the appearance as though big brother is really watching. I think that here we are talking about a person convicted for an offence under the Bill. If someone is committed for burglary and serving more than a year, under clause 36 that person is then subjected to take a tissue sample but against his will.

**Sen. Brig. Theodore:** We are guided by the courts and there is a discretion that the courts have with sentencing. *[Laughter]*

**Mr. Chairman:** The burglar may do a burglary again and they might be looking to identify people. It may be relevant.

**Mr. Valley**: For burglary?

**Mr. Chairman**: Yes, for burglary. Right now fingerprints are picked up on paints and things like this. *[Interruption]*

**Mr. Assam:** Of course, that person becomes both a rapist and a murderer.

**Sen. Brig. Theodore**: It will come as a result of something. It will not be used to identify people unless there is a cause. It does shorten the search time and the identification.

**Mr. Valley**: Our fears are just this "big brother" concept.

**Mr. Hinds**: Just to extend the point. If a man, for example, is convicted for larceny from the person, he snatches a handbag on Frederick Street and is sentenced to two years imprisonment, that offence is not like a sex offence, one requiring the need for evidence in respect of body samples, okay? So the person is convicted for larceny and he goes to prison. He is serving his two years. This clause is saying that the state now has the right to approach that man and against his will grapple him and take from him a body sample. Something strikes very strange about that.

**Mr. Assam**: What is the difference between taking the fingerprint and that?

**Mr. Hinds:** You see a body sample is quite a different thing.

**Mr. Assam**: No. It is a more advanced form of identification. So that in future if one has to be eliminated, you eliminate that person instead of going through a whole long process.

**Hon: Member**: Or you can catch him too.

**Mr. Chairman**: When he is out somebody again may have a bag snatched.

**Mr. Hinds**: Mr. Chairman, I miss the point. I am sorry.

**Mr. Chairman**: The whole question of purse snatching may arise again, and he would be one of the persons perhaps that they would try to match the sample.

**Mr. Hinds**: The question then is: how would a body sample assist in a purse snatching offence?

**Mr. G. Singh**: The person may be charged with some other offence and by virtue of the forensic samples because there is the data on him, he is eliminated as a result of that and on a more serious offence. So it can work both ways. It could work for or against him.

**Mr. Assam:** What the Member for Laventille East/Morvant fails to realize is a purse snatching could result in a piece of that person's hair being left; his fingernails, that person could have scratched the lady while he was pulling the bag and that too could have been left. So you could use both the fingernail and the hair to match the sample.

**Mr. Hinds**: Mr. Chairman, the point I am making is, by the time they are able to take it from him against his will he would have already been in prison, and if they need it when he is in prison it means that it was not necessary to convict him to go to prison.

**Sen. Brig. Theodore**: No, it is to convict him if he commits an offence again. That is what it is for.

**Mr. Hinds:** That is the point. That is why the Member for Diego Martin Central made mention of the "big brother" concept. Something is strange about it for me, but if the House says so, we must go along with it.

**Mr. Assam:** It is novel.

**Mr. Hinds**: I know it is novel.

*Question put and agreed to.*

*Clause 36 ordered to stand part of the Bill*.

*Clauses 46 to 58 ordered to stand part of the Bill.*

*Schedule ordered to stand part of the Bill.*

**Mr. Bereaux**: Mr. Chairman, before we move, I would like to just focus on one point and maybe the hon. Attorney General could assist. What is the law today that now gives the right to take fingerprints? It may be that we either have to amend that law or do something. The point that was raised by the hon. Member for Laventille East/Morvant seems as if there is an invasion of privacy in respect of taking the body samples. I am not saying it is right, wrong, or otherwise. Mr. Attorney General, we need to have a look at the law that permits the taking of fingerprints of accused persons and then see how that actual pursuit was put into law and then reverting it could be quite an error. The Attorney General should have a look at it and maybe he could deal with it when it goes to the Senate. *[Interruption]*

**Mr. Chairman**: Order please.

*Clause 41 recommitted.*

*Question again proposed,* That clause 41 stand part of the Bill.

**Sen. Brig. Theodore**: Mr. Chairman, may I go ahead? I have taken up the Member's suggestion that we increase the number to seven and the drafters suggested that after the word "pathologist" in line 5, just before the comma, include the words "or other similarly trained persons in DNA forensic analysis" which is also defined and would get away from the experts alone being members trained in DNA forensic analysis.

**Dr. Rowley:** You may have difficulty finding persons that fit that narrowness.

**Sen. Brig. Theodore**: There are two persons in the Forensic Science Centre right now.

**Dr. Rowley**: But you cannot use them—

**Sen. Brig. Theodore**: I know that and your point is taken.

**Dr. Rowley**:—because the board will be certifying that department, so anybody in that department cannot serve on the board. Understand that!

**Sen. Brig. Theodore:** What wording would you suggest?

**Dr. Rowley:** I am suggesting that you incorporate the concept of "discipline" meaning type of training. I would like to hear if the draftsman has a problem with the term "discipline".

**Sen. Brig. Theodore**: Yes. The international standards require that discipline be within the field of DNA analysis. So the term "discipline" would be a problem because it would limit it.

Otherwise, we will have people not involved in the DNA field, so that is really the thing. But we can extend it, and the suggestion is "similarly trained persons in DNA forensic analysis". It would open up the selection of board members.

**3.00 p.m.**

**Dr. Rowley:** Let me give an example. I come back to molecular biologist. It is possible to have a person telling one about the training in cell biology. To get a degree in cell biology, one would have done a considerable amount of molecular work and work with the nucleus. If the law specifically says that one must be designated a molecular biologist, one would have narrowed that down so much that a cell biologist would not qualify to serve on this board.

When we bear in mind that we may only have people in the University of the West Indies, one or two who may have this specific training, the ones in the

centre cannot serve on the board so, therefore, one may find oneself in difficulty. Let us broaden it a bit, and I think it is possible to broaden it away from molecular biologist to incorporate other persons who are sufficiently trained in cell nucleus information to be able to serve. In fact, a medical doctor can serve on this board. I do not see why not. A statistician can serve on this board. I will tell you why. The crux of the whole matter of the match is a statistical thing. What are the chances of this match being fixed to this person? It is a statistical thing. Therefore, this board could be improved by a statistician being on it. The application of the DNA matter would fall to statistical analysis.

**Sen. Brig. The Hon. Theodore:** If we look at 41(1)(a), we need to find people who can do what is required here: "to monitor annually the standards for testing the proficiency of conducting DNA forensic analysis". This would be something that an accountant or somebody would have great difficulty understanding. What we are trying to do is get a board that can carry out these functions.

**Dr. Rowley:** I am suggesting to you that a valuable person on this board would be a person with statistical training.

**Sen. Brig. Theodore:** I think this is what the Member is driving at. Let us look at another draft. In other words, insert "or other similar disciplines".

**Mr. Chairman:** Hon. Members, it is being suggested that clause 41(1) should read, "The Minister shall appoint the Board (hereinafter called the DNA Board) comprising of not more than seven members including a molecular biologist, a population geneticist, a forensic scientist or a pathologist or other persons trained in similar disciplines, and a member of the legal profession, each of whom shall be of at least ten years standing."

*Question again put and agreed to.*

*Clause 41, as amended, again ordered to stand part of the Bill.*

*Preamble ordered to stand part of the Bill.*

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

*House resumed.*

*Bill reported, with amendment.*

*Question put,* That the Bill be now read the third time.

*The House voted:* Ayes 29 Noes 0

**AYES**

Maharaj, Hon. R. L.

Panday, Hon. B.

Persad-Bissessar, Hon. K.

Lasse, Dr. The Hon. V.

Griffith, Dr. The Hon. R.

Humphrey, Hon. J.

Sudama, Hon. T.

Rafeeq, Dr. The Hon. H.

Assam, Hon. M.

Job, Dr. The Hon. M.

Khan, Dr. F.

Singh, Hon. G.

Nanan, Dr. The Hon. A.

Partap, Hon. H.

Mohammed, Dr. The Hon. R.

Singh, Hon. D.

Ramsaran, Hon. M.

Sharma, C.

Ali, R.

Valley, K.

Rowley, Dr. K.

Imbert, C.

James, Mrs. E.

Bereaux, H.

Joseph, M.

Sinanan, B.

Boynes, R.

Hinds, F.

Nicholson, Miss P.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

*[Desk thumping]*

**DANGEROUS DOGS BILL, 2000**

[Second Day]

*Order read for resuming adjourned debate on question* [May 8, 2000]:

*That the Bill be now read a second time.*

*Question again proposed.*

**Mr. Speaker:** Hon. Members, when the adjournment was taken, the Attorney General and Minister of Legal Affairs was replying and had spoken for some 20 minutes. He does have a balance of some 25 minutes left.

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I want to assure hon. Members that I do not intend to use that 25 minutes, because as one will recall on the last occasion, hon. Members on the other side, particularly the hon. Member for Diego Martin West, had made some suggestions and we had indicated that we would look at them and consider them.

I wish to report to this honourable House that we have looked at them, we have considered them, and we have decided to accept them. *[Desk thumping]* The draftsperson was given the instructions and he has produced what he considered to be the feeling from the other side.

If I may, very quickly, the draft has been circulated in respect of a new clause 5A which, in effect, deals with the question of the registration and the failure to register dogs and, in effect, the giving of false information. In clause 9, it specifies that a person under the age of 18 should not keep a dangerous dog. We have re-drafted that clause and have used the United Kingdom version where a person who is a minor has a dangerous dog and is guilty, it is deemed that the head of the household is responsible, but where the head of the household is the minor, then

the court will have to pass whatever sentence it considers appropriate in the circumstances.

Mr. Speaker, we have also accommodated the suggestion that a dangerous dog should not be on premises where there is more than one household, and that is in clause 13. We have also tightened up the area in respect of where a dangerous dog enters into the premises, which is at clause 13, and we had dealt with the new clause 13A where if a dog is being transported to the vet for the purpose of neutering, the dog must be kept very securely.

Mr. Speaker, in respect of a new clause 23, where the owner or keeper of a dangerous dog has not fulfilled the requirements under the Bill, the Ministry has the power to impound the dog and the Ministry would give notice to the owner or the keeper of what conditions must be complied with and, if the owner or keeper does not, within a period of time, fulfil these requirements, the Ministry shall be at liberty to destroy the dog.

We have put in a clause which we can consider, also, at the committee stage. It is a clause which deals with the penalties under clause 23B, having regard to the nature of this Bill and the fact that we want to send a signal that people would receive heavy punishment if the Bill is contravened. We considered whether in this Bill we should make it mandatory for the court to impose both the fine and the imprisonment where that is provided for in the Bill. That explains why the new clause 23B is inserted.

Mr. Speaker, the Government is still very amenable to suggestions and, at the committee stage, having regard to the Bill that we want to be able to flavour for Trinidad and Tobago, we will still be able to consider any other suggestion that the Opposition wants to make, and also, in relation to the amendments that we approved.

**Mr. Imbert:** Hon. Minister, there was an issue raised on the last occasion regarding a member of the public coming into contact with one of these dogs, if the dog has escaped, and whether that person would have the legal authority to defend himself or to destroy the dog. I am not really seeing this. I am seeing a reference to a private place, but I am talking about a public savannah.

If one sees a pit bull in a public savannah, what can one do, can one kill it? I do not see that dealt with here at all.

**3.15 p.m.**

**Hon. R. L. Maharaj:** I think you are correct, we did say that we would look into that, but obviously the draftsperson did not put that, so we will include that.

Mr. Speaker, all in keeping with the policy of the Government to be as responsible as it can—*[Interruption]* Sorry

**Dr. Rowley:** I thank the Attorney General for giving way. Before you take your seat, could we back up to clause 5A(1) and (2). Am I interpreting this correctly: that on passage of the law, every dog owner would have to register that dog? Was that—*[Interruption]* No, at anytime. Every single dog owner would have to register with the local authority that "I have a dog, or I am the keeper of a dog?"

**Mr. Imbert:** Of a dangerous dog or any dog?

**Dr. Rowley:** I thought the intention initially was that it was the owners who are keeping dogs that have been designated dangerous dogs. I could see the difficulty because I was arguing earlier on that a person, who has a part-breed dog, could take the position that I do not have to respond because my dog does not qualify. Is this how you have dealt with that problem?

**Hon. R. L. Maharaj:** As a matter of fact, I got the impression that the hon. Member was saying, if for example, owner A says: "I am taking the position that this is not a dog which falls within that definition of a dangerous dog", then you would have a situation where the person would not register the dog. If he does not register the dog, it may be that the Ministry of Local Government would not know that he has such a dog. In that context, we wanted a mechanism where the Ministry would have an idea, through the regional corporations, who has dogs. Therefore, they would be able to, in effect, have a register of dogs. That is the impression I got.

**Dr. Rowley:** We still have a little grey area here. When the person—maybe we should deal with it in the committee stage.

**Hon. R. L. Maharaj:** We would look at it in committee, but I wish to assure the hon. Member that—and I must confess, my draftsperson had a lot of difficulty trying to figure this out. I thought that was the impression that was given.

Mr. Speaker, 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.*

**Mr. Chairman:** Hon. Members, there are two lists of suggested amendments that are circulated and I take it that we all have them. If we do, we shall proceed. One begins with clause 5(1) and the other begins with the long title.

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

*Clause 3.*

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

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 3 be amended as follows:

"'keeper' means a person who is in charge, for the time being, of a dangerous dog."

"'owner' means a person who owns or is otherwise in possession of a dangerous dog."

This is mentioned in the list. I will refer to the other one as the supplemental list.

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clause 4 ordered to stand part of the Bill.*

*Clause 5.*

*Question proposed,* That clause 5 stand part of the Bill.

**Dr. Rowley:** I do not think, hon. Attorney General, that the intention was that every dog in the country should be registered.

**Mr. Maharaj:** Could I first deal with the amendment on the supplemental list. You are dealing with clause 5A. We are dealing with clause 5.

**Dr. Rowley:** Carry on.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 5(1) and (2) be amended as follows:

"5(1) Insert after the word 'is' the words 'spayed or'

Delete subclause (2) and substitute the following new clause:

(2) No person shall—

(a) breed or breed from a dangerous dog; sell or exchange such a dog or offer, advertise or expose such a dog for sale or exchange;

(b) make or offer to make a gift of such a dog or advertise or expose such a dog as a gift."

If I can just explain to Members. What is happening is that clause 2 was deleted to make it quite clear that these things would be involved, that a person shall not breed *et cetera*. In clause 5(1) we considered putting in the word 'spayed'. That is the basis of the amendment.

*Question put and agreed to.*

*Clause 5, as amended, ordered to stand part of the Bill.*

**3.25 p.m.**

**Mr. Maharaj:** Mr. Chairman, 5A being a new clause, is it the procedure that we deal with it afterwards?

**Mr. Chairman:** We would deal with the new clause after.

*Clause 6.*

*Question proposed,* That clause 6 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 6 be amended as follows:

| | |
|---|---|
| 6 | "Delete the word 'inner' occurring in subclause (10)(b) and substitute the words 'prima of the'. |
| 6(1) | "Insert after the word 'person' in the second place in which it occurs, the words 'within three months of the coming into force of this Act," |

**Dr. Rowley:** Mr. Chairman, some of these dogs' ears are black and if tattooing is used, the identification mark might not be sufficiently clear. We need to discuss that, because as it is done with birds now, we have had the knowledge and the experience to identify uniquely by inserting a rice grain size ID code under the skin, or any part of the animal which cannot be removed and might not be located and it could be picked up with a scanner.

Such scanners are available now and they are cheap. I wonder whether the law should be so structured to allow that to be accepted as identification as against the old technology of tattooing.

**Mr. Maharaj:** I will give you an undertaking that we will consider it and if it means we have to return with a—

**Mr. Imbert:** Let us add something after the word "tattoo", the words "or other permanent identification mark."

**Mr. Assam:** Mr. Chairman, I am wondering whether what the Member for Diego Martin West said is correct, that the inner ear of a black dog is dark—that inside the ear of a black dog is black. No. All my Rottweilers are black and inside their ear is pink. The inside of a dog's ear is pink irrespective of the colour of the dog.

**Mr. Manning:** What he said was, because of the colour of the inside—you can have difficulties with the identification and we ought to leave the door open that alternative identification as internationally acceptable could be used.

**Mr. Assam:** Inside the ear of my black dogs is very pink.

**Mr. Rowley:** Even if it is, I am raising the point that another kind of identification should be allowed which is now available, and that is the insertion of a unique identification and a scanner.

**Mr. Maharaj:** Mr. Chairman, I think the Member for Diego Martin East was referring to subclause (10) which says:

"With every licence granted under this Act, there shall be—

(a) issued free of charge and delivered to the licensee or his agent a metal label or other badge bearing a Registration Number in such form as may, from time to time, be prescribed by the Minister;

(b) branded onto the inner ear of the dog the registration number referred to in paragraph (a), or such other form of identification as may be prescribed by the Minister.

Do you want me to put the words or such other form of identification as may be prescribed by the Minister?

Clause 13 reads:

"A person who contravenes this section, removes or defaces the metal label, badge or branded registration number or such other form of identification referred to in subsection 10(b) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars or imprisonment for one year.

*Question put and agreed to.*

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

*Clauses 7 and 8 ordered to stand part of the Bill.*

*Clause 9.*

*Question proposed,* That clause 9 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 9 be amended as follows:

"Delete clause 9 and substitute the following new clause:

| | | |
|---|---|---|
| "Prohibition on ownership of dangerous dog | 9(1) | A person under the age of eighteen years shall not own or keep a dangerous dog. |
| | (2) | Where a person under the age of eighteen years owns or keeps a dangerous dog in contravention of this Act any reference to the owner or keeper of the dangerous dog in this Act is a reference to the head of the household of which the person under the age of eighteen years is a member. |
| | (3) | Where there is no head of household in circumstances referred to in subsection (2), the Court may impose a lesser penalty than that provided in this Act on the person under the age of eighteen years who owns or keeps a dangerous dog." |

We are deleting what was in clause 9 and trying to tidy it up having regard to what was stated. In clause 9(2) it means that the head of the household is responsible. In clause 9(3) where there is no head of the household in circumstances referred to in clause 9(2) the court may impose a lesser penalty than that provided under this Bill on the person under the age of 18 years who owns or keeps a dangerous dog.

**Mr. Imbert:** What would happen in a situation where a minor owns or keeps a dog without the knowledge of the head of the household? For example, the

head of the household is abroad for two months and during that period, a 17 year old acquires and keeps a dangerous dog which kills somebody.

**Mr. Maharaj:** According to this, it is strict liability, the owner—

**Mr. Imbert:** Suppose he does not know?

**Mr. Maharaj:** According to this, he is supposed to know. There are situations where, if you are the owner of a household you are supposed to take the responsibility.

**Mr. Imbert:** What if you are not there? You are not present for two or three months.

**Mr. Chairman:** One could be charged when the circumstances are explained to the court. The court is quite capable of taking these things into consideration.

**Mr. Panday:** Sentences are not mandatory.

**Mr. Maharaj:** You cannot legislate for everything.

**Mr. Panday:** The sentences are not mandatory, are they?

**Mr. Maharaj:** There are two sets of penalties which are mandatory where the dog injures or kills someone. Do we not want to send a signal to the owners of households that as parents, responsibility must be ensured that minors do not have these dogs? These are time bombs.

*Question put and agreed to.*

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

**3.40 p.m.**

*Clause 10.*

*Question proposed,* That clause 10 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 10 be amended in terms of the circulated draft. There is in the list of amendments to insert after the word "owns" in line 1(1), the words "a dangerous dog." It is purely typographical really. In respect of clause 10(1) "to ensure that the sum of $250,000 or such higher sum as the Minister may prescribe." If we leave it like that we would be giving the Minister the authority to prescribe and change it to a lower sum.

I just want hon. Members to know that what we are doing here in clause 10(1) is that in respect of every dog there is to be an insurance, and it is not in respect of

every claim, it is in respect of each dangerous dog. I am saying this because subsequent to our meeting here on the last day, there have been a lot of representations made to change this, but I have taken the position that if it is that we want to send this signal we should keep this as it is, so people would have insurance for each dangerous dog.

**Dr. Rowley:** Mr. Chairman, persons with large numbers of dogs can get group policies that cover each dog within the new policy if they insist on keeping these beasts.

*Question put and agreed to.*

*Clause 10, as amended, ordered to stand part of the Bill.*

*Clause 11.*

*Question proposed,* That clause 11 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 11 be amended in terms of the circulated draft as follows:

"Delete the word "promptly" and substitute the words, "within twenty-four hours,"

What this amendment does is that hon. Members would see that in Clause 11(1) there is the word "promptly"—Where the policy of insurance which is required and is no longer in force…" the owner must promptly inform the local authority" "Promptly" can mean several things. I indicated on the last occasion that we were going to put "within twenty-four hours."

**Dr. Rowley:** Mr. Chairman, I am having a difficulty with this from the operational standpoint. While I agree that "promptly" was not sufficiently tight, twenty-four hours might cause some problems. For example, if on a Friday afternoon the insurance company says to you—for whatever reason—your policy is void, local government authorities are not open on the weekend, so it automatically means that if on Friday you get a termination of your policy, on Saturday and Sunday you are in breach of the law. So I think if we are going to specify a period of time, 72 hours is—

**Mr. Maharaj:** Mr. Chairman, could we frame it in such a way—we said twenty-four hours but it would not include Saturdays, Sundays and public holidays. So could we come back to that and frame it in that way?

**Mr. Chairman:** The next working day.

**Mr. Maharaj:** Mr. Chairman, the draftsperson wants to know what working days would mean. Because working days can have difficulties so why do we not—okay, we will come back to it.

**Mr. Sinanan:** Saturdays, Sundays, and public holidays.

**Mr. Maharaj:** We can probably deal with it now—

"within twenty-four hours excluding Saturdays, Sundays and public holidays."

*Question put and agreed to.*

*Clause 11, as amended, ordered to stand part of the Bill.*

*Clause 12 ordered to stand part of the Bill.*

*Clause 13.*

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

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 13 be amended in terms of the circulated draft.

"13 A. Insert after subclause (1) the following new subclause:

1(A), "A person shall not keep a dangerous dog on premises that accommodate more than one household."

That was to accommodate the point of the hon. Member for Diego Martin West.

B. "In subclause (2) insert after the word '(1)' the words "or (1A)."

which is consequential.

"C. Delete subclause (3) and renumber subclause (4) as subclause (3).

D. Delete subclause (3) as renumbered and substitute the following new subclause:

"(3) If the owner or keeper of a dangerous dog allows it to enter private premises where it is not permitted to be and—

(a) there are reasonable grounds for apprehension that it will injure any person, the owner or keeper commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year;

(b) the dog injures any person, the owner or keeper commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment for five years."

**Dr. Rowley:** I am wondering whether the person who is threatened by this dog having strayed into the premises, should such a person be able to defend him or herself from that dog, and in so doing not be liable to prosecution.

**Mr. Maharaj:** Do we have that somewhere?

**Mr. Imbert:** No, it is not here. That is something that was requested.

**Dr. Rowley:** If you walk in to your yard and you are confronted by a pit bull and you kill it—

**Mr. Maharaj:** Why do we not put it in a separate—Do you want to put in a (c)?

**Dr. Rowley:** I want to put it in a clause (c), allowing the person to defend himself—

**Mr. Imbert:** Mr. Attorney General, it is not just private premises here, it is a question of being in a public place as well.

**Mr. Maharaj:** We could deal with it here in the private and also deal with it separately in the public. I was thinking of one but it is better we deal with it in the private premises. We will put a new subclause in any event.

**3.50 p.m.**

**Dr. Rowley:** Yes.

**Mr. Maharaj:** Could you just give me a minute, Mr. Chairman? We could say,

"Where a dangerous dog enters onto private premises, the owner or occupier of those premises may destroy the dog."

**Dr. Rowley:** Mr. Chairman, back up a bit to what we just accepted in 13(1)(A) where it says, "A person shall not keep a dangerous dog on premises", I am happy with that, but my legal colleague tells me that "premises" may need to be defined.

**Mr. Sinanan:** I think the point the hon. Member was making was if—we have apartments, but if I have one apartment in a compound, that premises is my

apartment but there are several different—so you need a definition for premises. The premises referred to here could be the apartment I am living in, but there are several apartments in that block.

**Mr. Maharaj: "**A person shall not keep a dangerous dog on premises that accommodate more than one household". If that premises accommodates more than one household—[*Interruption*]

**Mr. Valley:** But you see the "premises" is defined very narrowly, yes, as the apartment.

**Mr. Sinanan:** Is the "premises" the whole block of apartments?

**Mr. Maharaj:** Oh, I see what you mean. Would it do if we defined "premises" to include the common ground?

**Mr. Sinanan:** An area is fine.

**Mr. Maharaj:** We will come back with a definition. We will put that in the definition section but we can go ahead with this clause.

**Mr. Chairman:** Shall we revisit clause 13, then?

**Mr. Maharaj:** What I am saying, Mr. Chairman, is that we could go ahead with clause 13 but we will later ask you to revisit the Definition Section of the Bill. Mr. Chairman, before you proceed, I forgot to draw the fact to the attention of hon. Members that what we were doing in clause 6, inserting after subclause (6), still we are on clause 13:

> "Except for the purposes of compliance with section 5(1) where it becomes necessary for a dangerous dog to receive veterinary or other attention such attention shall be administered in the private premises of the owner of the dog."

We take out the word, "keeper" and insert "the owner of the dog" because it is the owner who will have the premises. So we want to make it quite clear that the medical attention will be at the premises of the owner. So we delete "keeper" from that subsection, Mr. Chairman. Are you with me, Mr. Chairman? It is in the supplemental list of amendments at page 3 under D we put E and in the last line, we insert the words, "private premises of the owner of the dog" and we delete "keeper".

**Mr. Chairman:** Hon. Members, the amendment to clause 13 would be to delete in E (6) in the last line the words, "or keeper" appearing after the words "owner" and before the words, "of the dog".

There will also be a new clause E (7) which will read:

"Where a dangerous dog enters onto private premises the owner or occupier of those premises may destroy the dog."

*Question put and agreed to.*

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

*Clauses 14 to 26 ordered to stand part of the Bill.*

*New Clause 5A.*

**Mr. Maharaj:** Mr. Chairman, I propose a new clause 5A which reads as follows:

"Registration of dogs

5A.(1) Within three months of the coming into force of this Act, every owner of a dog of whatever type shall register that dog in the prescribed form with the Ministry."

(2) A person who knowingly gives false information in a registration form referred to in subsection (1) shall be liable to a fine of ten thousand dollars."

*New clause 5A read the first time.*

*Question proposed,* That new clause 5A be read a second time.

*Question put and agreed to.*

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

**Mr. Maharaj:** Mr. Chairman, we inserted this on the basis that we were of the view this is what the Opposition wanted, but it seems as though, from what was stated, we had a misunderstanding of what it was.

**Dr. Rowley: "**Within two months of the coming into force of this Act, every owner of a dangerous dog of whatever type shall register that dog."

**Mr. Maharaj:** But you do not need to say "of whatever type".

**Dr. Rowley:** In fact you could delete "whatever type" because the Bill already determines what is a dangerous dog.

**Mr. Maharaj:** You do not need to.

**Dr. Rowley:** Now, I am not sure that, having said that, that the people—the definition of a dangerous dog that says "bred from" means that every dog that has some pit bull would have to be registered. The problem that we are trying to solve is, how do you get people to acknowledge that their minor component dog is covered? I do not think we can do that by having every dog owner in the country register his or her dog.

**Mr. Panday:** Are there other dangerous dogs beside pit bulls? So what is your problem of putting "dangerous dog", because you have already defined it? A part pit bull, is that what you are saying?

[*Crosstalk*]

**Mr. Sinanan:** Any dog bred from a pit bull or any dog bred from a Fila Brasileiro or any dog bred from a Japanese Tosa. So that will take care of the half breeds and the quarter breeds.

**Mr. Assam:** They will have to be registered?

**Mrs. Persad-Bissessar:** Of course.

**Mr. Sinanan:** Yes.

**Mr. Maharaj:** I think the point the hon. Member for Diego Martin West is making, and this is where we had the difficulty, is if an owner takes the position that, "My dog does not have any pit bull in him or her or it", what would you do in those circumstances? Because he is taking the position that it does not have any pit bull.

**4.05 p.m**.

**Mr. Maharaj:** In my response I had told the Member that the Ministry of Local Government would have machinery to be able to prove that, because you can have DNA for dogs. Anyhow, the point the Member is making is how are you going to administer that because you would not know who have these dogs. It is because of those concerns that were raised we looked at it and said that if you want this particular clause to cover the situation you would need to have a registration of all dogs.

**Mr. Sinanan**: That is impossible.

**Mr. Maharaj**: That is not practicable.

**Dr. Rowley**: Mr. Chairman, I do not know that the registration would solve the problem. What I am seeing is a challenge that somebody is saying that dog has

pit bull in it. The owner is saying, no, and there is a requirement for an authority to determine that regardless of what you say, this dog is bred from pit bull and, therefore, you should comply.

**Mr. Maharaj**: In any event, if the person has a dangerous dog and he does not have a licence, the court would be able to adjudicate.

**Dr. Rowley**: Suppose a person does not comply and the neighbour reports to the local government authority that his neighbour has a dog or dogs, that he feels those dogs are pit bulls and they are dangerous. What happens then?

**Mr. D. Singh**: A licensed veterinarian could determine that. So the independence of a licensed veterinarian.

**Mr. Valley**: If that dog is a dangerous dog?

**Mr. Maharaj**: Yes.

**Mr. Valley:** It does not make sense.

**Dr. Rowley**: I think we are losing the point that we are trying to deal with. Are you satisfied that if an individual takes the position even to the officer of the authority who comes to look, having been informed that my neighbour has pit bulls, somebody from the corporation comes to see and is not satisfied and the owner says, "Well, I do not have to comply, these dogs are not pit bulls." What happens then?

**Mr. Maharaj**: Well, I am of the view that that person commits an offence.

**Dr. Rowley**: But who determines that he has?

**Mr. Maharaj**: The court.

**Dr. Rowley**: On what basis?

**Mr. Imbert.** They come and seize the dog.

**Mr. Maharaj**: The Ministry takes the person to court and seizes the dog. That person goes to court.

**Dr. Rowley**: So, hold on. Are you saying that once the Ministry comes and the Ministry decides that the dog is a pit bull the Ministry will seize the dog?

**Mr. Maharaj**: Yes. That is how I look at it.

**Mr. Manning**: Something is inequitable about that. Suppose I have a neighbour next to me with dogs that I am just fed up of. I decide to make a

complaint that the dogs have pit bull in them and they do not really have, or I do not really know. What happens then? *[Interruption]*

**Dr. Rowley:** The Ministry will come and seize the dog.

**Mr. Valley**: You cannot do that. I do not know to what extent the Government wants to go with this. What is a dangerous dog? A dangerous dog is a dog whose mother or father is a pit bull. I mean, if there is a dog whose great great grandfather was a pit bull, that is not a dangerous dog at this point in time. *[Interruption]*

**Dr. Rowley**: As a matter of fact if you do that it means that people can tell you that dog is bred from a pit bull. If only a percentage of the dog is pit bull how would you determine that?

**Mr. Valley**: The dog's mother or father must have been a pit bull.

**Dr. Rowley:** Suppose you do not know who is the mother or father.

**Mr. Valley**: Well then you are in real trouble.

**Mr. Assam**: Mr. Chairman, I am not understanding their argument.

**Mr. Chairman**: Order. Order.

**Mr. Assam**: It seems to me that the definition says that a dangerous dog is a dog bred from those three dogs. So if it is some great great grandfather, you are not bred from those dogs. A dangerous dog is one bred from one of these. So, therefore, if for example, there is a female pit bull and some other dog or a male pit bull and some other dog that is a dangerous dog because it is bred from a pit bull. It cannot be a great great grandfather. That is impossible. It does not make sense.

**Mr. Valley:** So, I am not bred from my grandfather coming down the line?

**Mr. Assam**: No. You are not a dog. *[Laughter] [Interruption]*

**Mr. Manning**: What makes a dog dangerous, its unpredictability?

**Mr. Maharaj**: Is because it is a pit bull.

**Mr. Manning**: No, no, its unpredictability. *[Interruption]*

**Mr. Maharaj**: As a matter of fact that is why the definition as I understand it is any dog bred from a pit bull terrier.

**Dr. Rowley**: If you do not have that clause, it means then that you will have to determine the percentage of the breeding and that is an impossibility, unless you have a record of the blood line of the dog. It means having lineage of pit bull.

**Mr. Maharaj**: That is the point.

**Dr. Rowley**: If you do not have that it would be impossible to apply this law, because unless there is a record of the lineage of the dog and the owner says, this dog does not have a father that is a pit bull you cannot apply the law. All the owner has to do is take that position.

**Mr. Maharaj**: As a matter of fact, that is why, if you look at countries which have done this kind of legislation, that is how it is described.

**Dr. Rowley**: It is the only way to do it.

**Mr. Maharaj**: In England they went further to say "…or a pit bull terrier or any dog bred from the pit bull terrier or any dog of the type known as the pit bull terrier." So they have gone even further.

**Dr. Rowley**: What it means is that once the dog has pit bull in it—any percentage—it is deemed to be dangerous.

**Mr. Imbert**: Eradication of the dog. That is the whole point.

**Dr. Rowley**: What you are trying to do is to eradicate that lineage and that is the only way you can do it. If you leave two half pit bulls, you can breed them back and recover a lineage which is almost as pure. *[Interruption]* When you breed them back 25 per cent of that population would be pit bulls. The doctor would explain the genetics.

**Dr. Khan**: I just want to write it down for them.

**Dr. Rowley**: As you breed them back you get a certain percentage of the population being pit bulls.

**Mr. Maharaj**: Mr. Chairman, I wonder if the hon. Member would find that some of this legislation sometimes cannot be perfect.

**Dr. Rowley**: I am asking the question and if you are satisfied that it would work—I am seeing a situation where the owner takes the position and by taking the position it makes the legislation useless.

**Mr. Maharaj**: One recognizes that some of these matters you really cannot have it totally perfect. You have to have it, and then see how it works.

**Dr. Rowley:** Is it possible that we could put in the law that a veterinary officer can determine that?

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

**Dr. Rowley:** The physical attributes of the dog are well known and if the vet—

**Mrs. Persad-Bissessar**: That is only 10 per cent and the vet could never tell.

**Mr. Manning**: That is right.

**Mrs. Persad-Bissessar**: If there is a one per cent lineage the vet cannot tell.

**Dr. Rowley:** Mr. Attorney General, if there is enough of the lineage for it to show up in what is called the femur type then an expert could say, this dog has blood line of a pit bull—the physical aspect of the dog without going into the genes—it shows up certain physical characteristics. An expert could say this dog has been bred from a pit bull, because certain pit bull features will show up. If none show up then there is so little in the dog that it is not really a problem.

**4.15 p.m.**

**Mr. Sinanan:** What about if we say, "any dog which strain is bred from the pit bull terrier"?

**Mr. Maharaj:** Since we want to try definitions that have stood up, could we not leave the definition as it is, but put in the definition section of the Bill that "a dangerous dog means a dog of the type listed in the Schedule or certified by a veterinary surgeon to have been bred from a dangerous dog".

**Dr. Rowley:** So far, from what we have in front of us, what we are not having is a mechanism to deal with a challenge. That is what is missing. How do we treat with a situation where a challenge is put forward?

**Mr. Maharaj:** I think what I am saying will deal with the point as to the definition of the dangerous dog, but the challenge as to the dog not being a dangerous dog, that is why I was going to suggest that if we put the requirement of registration of a dangerous dog and if they do not register, there would be—let us see how it works and we may be able to have some machinery to register a dangerous dog. Maybe we will have to come back with something else.

**Dr. Rowley:** I could see problems with the cross-breeds. If we have problems with the cross-breeds and we give way with the cross-breeds, then we open the door for fuller—they breed back from the cross-breeds.

**Mr. Maharaj:** But the way it is drafted, the cross-breeds are dangerous dogs.

**Dr. Rowley:** The objective of the legislation is to eliminate this breed of dog. You will not do that if you do not treat with the crossbreeds.

**Mr. Maharaj:** Is the definition not treating with that?

**Dr. Rowley:** Yes, but the next point I am going to make is that if in dealing with the cross-breeds, one does not have a mechanism which will prevent people from saying it is not a pit bull, who will determine that it is a pit-bull? That is the problem.

**Mr. Maharaj:** The only mechanism we have is for the court to determine it.

**Dr. Rowley:** Before we get to the court, what I am suggesting is, could we not authorize the local body to have such a determination made by a vet? And we should put that in the legislation. "Where the lineage of a dog is in question, a veterinary officer—" If one did not capture the half breeds, then there are animals to breed back.

**Mr. Maharaj:** I take your point, because I think that before we get the intervention of the court, if it is that we can have some functionary in the Ministry where there is an issue as to whether a dog is a dangerous dog or not, one gets a certificate from a veterinary surgeon.

**Dr. Rowley:** Otherwise we will have no way of treating with the challenge.

**Mr. Maharaj:** Could we still leave the registration in the clause and we will put a clause later on? We will get it drafted. We are deleting "whatever type", so "within three months of the coming into force of this Act, every owner of a dangerous dog shall register that dog in the prescribed form with the Minister. A person who knowingly gives false information is liable", because it still puts an obligation on them to register.

**Mr. Imbert:** If you are registering, what false information would one report? That it is not a pit bull?

**Mr. Maharaj:** I see what you mean. Mr. Chairman, I propose the following amendment:

| | |
|---|---|
| Registration of dogs | 5A.(1) Within three months of the coming into force of this Act, every owner of a dangerous dog shall register that dog in the prescribed form with the Ministry. |
| | (2) A person who fails to register a dangerous dog in accordance with subsection (1) commits an |

offence and shall be liable on summary conviction to a fine of ten thousand dollars.

*Question put and agreed to.*

*New clause 5A ordered to stand part of the Bill.*

*New clause 6A.*

*Question proposed,* That new clause 6A stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I move that new clause 6A be added to the Bill as follows:

6A (New Clause) Insert after clause 6 the following new clause:

"Ministry to take charge of dangerous dog

6A. An owner or keeper of a dangerous dog who is unable to fulfil the requirements of this Act shall notify the Ministry of that fact, transfer possession of it to the Ministry whereupon the Ministry shall take charge of the dangerous dog and thereafter destroy it.".

*New clause read the first time.*

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

*Question put and agreed to.*

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

*Question put and agreed to.*

*New clause 6A ordered to stand part of the Bill.*

*New clause 13A.*

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

**Mr. Maharaj:** Mr. Chairman, I proposed a new clause 13A as follows:

| | |
|---|---|
| Transportation of dangerous dog | 13A.(1) An owner or keeper of a dangerous dog who desires to fulfil the requirements of section 5(1) shall ensure that the dog is—<br>(a) securely fitted with a muzzle sufficient to prevent it from biting any person;<br>(b) securely held on a lead by a person who is not less than eighteen years old and who is capable of controlling the dog.<br>(2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.”. |

*New clause 13A read the first time.*

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

*Question put and agreed to.*

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

*Question put and agreed to.*

*New clause 13A ordered to stand part of the Bill.*

*New clause 14A.*

*Question proposed,* That new clause 14A stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I propose a New Clause 14A to be added to the Bill as follows:

| | | |
|---|---|---|
| 14A (New Clause) | Insert after clause 14 the following new clause: | |
| | “Obligation not to abandon dangerous dog | 14A. (1) An owner or keeper of a dangerous dog shall not abandon the dog. |

(2) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.".

*New clause 14A read the first time.*

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

*Question put and agreed to.*

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

*Question put and agreed to.*

*New clause 14A ordered to stand part of the Bill.*

*New clause 23A.*

*Question proposed,* That a new clause 23A stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I propose a new clause 23A be added to the Bill as follows:

Impounding or destruction of dangerous dog due to non-compliance with Act

23A(1) Where an owner or keeper of a dangerous dog has not fulfilled a requirement in respect of a dangerous dog under this Act the Ministry shall impound the dog until the requirement is fulfilled.

(2)Where seven days after notice for fulfilling a requirement under this act has elapsed the Ministry shall inform the owner or keeper of the dangerous dog referred to in subsection (1) of the fact.

(3) Where an owner or keeper of a dangerous dog has still not fulfilled the requirements three days after receiving notice under subsection (2) the Ministry shall destroy the dangerous dog.

*New clause 23A read the first time.*

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

*Question put and agreed to.*

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

*Question put and agreed to.*

*Clause 23A ordered to stand part of the Bill.*

**4.30 p.m.**

*New clause 14A. recommitted.*

*Question again proposed,* That new clause 14A. stand part of the Bill.

**Mr. Sinanan:** In the third line of new clause 14A(2) we should be consistent. Instead of it reading 'is liable', it should read 'shall be'.

**Mr. Chairman:** Actually it appears in more than one place. As a matter of fact it is being pointed out to me that in many parts of the Bill there does appear "is". Shall it just be put that in several other parts of the Bill, wherever it appears "is liable" should be changed to "shall be"?

**Mr. Maharaj:** This might sound strange, but I am being told that it should be the other way, and the person "is liable" and not shall be.

**Mr. Chairman:** Shall we then put it that there should be consistency in the Bill, in the several places where "is" and "shall" appear, and the draftsman would tidy it up.

*Question again put and agreed to.*

*New clause 14A, as amended, again ordered to stand part of the Bill.*

*New clause 23B.*

*Question proposed,* That a new clause 23B stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I propose a new clause 23B which reads as follows:

"Section 68 of the Interpretation Act, Chap. 3:01 not Applicable

23B. Section 68(2) and (3) of the Interpretation Act shall not apply to penalties prescribed in sections 13(4)(b) and 17."

*New clause 23B read the first time.*

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

*Question put and agreed to.*

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

*Question put and agreed to.*

*New clause 23B ordered added to the Bill.*

**Mr. Maharaj:** I just want to alert Members as to what we are doing in this clause. What we are doing here is that in two instances, in sections 13(b)(2) and 17, that is where the dog causes death to the person, or injures the person, we are saying that the court must impose both fine and imprisonment. I do not know whether Members would agree to this or they want to leave it to the total discretion of the court. Do you prefer to leave it to the total discretion of the court?

*Assent indicated.*

So I would not pursue new clause 23B.

*New clause 23B, by leave, deleted.*

*Schedule*

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

**Mr. Maharaj:** Mr. Chairman, I beg to move that the Schedule be amended as follows:

"A. Insert at the end of item 1 the words 'or any dog of the type known as the pitbull terrier'.

B. Insert at the end of item 2 the words 'or any dog of the type known as the Fila Brasileiro'

C. Insert at the end of item 3 the words 'or any dog of the type known as the Japanese Tosa.'"

I did indicate earlier that when countries have to look at this kind of legislation, they look to see what there is in other legislation. Although the Bill has—*[Interruption]*

**Mr. Chairman:** Order please!

**Mr. Maharaj:** Although the Bill has "pitbull terrier or any dogs bred from the pitbull terrier", we wanted to include "or any dog of the type known as the pit bull terrier." The reason for that is that I have mentioned that is how we see other legislation have it done and it would cover "any dog of the type known as the pit bull terrier."

**Dr. Rowley:** Throughout we have been talking about local government bodies, with respect to Tobago it would have to say "Tobago House of Assembly".

**Mr. Maharaj:** Oh yes, that is an important point.

**Mr. Bereaux:** Mr. Chairman**,** in the short title to the Bill, which states:

> "An Act to provide for regulating the keeping of dangerous dogs which present a serious danger to the public; and to make further provision..."

there appears to be some inelegance in that, in that it is either the Act is to provide for the keeping of dangerous dogs, and dogs which present a serious danger to the public. There seems to be some inelegance in it**.** Would the draftsmen just—*[Interruption]*

**Mr. Chairman:** Could we just get over the Schedule before we deal with that.

**Mr. Bereaux:** Sure, thank you.

*Question put and agreed to.*

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

**Mr. Chairman:** We need to go back to clause 3, the interpretation clause. Under dangerous dog you wanted to put:

> " 'dangerous dog' means a dog of the type listed in the Schedule as defined by a veterinary surgeon."

**Mr. Maharaj:** No. It means "a dog of the type listed in the Schedule—

**Mr. Chairman:** Yes, did you suggest "as defined by a veterinary surgeon?"

**Mr. Maharaj:** I do not think that there was any—we do not need that. That will make it—We will put a different section where there is an issue.

**Mr. Chairman:** Okay. What about premises, did you not want to define that?

**Mr. Maharaj:** Yes, we have to define premises.

**Mr. Chairman:** We will have to go back to clause 9. Let us finish with this one.

**Mr. Maharaj:** What clause is it?

**Mr. Chairman:** That is clause 3.

**Mr. Maharaj:** Could we agree to come back to that or do we have to wait?

**Mr. Chairman:** No, we could come back to it. You wanted to go to clause 9 is it? We shall revisit clause 9.

**Mr. Imbert:** Mr. Chairman, when I look at the definition section "keeper" means a person who is in charge of a dog, and "owner" means a person who owns or otherwise is in possession of a dangerous dog." If one looks at your definition of "keeper" and "owner", someone who is in charge of or in possession of a dangerous dog, and then one looks at the amendment that has been made to—*[Interruption]*

**4.40 p.m.**

**Mr. Maharaj:** Which amendment are you on?

**Mr. Imbert:** Clause 9. You amended clause 9 to make the head of the household liable in the case of a minor. If one looks at the new definition of "keeper" in the amendment in clause 3, it "means a person who is in charge, for the time being, of a dangerous dog." The definition for "owner": "means a person who owns or is otherwise in possession of a dangerous dog." Then we had this big debate about what is a dangerous dog, what per cent of a dog is dangerous and now you are saying here that if a minor has a dog, the head of the household commits an offence. Do you not find this is leaving it wide open? Someone may give a minor a dog that may not be, on first examination, a dangerous dog, takes it home and then the parent is charged. Do you understand what I am saying?

**Mr. Maharaj:** All I can say is when legislation like this was discussed, we were reminded in the other place that it depends on what policy you want. Do you want to ensure that persons in households and people take care in ensuring—

**Mr. Imbert:** I totally agree with that policy.

**Mr. Maharaj:** —and the court has the discretion to consider those circumstances.

**Mr. Imbert:** Let us take a perfectly innocent case where someone has given a dog as a gift. It may not be immediately apparent that the dog is a dangerous dog.

**Mr. Maharaj:** If there are doubts about the dog, or if they see that the dog may be so, get it checked and, in any event, if there is a violation, the court will take all the matters into consideration.

**Mr. Imbert:** The reason I want to have all these matters discussed—this *Hansard* can be used in court—is it not so? The discussions.

**Mr. Maharaj:** The *Hansard?* If there is a challenge to the meaning of the legislation. If there is ambiguity, you can do so now.

**Mr. Imbert:** I just wanted to have it on record. Well, let us leave it as it is.

**Dr. Rowley:** The gist of it is that the parent is responsible for the minor.

**Mr. Maharaj:** And, therefore, if the minor is allowed to contravene, the parent must accept the responsibility. If, for some reason, there are extenuating and mitigating circumstances, the court will take those matters into consideration.

**Mr. Imbert:** I just wanted to have that on record.

*Preamble ordered to stand part of the Bill.*

*Long Title.*

*Question proposed,* That the Long Title stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that the Long Title be amended as follows:

Delete the Long Title and substitute the following:

"An Act to prohibit persons from importing and breeding dangerous dogs and imposing other restrictions in respect of dangerous dogs and for regulating the manner in which dangerous dogs are kept by their owners or keepers, to make further provisions for ensuring that such dogs are kept under proper control and for connected purposes."

**Mr. Chairman:** Mr. Bereaux, were you trying to say something on the title?

**Mr. Bereaux:** Yes, I was pointing out that the Long Title says: "An Act to provide for regulating the keeping of dangerous dogs…"

**Mr. Chairman:** That has been amended.

**Mr. Bereaux:** Thank you.

*Question put and agreed to.*

*Long Title, as amended, ordered to stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, we still have to have an amendment. I wonder whether the Member for Diego Martin West would take my undertaking that in respect of the matters we would do that amendment in the other place and let me just sort out the premises. Or could we do that in the other place too?

I could put on record in respect of the definition of the word "premises"—because it would have to come back here—we will have it effected in the other place and with respect to the clause which deals with any person in the public place that the person would be entitled to destroy the dog and we will ensure that in respect of all the provisions where it appears as though it is the local authority, it will also include the Tobago House of Assembly, and with that undertaking, we can proceed with this.

**Dr. Rowley:** *[Inaudible]*

**Mr. Maharaj:** No we could propose the Bill to the House.

*Question proposed,* That the Bill be reported to the House.

*House resumed.*

*Bill reported with amendment.*

*Question put,* That the Bill be now read a third time.

*The House voted: AYES: 31*

Maharaj, Hon. R. L.

Panday, Hon. B.

Persad-Bissessar, Hon. K.

Lasse, Dr. The Hon. V.

Griffith, Dr. The Hon. R.

Humphrey, Hon. J.

Sudama, Hon. T.

Rafeeq, Dr. The Hon. H.

Assam, Hon. M.

Job, Dr. The Hon. M.

Khan, Dr. F.

Singh, Hon. G

Nanan, Dr. The Hon. A.

Partap, Hon. H.

Mohammed, Dr. The Hon. R.

Singh, Hon. D.

Ramsaran, Hon. M.

Sharma, C.

Ali, R.

Valley, K.

Manning, P.

Rowley, Dr. K.

Imbert, C.

James, Mrs. E.

Bereaux, H.

Joseph, M.

Sinanan, B.

Boynes, R.

Hinds, F.

Williams, E.

Nicholson, Miss P.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**Mr. Speaker:** Hon. Members, the sitting is now suspended for half an hour.

**4.55 p.m.:** *Sitting suspended.*

**5.30 p.m.:** *Sitting resumed.*

**RULES OF COURT**

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I beg to move the Motion standing in my name:

1. *WHEREAS* section 77 of the Supreme Court of Judicature Act Chap. 4:01 provides for the formation of the Rules Committee which shall comprise the Chief Justice and any four of prescribed persons;

*AND WHEREAS* section 78(1) of the said Act provides for the matters in respect of which Rules of Court may be made;

*AND WHEREAS* on the 29th day of June 1998, the Rules Committee, purporting to act under the Act aforesaid, made the Civil Proceedings Rules 1998 and the Family Proceedings Rules 1998 wherein it was provided that both sets of Rules shall come into force on the 1st day of January 1999;

*AND WHEREAS* on the 3rd day of November, 1998, the above-mentioned Rules were amended by the Civil Proceedings (Amendment) Rules, 1998 and the Family Proceedings (Amendment) Rules, 1998, (hereinafter referred to as the 1998 Amendment Rules) to the effect that they shall come into force on a date in 1999 to be fixed by the Rules Committee;

*AND WHEREAS* on the 21st day of September, 1999, the Rules Committee purporting to act under the provisions referred to above, amended in certain respects the Civil Proceedings Rules, which amendments are referred to as the Civil Proceedings (Amendment) Rules 1999;

*AND WHEREAS* on the 6th day of October 1999, the Rules Committee again acting under the provisions referred to above, amended the Civil Proceedings Rules, which amendments are referred to as the Civil Proceedings (Amendment) (No. 2) Rules 1999, to provide that the Civil Proceedings Rules shall come into effect on a date in the year 2000 to be fixed by the Rules Committee;

*AND WHEREAS* on the 6th day of October 1999 the Rules Committee again acting under the provisions referred to above, amended the Family Proceedings Rules, which amendments are referred to as the Family

Proceedings (Amendment) Rules 1999, to provide for the Family Proceedings Rules to come into effect on a date in the year 2000 to be fixed by the Rules Committee;

*AND WHEREAS* on the 19th day of November, 1999 the Rules Committee again acting under the provisions referred to above, amended in certain respects the Family Proceedings Rules, which amendments are referred to as the Family Proceedings (Amendment) (No. 2) Rules 1999;

*AND WHEREAS* it is provided by section 78(4) of the Supreme Court of Judicature Act that the Rules of Court made under that section shall be subject to negative resolution of Parliament;

*AND WHEREAS* a resolution to annul the Principal Rules was filed in the House of Representatives by the Honourable Member for La Brea on behalf of the Opposition on the 6th day of August 1998 but lapsed without debate;

*AND WHEREAS* the 1998 amending Rules were laid in the House of Representatives on the 18th day of December 1998 and in the Senate on the 12th day of January 1999;

*AND WHEREAS* the following Rules were laid in the House of Representatives on the 28th day of April, 2000:

The Civil Proceedings (Amendment) Rules, 1999 dated 21st day of September 1999;

The Civil Proceedings (Amendment) (No. 2) Rules, 1999 dated 6th day of October 1999;

The Family Proceedings (Amendment) Rules, 1999 dated 6th day of October 1999;

The Family Proceedings (Amendment) (No. 2) Rules, 1999 dated 19th day of November 1999;

*AND WHEREAS* the Law Association has expressed its disapproval of the Rules and of their coming into effect;

*AND WHEREAS* the Government of Trinidad and Tobago is of the view that the policy contained in the proposed Rules named, would, if implemented:

(i) deny equal access to justice which would amount to a discrimination against poor litigants;

(i) make the cost of litigation more expensive and thereby prejudice the poor;

(ii) increase delays in the system;

*AND WHEREAS* it is expedient that:

1) the Civil Proceedings (Amendment) Rules, 1999;

2) the Civil Proceedings (Amendment) (No. 2) Rules, 1999;

3) the Family Proceedings (Amendment) Rules, 1999; and

4) the Family Proceedings (Amendment) (No. 2) Rules, 1999,

be annulled.

*BE IT RESOLVED* that the said Rules, namely:

1) the Civil Proceedings (Amendment) Rules, 1999;

2) the Civil Proceedings (Amendment) (No. 2) Rules, 1999;

3) the Family Proceedings (Amendment) Rules, 1999; and

4) the Family Proceedings (Amendment) (No. 2) Rules, 1999,

be annulled.

Mr. Speaker, it has become necessary for the Government to move this Motion, in light of the fact that the principal Rules are those which the Government believes, if they come into force, would not operate in the public interest.

The way I wish to deal with this, firstly, is to mention what are really the principal concerns of the Law Association. As you know, the Law Association represents the legal profession in Trinidad and Tobago pursuant to statute. The legal profession—when I say the legal profession I should really say that it is very important for lawyers to be on board in respect of Rules of Court, because the Rules of Court cannot really work without the support of the legal profession. These Rules would make radical changes to the present procedure in respect of civil procedure and procedure relating to family matters.

The principal concerns of the Law Association in respect of these new Rules may be summarized as follows:

The Rules are likely to have the effect of increasing costs.

The Rules are designed to increase the number of court appearances by attorneys for both parties with consequent increased cost to litigants.

The reports coming out of England, where similar Rules have been introduced, tend to confirm these fears.

In England, the Civil Legal Aid Fund is over £800 million. Lord Woolf has publicly acknowledged that the Rules would not work without adequate funding. If I may say how Lord Woolf is relevant to this is that the proposed new Rules in Trinidad and Tobago are Rules which contained the policy of what we know in England to be the Rules which came about as a result of the Commission which was appointed, headed by Lord Woolf, and he looked into the civil procedure in the United Kingdom.

Lord Woolf has publicly acknowledged that the Rules would not work without adequate funding. In the absence of funding increased costs would have to be borne directly by the litigant. This would result in a denial of access to persons who are already hard-pressed to meet legal costs, in the civil courts. This concern has not been addressed by the Rules Committee. May I say before I go to the second point of the major concern of the Law Association—I want to put it on record, that when these Rules were originally devised and were laid in the Parliament they had the signature of the Attorney General.

And as I mentioned in a public statement and I put on record, the Attorney General signed those Rules on the basis that he was assured that the legal profession was consulted and was on board with the Rules. Therefore, I took the position that if the legal profession was in agreement with the Rules, they would have studied them in detail and have the comparisons done, and, therefore, as a Member of the Rules Committee, I went along with it.

Some time after the Rules were laid there was a delegation from the lawyers. When the lawyers came to me I got the Rules Committee to see members of the legal profession. Based on what the legal profession stated, it became quite clear to me that one should look into these Rules more. As a result, I requested Prof. Michael Zanda of the London School of University who had done a study with respect to policy with respect to new rules of court. He did a study of the Rules and the policy contained therein, and he advised that the proposed policy in the

Rules would increase costs, delay litigation and deny poor people access to justice.

As a matter of fact, Prof. Michael Zanda stated that studies were done by the Rhand Corporation of the United States of America in respect of this policy, which was contained in the Rules. After extensive study, his opinion was supported by what this study had done.

As the second main concern of the Law Association, these Rules would have a lot of up-front costs. Mr. Speaker, the Law Association says that the Rules would have the effect of substantially increasing the up-front costs of the litigant.

One of the arguments in support of the new Rules is that they are likely to increase pre-trial settlements. This is dubious and fails to take into account the cultural idiosyncrasies of our people: they want their day in court. While it may be true that pre-trial settlements might occur in major commercial matters such matters only account for a very small percentage of the litigation in civil courts. Under our present system of civil justice, when a person has a case to file, the person would go normally to a lawyer, the lawyer would take instructions and a statement of claim would be filed.

**5.40 p.m.**

At the time of filing this statement of claim the person would not need to have all the evidence, he would not have to do all the studies, he would not get the police statements because those things take time. Sometimes the police statements in some matters, let us say it is a motor vehicular case, come just before the trial. So the person files the case, there will be a defence but there is a period of time and the matter goes on until the person gets the evidence.

Under the proposed new rules, if they come into force, the person would have to file a claim and the claim would have to be accompanied by a statement of case, which must be accompanied by the documents relied upon. All these matters would need a lawyer to advise and to draft, then after it is filed and the person has a defence, there will be a case management conference. There will be a lot of arguments and documents to be prepared and there is a time frame for these matters to finish. So that the poor litigant will have to find all these moneys up front in order to litigate this matter. If he cannot litigate it, the matter is ended. There is a strict time frame and then the matter comes to an end.

Mr. Speaker, as we all know in Trinidad and Tobago, people go to lawyers, they start cases and they get money from their family abroad, they might run a

"sou sou", they would get the money, they get help and they pay their lawyers from time to time. There are cases in which some lawyers would start the work without even collecting money. What would happen as a result of the new rules, if they come into operation, is that there would be situations where the big companies, the rich people, the ones who are of the upper bracket, would have the money, because they would have put money aside to file and to contest matters. The poor man whose family gets into a motor vehicle accident, or the poor widow, would be left out of the court system. When it became quite clear to me that this is what the rules were going to do, there is no way that I was prepared to support it.

The third matter, which the Law Association would like to be raised about these Rules, is that these sweeping changes will require increased resources in terms of time and care in any single case. Big firms will be able to attract more associates to meet this demand. Their non-litigation work and conveyancing practices will support the additional costs. The sole practitioner, both in and out of the areas of the Registry, will be unable to cope. Another feature of introducing these new rules is, because of the technology that would be required of case management and the changes and the resources which they would require, it would mean that small firms would not be able to operate. The small person or the one-man firm or the one-lawyer operation would not be able to operate. They would all end up being absorbed into the big firms.

So, Mr. Speaker, it seems to me that the policy contained in these rules has not taken into account the litigation culture of Trinidad and Tobago. What we are trying to do is transplant the policy, which was devised in England but devised after extensive consultation for that particular society, and just put it into Trinidad and Tobago's situation. The Law Association has also expressed concern in this respect. The information technology required, both in the court structure and in the attorneys' practice, is going to be very expensive.

One of the objectives of setting up the local law school must have been to open up the profession to persons from all walks of life and so remove the elitism of the old days. By instituting measures that require serious financial outlay for running an office to be able to cope with the new Rules of Court, we are returning to those days when law firms were a certain class and colour and attracted all the most lucrative work by virtue of economics. This, Mr. Speaker, must be considered retrograde. Sole practitioners provide service for the small man, especially outside of Port of Spain and San Fernando. In effect the Rules would deprive the small man of access to representation.

Mr. Speaker, may I mention that the Rules themselves, those we are talking about and the amendments which have been done, do not address the main concerns and the policy and philosophical objections which have been made in respect of the new Rules. Rather, the amendments give greater efficiency to the new Rules. Although the legal obligation was for the rules to be laid—and there could be no doubt about the rules having to be laid—the proposed reform of the Rules of Court was part of the judicial sector reform programme which consisted of several components, and the reform of the Civil Proceedings Rules was, in effect, part of that judicial sector reform programme. The Cabinet of Trinidad and Tobago considered this matter and decided, on April 6, 2000, that a negative resolution be filed in relation to these matters.

What has happened in this matter is that there seems to be some disagreement or difference of views as to whether, if this Motion of annulment succeeds, the Rules would come into force. When the Rules Committee made the Rules and they were laid, the commencement date passed and then the instrument, which formed part of the rules that were laid in this House, was to the effect that the Rules Committee would fix a date in 1999. The Rules Committee fixed a date in 1999 and they fixed the date at December 31, 1999 for the Rules to come into force. However, after they fixed that date the Rules Committee extinguished that decision because, on October 6, 1999 from the document which has been filed in this Parliament, one would see that the Rules Committee decided that the Rules have to come into effect on a date in the year 2000.

So, Mr. Speaker, the position which the state has taken, after receiving advice, is that even though the Rules Committee, having fixed a date in 1999, then reversed that decision, altered that decision and said it would come into force on a date in 2000, the rules must become operative. The rules cannot become operative, in our view, if the operative date is annulled. What would have to happen, in our respectful view, is that there would have to be another instrument for it to come into operation at whatever time the Rules Committee thinks it should come into operation. I know that there have been some concerns raised as to whether the effect of this would mean that the rules would come into force. In any event, if this Motion of annulment does not succeed, the Rules Committee can fix a date and it can come into effect without having any instrument filed in the Parliament.

I ought to mention also that what occurred, without going into the whole history of the matter, is that the chairperson of the Rules Committee, the hon. Chief Justice, when representations were made to him, the Rules Committee

recognized that these rules should not be implemented. The Law Association was saying that it is not a matter of amending these Rules. These Rules should be withdrawn, because there ought to be a new policy and this policy should come from the legal profession and from the public and that merely looking at the drafted Rules, which have been copied from the United Kingdom, would not solve the situation.

The Rules Committee decided that the Rules, which were laid, would be regarded as draft Rules and that there would be discussion in order to see whether there would be a new set of Rules. I say this, Mr. Speaker, to show that in the documents which have been laid before this Parliament, in respect of this Motion, the majority of the members of the Rules Committee are of the obvious view that they should have the discretion at any time to fix a date for these Rules to come into operation. This is being done although the hon. Chief Justice said, shortly after the opening of the existing law term, that there was going to be an advisory committee to look into these Rules and then to report.

Before this committee has actually reported, the majority of the Rules Committee had obviously decided that it would want to have the discretion, without reference to Parliament, to fix a date for the coming into force of the rules. Mr. Speaker, the position of the Government is that, we are of the view that the Principal Rules, which are sought to be made rules, as stated in the Motion, would deny access to justice to poor people, would increase costs and would not provide any solution to the existing problems. As a matter of fact, the existing institutions would not be able to cope with the reforms contemplated.

The Law Association, through its President on May 5, 2000, wrote the Attorney General a letter and I would like that letter to form part of the record. I would not read the entire letter, I would only read material contents of the letter. After referring to the instruments which are before this honourable House, the letter states:

> "Of the above instruments, the Civil Proceedings (Amendment) (No. 2) Rules 1999 and the Family Proceedings (Amendment) Rules 1999 each contain a provision that the Rules of Court 1998, both Civil and Family, 'shall come into effect on a date in the year 2000 to be fixed by the Rules Committee'. It is to be noted that both of these amendments were made by the Rules Committee on the 6th October 1999 without the agreement of the Hon. Attorney General or the two (2) representatives of the Law Association of Trinidad & Tobago. The original commencement date specified in Rule 2.1 of the Rules of Court

1998 was the 1st January 1999. This was changed to 'a date in 1999 to be fixed by the Rules Committee' by the Civil Proceedings and Family Proceedings (Amendment) Rules 1998."

**5.55 p.m.**

Mr. Speaker, a date was fixed to be December 31, 1999 as I mentioned earlier. At the meeting of the council held on April 17, 2000, a letter dated April 11, 2000 from the Attorney General was considered.

"This letter advised that instruments had been sent to the Hon. Attorney General with a request for them to be laid in Parliament. As advised, these instruments were to the effect that the commencement date for the Civil and Family Proceedings Rules 1998 be further extended 'to a date to be fixed in the year 2000 by the Rules Committee'".

Mr. Speaker, so one sees a definite decision by the Rules Committee and we know as a fact that the rules did not come into force in the year 1999 and, therefore, a new date was being sought for the fixing of the rules.

"At this meeting the Council considered copies of correspondence passing between the Hon. Chief Justice and the Hon. Attorney General. This correspondence was made available by the hon. Chief Justice to the Council through one of its members. In addition, a copy of a letter written by the Vice President of the Association to the Chairman of the Advisory Committee appointed by the Rules Committee was considered…the Council resolved as follows:—"

Mr. Speaker, and I quote the decision of the Council of the Law Association for the records:

"That the President of the Association write to the Hon. Attorney General requesting him to move a negative resolution in the House of Representative to prevent the coming into force of the Civil Proceedings and Family Proceedings (Amendment) Rules 1999 to extend the commencement date of the Civil Proceedings and Family Proceedings (Amendment) Rules 1998.

That the under-representation of the profession on the Rules Committee be raised with the Hon. Attorney General.

That the Vice President of the Association notify the Hon. Chief Justice of the foregoing."

The above resolutions were confirmed and expanded upon at the further meeting of the Council on Wednesday, 3rd May 2000 after the Council was advised that the Hon. Attorney General had in fact laid the above-mentioned instruments in Parliament. The Council also considered a letter dated 2nd May 2000 from the Hon. Chief Justice asking the Council 'to reconsider its decision to request the Hon. Attorney General to move a negative resolution in Parliament to prevent the amendments of the New Rules from becoming law'. At this meeting the Council after mature deliberation further resolved as follows:—"

Mr. Speaker, and I quote:

> "That the Hon. Attorney General be requested to take such action as may be necessary, not excluding legislative action, to prevent any continuation in force of the Civil and Family Proceedings Rules 1998 without prejudice to such discussions as the Council may wish to have with the Advisory Committee set up by the Rules Committee."

The continuing objection of the Law Association of Trinidad & Tobago, the statutory representative body of all practising attorneys-at-law in Trinidad & Tobago, is well documented. The Association has been consistent and unswerving in its fundamental objections to the New Rules of Court. It is of the view that the New Rules are inimical to the welfare of the society as a whole and to the legal profession in particular. It is convinced that the New Rules will have a destructive and deleterious effect on the majority of legal practitioners and will make access to justice more difficult for, if not beyond the reach of, the poor and disadvantaged members of the public.

More recently, the Council has embarked on the broader inquiry into the extent to which the cost of and access to legal work generally is being compromised by existing commercial practices and structures. This is a question not unrelated to the position of the Association with respect to the New Rules. The principle of the provision of structures which facilitate rather than deny access to justice for all—justice in its broadest sense of legal and social justice—is of primary concern to the Association and its members.

At a meeting of the Rules Committee on the 19th November 1999, an Advisory Committee was set up 'to consider and report on the advantages and disadvantages that are likely to flow from the introduction of the Civil Proceedings Rules and the Family Proceedings Rules 1998'.

The representatives of the Law Association on the Rules Committee did not support the terms of reference of the Advisory Committee. They advanced the

position of the Association that what was required was an examination of the existing Rules of Court as a pre-requisite to any change in them. The Hon. Attorney General supported the position of the Law Association. Notwithstanding this, an Advisory Committee has been sitting with the above terms of reference. The Council has attempted to persuade the Advisory Committee that what is required is an examination of the existing Rules as a pre-requisite to reform.

The Council of the Association wishes to recall that after the protests of the majority of the legal profession, the Hon. Chief Justice announced in September of 1999 that the New Rules of Court 1998 should be considered as 'draft Rules'. Consistent with that status it is difficult to justify the continued deficiency in any form, amended or otherwise of the New Rules of Court. The Question must be asked as to why the validity of the 'draft rules' is being extended while they continue to be under review by an Advisory Committee with a view to possible further amendment or rejection.

To agree to a date in the year 2000 is to commit to an acceptance of the Rules in the present or amendment form and that they will take effect in the year 2000. The position of the Association has always been that the New Rules should be withdrawn and a revision exercise of the existing rules undertaken.

As a responsible professional body the Law Association has attempted at all times to enter into serious discussion with respect to Rules of Court and the enhancement of access to justice for all. It is of the view that no useful purpose will be served consistent with a demonstration of good faith by all concerned if the validity of the Civil and Family Proceedings Rules were amended to come into effect on a date in the year 2000 to be fixed by the Rules Committee.

In asking the Hon. Attorney General to file a negative resolution to annul the Civil Proceedings (Amendment) (No. 2) Rules 1999 and the Family Proceedings (Amendment) Rules 1999, the Council does not rule out the possibility that further legislative action may be necessary to annul the New Rules of Court.

The Council is aware that on the 14th August 1998, one of the members of the Association, the Hon. Mr. Bereaux, Member of Parliament for La Brea, had filed a negative resolution to annul the Civil Proceedings Rules 1998 and the Family Proceedings Rules 1998. The negative resolution of the Hon. Mr. Bereaux was not proceeded with. The Council supported that initiative and is of the view that the reasons supporting same are still valid."

Mr. Speaker, I should also mention that on May 11, 2000, the President of the Law Association drew my attention to a publication in the *Extraordinary Gazette*

and he said having regard to the above it now appears that a past negative resolution concerning all the above will immediately bring the Rules into effect retroactively from December 31, 1999. It would appear therefore that debate should be restricted to negativing the Family Proceedings (Amendment) (No. 2) Rules 1999 and the Civil Proceedings (Amendment) Rules 1999 and not the Civil Proceedings (Amendment) Rules 1998 and the Family Proceedings Rules 1998.

Mr. Speaker, may I put on record that after I got this letter, I spoke to the President of the Law Association. I sought an advice in the matter from senior counsel and the advice was to the effect that we should proceed with annulling all the rules—I mentioned the legal opinion which I got in my conversation thereafter with the President of the Law Association.

Mr. Speaker, the position the state is taking is that the Rules did not come into effect, they have not become operative. There was a decision by the Rules Committee for them to become operative on a particular date. They did not and, in fact, in law they did not become operative and what is before this Parliament is the annulling of those instruments which form part of the Rules; the instruments of the Rules which form part of the Rules; and an annulment of the instruments would mean that there can be no legal operative date of the Rules.

**Mr. Speaker:** Hon. Members and strangers, just for the avoidance of doubt, it is an absolute no-no, that phones should ring during sessions of the House in the Chamber. So, just in case anybody else may happen to have a phone, which is not on vibrate, please take it off.

**Hon. R. L. Maharaj**: Mr. Speaker, I cannot put all the letters on record and I cannot put all the Law Association letters on record, but I think I should also put on record the letter of the hon. Chief Justice to the President of the Law Association, a copy of which was sent to me and to the Leader of the Opposition, in relation to the letter replying to the President of the Law Association talking about the resolution, and the Chief Justice said:

**6.05 p.m.**

"I acknowledge receipt of your letter dated 10th May 2000 with reference to the above. I note that you have written to the Attorney General requesting that he file a negative resolution to annul the 1999 amendments of the above Rules, and also to the Leader of the Opposition soliciting his support for such a resolution.

If such a resolution is passed, it will have the unfortunate result of defeating the intention of the Rules Committee to defer a final decision on whether, and if so, when to implement the new rules until it has received and considered the report of the Advisory Committee. The legal effect of such a resolution will be to annul the amendments whereby the coming into force of both sets of rules was further until a date in the year 2000 to be fixed by the Rules Committee.

You are no doubt aware of the history of the matter which is as follows:

In the original form, the rules provided that they were to come into force on 1st January 1999. It was in that form the rules were signed by all members of the Rules Committee including the Attorney General and the two nominees of the Law Association and laid in both Houses of Parliament.

No negative resolution has been ever passed in either House of Parliament in respect of the rules so laid. On 3rd November 1998, the Rules Committee amended the commencement date of both sets of rules by providing that instead of coming into force on January 1, 1999, they should come into force on a date in 1999 to be fixed by the Rules Committee.

These amendments again were signed by all members of the Rules Committee and were laid in the House of Representatives on 18th December, 1998, and in the Senate on 12th January 1999. No negative resolution was ever passed in relation to these amendments.

Pursuant to the commencement provision as amended, the Rules Committee at a meeting held on 12th July 1999 at which the Attorney General and both nominees of the Law Association present fixed 31st December 1999 as the date on which the new rules should come into force.

This decision was Gazetted and it referred to the relevant decision. This decision was, however, overtaken by the 1999 amendments…"

Here it is the Chairperson of the Rules Committee is agreeing.

> "…of the rules which you are seeking to have negatived, postponing the commencement date to a date to be fixed by the Rules Committee in the year 2000.
>
> I have some difficulty in seeing what purpose will be served in these circumstances by Parliament negativing the 1999 amendment. It seems to me that this will trigger the commencement of the new rules. That I thought was the last thing your council wanted to do. I also do not understand why the

council thinks it necessary to take some action at this time. I have repeatedly given the assurance, both privately and publicly, that no final decision will be taken with regard to the new rules and they will certainly not be implemented until the Rules Committee has had the benefit of considering the views of the Advisory Committee with whom, incidentally, your council has itself been meeting."

Mr. Speaker, before I read the last paragraph, all I can say from the facts is that it would seem that if that is the position, why is the effort to have a date fixed for the rules to come into force a date in the year 2000? What is the effect of this? If it is not annulled, it would mean that the Rules Committee can meet with a majority of members and can fix any date in the year 2000 without coming to Parliament and the rules can come into operation.

The final paragraph of the letter said:

"In view of the letter which you have written to the Leader of the Opposition, I think it is my duty to ensure that he determines his course of action with full knowledge of the facts. Accordingly, I shall be sending him copies of this letter as well as my letter to Mr. Mendez dated 2nd May 2000, together with the enclosures to both letters.

Only the hon. Attorney General and Minister of Legal Affairs is aware of all the facts I have set out above. I will send copies of the same document to him as well."

Mr. Speaker, it would seem to us that just as one can have a law which can be passed in Parliament and become effective on a date to be proclaimed—and the law can be passed but will not become operative until the law is proclaimed—one can have rules, but if there is not a legally operative date, they can be considered to be law, but no effective operation date, according to law, has been fixed.

**Mr. Valley:** Is it not a fact that given that those rules were Gazetted in July 1999 setting the operative date as December 31st, does that make it legal and binding? And if, in fact, we approve this Motion, is it not a fact that those rules which caused the controversy in the first place would continue to obtain?

**Hon. R. L. Maharaj:** Mr. Speaker, I wish the hon. Member, when he gets up the next time to ask me a question, could state what is the Opposition's position. Do they agree to these rules? Do they object to them? I would answer his question.

**Mr. Valley:** I can state my position now.

**Mr. Speaker:** Order!

**Mr. Valley:** Mr. Speaker, the Member asked what is the Opposition's position on this matter. We remain convinced that the original rules, the 1998 rules, are not in the interest—we have met with persons from the Law Association, and our fear is that by approving the Motion that the Attorney General has brought to the House, we would be back in Catch 22. In other words, the original rules of 1998 would continue to apply as is borne out by the correspondence we have before us.

**Hon. R. L. Maharaj:** Mr. Speaker, do I get it on record that the Opposition believes the rules are not in the interest of the public?

**Dr. Rowley:** We could speak for ourselves!

**Mr. Valley:** The Member for La Brea would be joining the debate. I do not know why he is so previous.

**Hon. R. L. Maharaj:** I think it is sometimes very difficult for people to understand these principles. Be that as it may, if it is that the Opposition's position is that it believes the rules are not in the public interest, I am very happy that they can admit that.

What we are saying is that one can have rules which are subject to a negative resolution. They can be there, but the operative date is an essential part of the rules. The reason the document has to be laid for the rules to come into force is because it is recognized that that instrument is part of the rules. So, even though there was no negative resolution to the principal rules and there was no negative resolution, yes, the rules, just as they are—Mr. Speaker, one has to understand that this is subsidiary legislation, and when a body is given power to legislate in this way, it does not mean that the Parliament does not have the power to prevent the law from coming into force.

**Dr. Rowley:** Well bring a Bill!

**Mr. Valley:** Bring a Bill. You cannot do it in this way.

**Mr. Speaker:** Could I appeal to the Member for Diego Martin Central and the Member for Diego Martin West to contain themselves. You will have all opportunity of speaking.

**Hon. R. L. Maharaj:** We have taken the position that yes, there is law, but law cannot come into effect unless we have a legally operative date, and we have taken that position, but we will say that we will pass this resolution and, if the

Opposition wants us to bring a Bill, we will also come with a Bill, and it will be in 24 hours, 48 hours, 72 hours.

If the Opposition's position is that this is the wrong procedure, the Government's position is that this is the right procedure, and the Government is prepared to say that if the Opposition says once we come with a Bill they will support it, it means that they will not tell us to come with a Bill unless they are of the view that these rules are not in the public interest.

Mr. Speaker, our position is that these rules are not in the public interest. We are very happy that the Opposition has taken the position also that they will support a Bill. What we are saying is that we, the Government, are of the view that this Motion will annul the rules and will not become operative, but we are giving the assurance that notwithstanding that opinion, the Government will go further and satisfy the Opposition by also introducing a Bill if the Opposition wants us to introduce a Bill.

Thank you, Mr. Speaker. I beg to move. [Desk thumping]

*Question proposed.*

*Seconded by Hon. K. Persad-Bissessar.*

**6.20 p.m.**

**Mr. Hedwige Bereaux** *(La Brea):* Mr. Speaker, I rise to join the debate on this Motion. It has been read on more than one occasion. In consideration of the concerns expressed by some Members opposite, I am just going to read portions of the resolution, so we will take it as read.

Mr. Speaker, paragraph three of the resolution says:

> "*And Whereas* on the 29th day of June 1998, the Rules Committee, purporting to act under the Act..."

meaning the Supreme Court of Judicature Act,Chap. 4:01.

> "…purporting to act under the Act aforesaid, made the Civil Proceedings Rules 1998 and the Family Proceedings Rules 1998 wherein it was provided that both sets of Rules shall come into force on the 1st day of January 1999."

I will therefore look at the Supreme Court of Judicature Act, Chap. 4:01 section 77 which states:

> "Rules of Court may be made by the Chief Justice together with any four of the following persons who shall form the Rules Committee, namely:

(a) a Judge of the Court of Appeal* to be nominated by the Chief Justice;

(b) a Judge of the High Court* to be nominated by the Chief Justice;

(c) the Attorney General or any legal officer referred to in Part I, II or III of the First Schedule to the Judicial and Legal Service Act, to be nominated by the Attorney General;

(d) the Registrar of the Supreme Court;

(e) a practising barrister nominated by the Bar Council who shall hold office for three years; and

(f) a practising solicitor nominated by the Trinidad Incorporated Law Society, who shall hold office for three years."

The Legal Profession Act eliminated the question of a solicitor, so we now have two representatives of the Law Association.

Mr. Speaker, I took time to read that because words are important. Purporting, as I see it—the dictionary meaning states:

"claim to be true, it appears to be false, and falsely to signify.

The very tone of this Motion tells you that there is something in the mortar more than the pestle. It has nothing to do with the rules. It tells you that that is the case. You have the hon. Attorney General, a learned man and a legal friend, as he claims. Those are the words he uses in reference to a law which authorizes the Rules Committee to do what they have to do. I am going to continue on this. I get further down:

"*And Whereas* a resolution to annul the Principal Rules was filed in the House of Representatives by the Honourable Member for La Brea on behalf of the Opposition on the 6th day of August 1998 but lapsed without debate;"

I know that I am a Member of the Opposition and the hon. Member for La Brea, that is one, but I want to read the resolution which I had the honour to file, for the benefit of this House. The resolution says—like "all yuh hide meh resolution" What have you been doing, interfering with my papers? Anyhow—*[Laughter]*

**Mr. Assam:** It just goes to show how disorganized you are.

**Mr. H. Bereaux:** That is all right, you can say that, I will have to represent you when they have to deal with you in respect of the debt which you did not pay.

**Mr. Speaker:** Could the Member for La Brea, please—

**Mr. H. Bereaux:** I was just saying that, Mr. Speaker. The resolution is dated July 28, 1998. It says:

> "*Whereas* by virtue of the Supreme Court of Judicature Act, Chap. 4:01 of the laws of Trinidad and Tobago the Rules Committee is empowered to prescribe rules for the practice and procedure of the Supreme Court of Judicature.
>
> *And Whereas* new Civil Proceedings Rules and Family Proceedings Rules were laid in the House of Representatives on Friday 17th July 1998 and in the Senate on Tuesday 21st July 1998 before they were made available to Members of the Legal Profession."

I underscore that.

> *"And Whereas* the said rules were laid subject to negative resolution of Parliament.
>
> *And Whereas* such rules ought not to come into effect before members of the Legal Community..."
>
> or fraternity, anyhow you care to call it.
>
> "...have been afforded a reasonable opportunity to consider and comment thereon.
>
> *And Whereas* copies of the Rules were not made available to members of the Legal Profession prior to the laying in Parliament of the new Rules and are still not available for general circulation as at the date of the filing of this motion.
>
> *And Whereas* by way of a resolution passed at a Special General Meeting of the Law Association of Trinidad and Tobago held on Wednesday July 22, 1998, the Law Association called upon the Attorney General to withdraw forthwith from Parliament the new Rules until the Legal Profession has had a reasonable opportunity to consider, comment and make recommendations thereon.
>
> *Be it Resolved* that the said Civil Proceedings Rules 1998 and Family Proceedings Rules which were laid in the House of Representatives on the 17th July, 1998 and in the Senate on the 21st day of July 1998 be annulled."

Mr. Speaker, I had the honour to move that resolution. You will note that it was moved on July 28, the hon. Attorney General comes here, and what he tells us? I did not read the rules, I thought they had discussed it with the profession. He saw these rules here. He saw this resolution, but he did nothing.

Mr. Speaker, they control the Parliament. They did not allow us to come here, and give me or the Opposition an opportunity to discuss it and raise the points as detailed to us by the legal profession. The very statements he comes here to make today were statements which we were going to make, and which I told him about. Now he comes crying. He is so interested in poor people. That is the point I am making, Mr. Speaker. He allowed the Motion to lapse, because they control the court, and then they control the Parliament. Oh yes, Freudian slip; he wants to control the court. That is what he did, Mr. Speaker.

I also want to read some of the statements which were given to me by the legal profession when they asked me to move this Motion. I practise law from time to time, but I am not really in it fulltime, because I have to get here and deal with the Attorney General.

I am reading from a document so kindly given to me by the legal profession at that time:

The last substantive revision of the rules took place in 1975. A copy of the preface to the 1975 Rules (which we enclose) sets out the procedure adopted by the then Chief Justice in relation to that exercise.

Because of the magnitude and the gravity of the task, the then Chief Justice appointed an *ad hoc* committee to assist in the exercise. That process which involved revision and compilation took two years.

**6.30 p.m.**

Mr. Speaker, I want you to note that the first draft was brought to this House in June and it was laid in Parliament on July 17 and on July 21, 1998 and we are now in May 2000. We are one year and nine months—I am not saying that is enough time. That committee comprised seven members of the profession.

The current revision of the rules started with a conference entitled “Reforms in the Administration of Justice” in May 1997 and there was not enough time from what they have said and I agree.

On June 25, 1998, 100 members petitioned the Rules Committee to delay adoption of the rules on June 30, 1998 on the grounds that the profession had not seen the final draft. This intended adoption date had never been advertised. As a result thereof, the adoption date was accelerated to June 29, 1998. These concerns were indicated to the Chief Justice in writing by the Council of the Law Association.

They went on to give the following proposed changes which were of serious concern: The current rules of court incorporate considerable learning of the English rules and benefits from centuries of judicial commentary; the proposed rules do not contain any learning with regard to interpretation, and would take a minimum of ten years to be settled by judicial commentary. This is highly unsatisfactory, and I agree with that in its entirety.

However, what has happened since these rules have been allowed to become law as a result of inaction and blatant omission? I should not say omission, but I think it was done wilfully by the Attorney General allowing Parliament to—you see what happened, and I want to put this on the record. At the time when the resolution was brought, there were a certain number of days and I had approached members of the staff, I checked the days and I filed after the resolution was filed, very shortly thereafter, knowing full well that the resolution would lapse, and if it lapsed, by the time we got back to Parliament, the rules would already become law. And that is what happened.

When they were discussing the rules on television, I recall calling in and saying that a negative resolution had been passed and it was allowed to lapse. Nobody spoke about it, but that is what happened.

I want to get back to the point where it said we have all the English jurisprudence that has been developed over the centuries. Similar rules are now practised in England and I know for a fact that is the case, and I was able to get first-hand information of one who practises in that jurisdiction to tell me how it is working and I will address that.

The provision for case management will increase the cost of litigation to the disadvantaged or the needy. While case management can be useful, the provisions as currently drafted need to be carefully reviewed with regard to the cost effect. If the profession says that, and they are practising it, I agree with them. I will go on the point that they need to be looked at.

Provisions are made for a small claims court, financial limit between $15,000 and $25,000 in which no costs or interest shall be awarded. This will mean that financially strong defendants may frustrate weaker plaintiffs, thus denying them recourse to the law. If that is the case, Mr. Speaker, that should also be dealt with.

Provisions for the appointment of joint experts are highly unsatisfactory. Just saying that, we need to look at it. So I appreciate the fact, and have always appreciated the fact that the legal profession needed to have some say. Just as in

teaching they say that education must be child-centred, so too in litigation; litigation must be client-oriented and client-centred.

I am hearing, and I want to agree to some extent that the legal profession in each instant, each lawyer will take a great interest in his client's business, but remember we are talking about an adversarial system where certain members of that profession have certain skills honed over the years and we are hearing about poor litigants, who would not be able to afford things, but I am not hearing about any representative anywhere telling me what the litigants want. I listened on the television.

After I had brought this Motion to Parliament, when a judge of the Supreme Court and the hon. senior member and President of the Law Association were talking, I listened carefully to the callers. A number of callers who appeared to be litigants, not attorneys, were talking about time or cost. On the question of front loading, I agree to some extent that it can be, but I heard the judge of the Supreme Court saying that the time for getting cases to trial would be reduced to a year or 18 months, whereas today you have as long as 5—10 years. The hon. Attorney General talks about how long people take to do things, but what he would not tell you is that the Government of Trinidad and Tobago is itself frustrating the speedy trying of cases.

They gave to the court seven CAT Reporters and by "CAT" I do not mean animals, I mean Computer Aided Transcription. I am just explaining what it is. Do you know what happened? Right now they have only two. There is a court administration department and they are frustrating the appointment of people. *[Desk thumping]*

Mr. Speaker, why do I have to tolerate the three-legged toy? I have not identified anyone, Mr. Speaker. As I was saying, it is said when elephants fight, only the ground gets damaged.

**Hon. Member:** Not the ground, the grass.

**Mr. H. Bereaux:** All right, I thank you, but the ground gets damaged too. If that is your statement, I make the one with the ground because the ground gets cracked. *[Interruption]*

**Mr. Speaker:** Order please!

**Mr. Assam:** And you want to represent me?

**Mr. H. Bereaux:** Mr. Speaker, I know they are having a problem with me, but it is okay. What we are seeing in Trinidad and Tobago today was aptly

brought out in the SARA polls about the kind of impression that the average person in Trinidad and Tobago has about the administration of justice, about the hon. Attorney General, about—*[Interruption]* Yes, very good. I agree with you, they said so and you have a 17 point lead.

**Mr. Speaker:** Order please!

**Mr. H. Bereaux:** Mr. Speaker, I want the hon. Member for Caroni East and the hon. Member for St. Joseph to know, and in respect of the Member for Caroni East, if it is that they have a 17 point lead, do what you want with it, and in respect of the hon. Member for St. Joseph who is threatening to bury me in pitch, I want him to know that I hope that is not a threat to my life, but I hope he will do it when I am dead. *[Laughter]*

**Mr. Speaker:** May I suggest that you ignore the asides and stick to the Motion.

**Mr. H. Bereaux:** I agree, Mr. Speaker, I will speak directly to you seeing that one of the asides came from Assam. As I was saying, we have a situation in the country where there is quite clearly a battle going on between the titans and any problem which the legal profession has with the rules, I am certain that good sense could prevail and it could be worked out. I refuse, however, to stay here and allow the rules of the Supreme Court or the amendment to any rules to be used as any pawn in any battle between the titans.

Mr. Speaker, I agreed to move the negative resolution in order to give the profession an opportunity to comment, and what I would do or should I say, what the hon. Attorney General has said and the letter he has read from the Chief Justice all give the impression that the opportunity to comment is still available.

An advisory committee was appointed to the Rules Committee. I have this report, not in writing, but I understand—and if I am wrong, I will stand corrected—that the Law Association has not yet appeared before the advisory committee. If the hon. Attorney General asks somebody there—there are many members of the Law Association here, and they tell me differently—I will withdraw that statement, but that was told to me by a member of the advisory committee. It is one thing I do not want, and that is to be used as any tool for any games.

Mr. Speaker, when I came, I told members of the Law Association—and this is how strongly I felt—that even if I did not get full support, I would move it; once I am told not to do it, I would not do it. If I was told not to do it, party

discipline, I would be unable to do it, but I said I would do it and I did it for the purpose of giving the Law Association an opportunity to be heard, and they had an opportunity for 21 months maybe 22 and the hon. Attorney General went into all the various explanations.

**6.45 p.m.**

I want to read a Media Release which was given by the Secretary to the hon. Chief Justice—and it refers directly to this Motion—which states:

> "When the Attorney General laid in Parliament on Friday April, 28, 2000, certain amendments of the Civil Proceedings Rules, 1998, and the Family Proceedings Rules 1998, he was fulfilling a statutory obligation. That obligation is to lay before each House of Parliament, any statutory instrument that is subject to negative resolution of Parliament as soon as may be after it is made, but within the prescribed period—section 75(7) of the Interpretation Act.
>
> The four instruments in question—and they are named in the Resolution—were all made by the Rules Committee, 1999 between five and seven months ago. Two of them, in fact, postpone the coming into force of the new Rules. This postponement will permit the Rules Committee to receive and consider the report of the Advisory Committee appointed by him before making any final decision with regard to the new Rules."

The very Advisory Committee, which I am told—and I hope the Attorney General is trying to get the information for me—before which the Law Association had not appeared.

> "There is no move afoot by the Chief Justice or any Member of the Rules Committee to hurry the new Rules into force. There has been no change in the decision of the Rules Committee to suspend the implementation of the new Rules until it has had an opportunity to consider the report of the Advisory Committee which was appointed in November, 1999.

In fact, the Rules Committee has not met since meeting with the Advisory Committee in December 1999. When the new Rules were first made at the end of June 1998, they contained a provision that they would come into force on January 01, 1999. The first amendment of the Rules made in 1998 was to postpone commencement of the Rules to a date in 1999 to be fixed by the Rules Committee.

When the decision was taken in September 1999, to appoint the Advisory Committee, a further amendment was made to change the commencement day to a date to be fixed by the Rules Committee in the year 2000."

You see, first it was to come in 1999—they did not try to implement it—they said, okay 2000. So this, in my view, does not point to a Rules Committee that is likely to come like a thief in the night, surreptitiously, and put it in. No, it cannot be done. And they do not appear from the media release to tell me that; and I have good reason to believe the Chief Justice because I am certain that he is an honourable man until I find out differently.

> "During 1999 the Rules Committee took the opportunity to revise and made other amendments to the new Rules, though their implementation had been suspended.
>
> This was an exercise in which the Law Association participated. That is the opportunity I wanted to give them and they took it in respect of that. Arising out of workshops which it organized, the Law Association submitted comments and proposals for amendments of the Rules."

I would have hoped that the hon. Attorney General would have told me some of the comments which the Law Association had put for the amendments of the Rules and which were not accepted by the Rules Committee. He did not tell me that.

> "After considering these proposals, as well as comments and suggestions made by the judges, the Rules Committee made certain substantive amendments of the new Rules. These amendments were completed in the case of Civil Proceedings Rules by June 1999, and in the case of the Family Proceedings Rules by November 1999. These amendments, as well as those postponing the commencement date of the Rules, were submitted to the Attorney General for laying in Parliament. Laying in Parliament is a legal requirement. It does not make the Rules or the amendments of them effective. It gives the Parliament the opportunity to pass a negative resolution within the prescribed period, which has the effect of annulling what the Rules Committee has done."

And we are looking at that here.

> "Until and unless such a resolution is passed, however, what the Rules Committee has done is binding and effectual. Parliament did not pass any resolution annulling the Rules in the original form. And the time for doing so has now expired—"

And you know who to blame for that—the Hon. Attorney General and the Government.

> "It is the original Rules themselves and not the amendment of them which are controversial."

Well, this is an opinion. But I know that the original Rules are very controversial. It may be that the amendments had not gone on file that is why their implementation has been suspended from time to time by the Rules Committee, pending some resolution of the controversy. For Parliament to pass a negative resolution cancelling the amendments would serve no useful purpose. It would seem to be in no one's interest for Parliament to cancel the amendments, which have postponed the implementation of the Rules. To do that would be to bring back the old Rules—the same ones—against which we all have some objections.

> "The Chief Justice, has, in correspondence with the Attorney General, sought over several months to persuade him that the law requires that the amendments of the Rules, like the original Rules themselves, should have been properly laid in Parliament after they were made. That was now being done. The important point to note, however, is that the laying of these amendments in Parliament would not serve to accelerate, in any way, the implementation of the Rules."

So here we had the Law Association at the time when I raised that—and I make no apologies for it—I did it—saying they wanted time because they had some problems, getting an opportunity both to deal with it—and they did some work—and also getting an opportunity to have several other bites of the cherry by dealing with the Advisory Committee.

But the hon. Attorney General would have us believe that if you only annul the 1999 amendments that were laid, everything would be okay. You see, I never boast to be eminent counsel, but there are eminent counsel in the Law Association: and an eminent counsel in the Law Association is no less a person—*[Interruption]* I am making a contribution and you leave me, when I am finished I will tell you where I am going. Do not be previous because it would not get you anywhere. Do not behave like the hon. Member for Nariva.

**6.55 p.m.**

The hon. President of the Law Association, Mr. Karl T. Hudson-Phillips, QC, in a letter to the Attorney General dated May 11, 2000 stated—[*Interruption*] No,

I want to read it now. You went all over the place rambling and now I am trying to make my contribution you do not want me to read it but I am going to read it now:

> "Further to my correspondence concerning the above, my attention has been drawn to Extraordinary Gazette of the 20th July 1999 Vol. 30 No. 131 in which the date of 31st December 1999 was given by the Rules Committee as the commencement date of the Rules. I apologise for not having drawn this to your attention before. Neither of the present representatives of the Council of the Association was aware that any date had been fixed. Indeed, no mention of this was ever made in any of the discussions concerning the Rules.
>
> Having regard to the above, it now appears that to pass negative resolutions concerning all of the above will immediately bring the Rules into effect retroactively from the 31st December 1999. It would appear therefore that debate should be restricted to negativing the Family Proceedings (Amendment) (No. 2) Rules 1999 and the Civil Proceedings (Amendment) Rules 1999 and **not** the Civil Proceedings (Amendment) (No. 2) Rules 1999 and the Family Proceedings (Amendment) Rules 1999.
>
> It would appear that the only way to annul the Civil Proceedings and Family Proceedings Rules 1998 is by an Act of Parliament."

Now, Mr. Speaker, the hon. Attorney General has told us that he got some opinion from some eminent counsel and he did not read it but that is his opinion, he has received it and he is entitled to hold it close to his chest. I also have the opinion of another eminent counsel whom I respect. It therefore transpires at least that there is a doubt in the minds of several persons. There is a doubt in law as to what will be the effect of what the Attorney General is telling us to do here and there have been a number of instances in this honourable Chamber where he has come here insisting that he was correct in law and then been wrong. We know he won many cases in the criminal court, he was good then I suppose, but he has a bit of a problem with some of these civil matters. So we cannot take anything he says and even if we wanted to take what he said, Mr. Speaker, we have the opinion of the hon. Chief Justice, and if you want me to read that I could read that too. I have that letter too.

**Hon. Members:** Read it, read it.

**Mr. H. Bereaux:** I was not speaking to you. None of you are Attorneys General. I was speaking to the Attorney General.

[*Words expunged*]

**Mr. Speaker:** It is unfortunate that you used that phrase.

**Mr. H. Bereaux:** I take that back.

**Mr. Speaker:** No, it is very unfortunate. It is like doing the damage and then saying that you take it back. You could do better than that. Could that be expunged, please.

**Mr. H. Bereaux:** That will be expunged. I should say I do not want the lesser mortals, minions, to talk. I appreciate your advice and I will accept it.

So, Mr. Speaker, you have the hon. Chief Justice taking a view, you have the hon. President of the Law Association taking a view and you have the hon. Attorney General and whoever advised him taking another view and we are here deciding what to do, and I say, Mr. Speaker, somebody has got to take the part of Trinidad and Tobago. [*Desk thumping*]. I recall a statement made, written in the newspaper, I think, by an attorney-at-law for whom I have a lot of respect, Ms. Carol Gobin, when she said she is not holding any brief for anybody but trying to see about what is best for Trinidad and Tobago. Lawyers always have differing opinions. It is my considered opinion, and the opinion not necessarily as a lawyer alone but as a man who has had some considerable years in difficult situations, that what is happening here is one-upmanship, a fight with the hon. Attorney General.

He brought people here, a commission of inquiry. A number of lawyers did not like it, but he still did it, yet he comes here today telling me what the Law Association said. I say he seems to jump on the back of the Law Association when it is convenient to him. [*Interruption*] Well, they could best take care of themselves but I am coming to that now. You see, Mr. Speaker, he first started there but even in the Law Association election, which I wilfully did not attend because in my view I did not want to see the profession descend to this kind— [*Interruption*] Please shut up, I am speaking about lawyers and you are not one. I did not want to see the profession descend to that. So I did not attend it but there was a big fight going on as to who is on the side of the Chief Justice, who is on the side of the Government and things like that. That is where we are today, Mr. Speaker.

I think it is important for us not to lose sight of where we are going. You see, Mr. Speaker, one of the comments made by the hon. Attorney General, and he claimed it is a comment made by the Law Association, is that we will find that a number of the one-man practices would go out and that the big firms would take all. [*Interruption*] Stay quiet while I am speaking, please. Now, if that is the case,

there are ways to deal with it. You know, when we talk about the one-man firm will go out and the big firms would stay in and gobble up more, there is no law preventing a number of the one-man people from coming together. Maybe that is what they need to do now and to display. They are well educated, very competent and they need to display some of that. Even so, Mr. Speaker, they are talking about the cost and that very well could be it, but getting together might also be it.

What I agree with is that there are some firms—and I am not pelting stones at any of my colleagues—which get all the conveyancing. If we are concerned about that, bring in the competition law that you are talking about. You see, do not try to grow—again, I use this example. If you have a man taller than you or you want to grow, the way to settle that is not to cut him off from just above the ankle but to find some way to measure up to a tall man. A man of my height knows about that so I am telling you, the solution is not to bring down the big folks but to become big yourself or to ensure that the law is so administered that the Government itself pays more respect to lawyers in this country, as my learned friend and colleague from Laventille East/Morvant said, and give more of your work here.

[*Words expunged*]

Do not do that. You see, Mr. Speaker, if we are going—[*Interruption*] Or, casting aspersions? I know what I am saying.

**Mr. Speaker:** No, you are in fact coming dangerously close.

**Mr. H. Bereaux:** Close, close.

**Mr. Speaker:** You are, in fact, coming dangerously close to casting aspersions which you know, according to the Standing Orders, you should not do. It is quite unnecessary for you to do that.

**Mr. H. Bereaux:** Mr. Speaker, if something that I have said has cast aspersions—[*Interruption*] No I want to just—I am taking it back. I am straightening it out.

**Mr. Speaker:** No, well, I rule that what you just did was to cast an aspersion on a Member of the House and—[*Interruption*]

**Mr. H. Bereaux:** Well then, I take it back.

**Mr. Speaker:**—I ask you please, discontinue. We will have that expunged.

**Mr. H. Bereaux:** I am going to do that. Mr. Speaker, I will not say or do anything in this House that will prevent me from completing the contribution that I have started. [*Desk thumping*]

**Mr. Speaker:** The speaking time of the hon. Member has expired.

*Motion made,* That the hon. Member's speaking time be extended by 30 minutes. [*Mr. F. Hinds*]

*Question put and agreed to.*

**Mr. H. Bereaux:** [*Desk thumping*] Mr. Speaker, what we have is a classic 24-hour behaviour by the Government. If, when they had an opportunity to deal with what we all agree was the more obnoxious set of rules, the rules of 1998, they had done the proper thing, we would not have been here today debating this. They have the authority and the power, they will win the amendment, but that is not what it is. They will win the vote but that is not what it is.

Mr. Speaker, it points to an attempt to use a profession, a behaviour in the sense where the Government at the time—remember, at the time when the rules were brought forward and the resolution was brought forward, everything was hunky-dory as we say, using a colloquialism, between the hon. Attorney General and the hon. Chief Justice. They were willing, in the face of all the objections by the profession, and serious objections, in respect of saying they did not have time, they had not seen the documents, even in the face of that, to let it go through. Now, he comes crying crocodile tears here saying he now realizes about poverty and things like that. You may know about poverty, but do not feel—and you could call the name of the Member for La Brea as much as you want in any resolution and tell him how he did what he did when, you are not going to get away with that here with me.

Since he indicated, Mr. Speaker, in his speech the comments made by the profession and elsewhere about these rules in England and elsewhere about what statements were made, I go back to the point that, in the profession we use the White Book, as it were, the Bible in respect of rules in civil cases. That is an English document, a book written in England dealing mainly with English cases.

**7.10 p.m.**

Mr. Speaker, England has now gone the way of these rules. I am not saying and, in fact, I am confident that we do not have to use all the rules that England has because we have a different culture in some instances. The same argument which was used before, that we needed to have these rules that were developed over centuries, now the same people who developed the rules over centuries have gone and done something else. If we could not develop our own rules, where are we going to get rules if we stick to the old rules now? I mean, the 1975 rules.

So, basically, the people who say that have not read the rules. Although the rules do some things there is still a substantial proportion of the White Book which can be utilized as precedent for these new rules. I say that based also on the fact that, as I said, I have a sibling who practises law in England and was giving me a crash course as to how the rules are used. *[Interruption]* So I know that but more importantly, I am going to read from *The Times Law: A practitioner's point of view* dated May 2, 2000 and it says:

"This time last year solicitors were worried about the impact of Woolf:"

As the hon. Attorney General explained, it was Lord Woolf's Rule and Green Slade who did ours was a member of that committee.

"Government figures suggest new claims are down 23 per cent. Our experience confirms that more cases are settling, and faster, with fewer preliminary court applications."

Now, I take the point that a number of those cases may very well be on the commercial list because commercial people tend to want to know: Is my case going on or am I likely to win or not? If they think that they are likely to lose they are likely to settle.

And it says:

"Most pundits predicted that cases would be 'front-loaded', with a higher proportion of costs in the early stages. That has happened."

I am not only saying what is good on one side, that has happened.

"More activity early on means more analysis and advice, so more costs…"

That is a fact. By contrast, routine case management conferences do not really differ from the old style direction hearings—it means on the summons for direction—and often proceeded by agreement between the parties. By contrast, the new rules restrict parties agreeing to extend court deadlines.

Mr. Speaker, one of the things that have bedeviled the court is that attorneys agree to shift and postpone cases for a myriad of reasons and the intention is to try as far as possible to shorten the length of time it takes to go from statement of case as in the new rules to trial, if trial at all.

I read parts of another article from the *The Times Law* also dated May 2, 2000: "Verdict on Woolf shake-up: it's a qualified success":

"The UK legal system historically has been plagued by unsatisfactory delays and expense. The style of dispute resolution is changing as a result of Woolf

reforms; people no longer seek aggressive uncompromising lawyers, but those who look for commercial solutions."

So this supports the point I am making. It is normally the persons on the commercial list you will find being involved in this. Then it says:

"But a conference on Woolf held by CEDR found that although costs had increased at the start of litigation (front-loading) overall they were down as settlements came sooner"

I then go further:

"Overall the findings are positive, says Heaps. 'Over half the respondents feel the speed of resolving disputes has improved. But there are concerns that the aims and aspirations are not matched by court resources."

So there is a need to put resources in place.

Mr. Speaker, the hon. Attorney General alluded to this. He spoke about the legal aid system in England and as to how their legal aid—I think the Attorney General said—in civil cases are and we do not have it here. So, therefore, what we are doing is putting blame on the rules for things we should be doing as legislators here. The Government has done some work on legal aid, fine, very good, but we should be thinking about extending that in the $15,000 to $25,000 bracket. Let the poor litigant be able to get legal aid for that, and do not come here and tell me the rich corporation could get it. No!

Mr. Speaker, take for instance and we are going to sue on that—the Water and Sewerage Authority—the Member encouraged to leave that allurement up in Laventille and cause a young man to die.

**Mr. G. Singh**: How that come into this! *[Interruption]*

**Mr. H. Bereaux**: I am just telling you. I was saying that WASA allowed an allurement to remain there in Laventille and as a result of that a young man died. That is a case where you should have legal aid for the boy's parents. *[Interruption]* Well, I will.

**Mr. Speaker**: Is that really relevant to this?

**Mr. H. Bereaux**: Mr. Speaker, yes, very relevant.

**Mr. Speaker**: Do you honestly think so?

**Mr. H. Bereaux**: I would like to explain if you would allow me. What I was saying is that the hon. Attorney General said that in respect of these rules there is

a situation where because there is front-loading, a poor litigant fighting against a wealthy client would be at a disadvantage. I am saying that because of the front-end loading that can happen and we as legislators cannot just sit here and say that is what will happen, but rather we should deal with legal aid and make it available to those poor litigants so that we will not have that kind of situation.

**Mr. Speaker**: I have difficulty in relating it really to this. I really have difficulty. May the Member please continue but on another line?

**Mr. H. Bereaux**: Yes, I am going on another line. So I was saying that is the situation. So on the question of cost and $15,000 to $25,000 bracket that is a non-point. It is a point that could be corrected if we were to amend and make stronger the legal aid system. *[Interruption]*

Mr. Speaker, do you see what is happening? I am being controlled, but the other people are obstructing me, and when I respond, you have to control me.

**7.20 p.m.**

**Mr. Speaker:** Will the hon. Member continue. If at any stage the hon. Member finds it necessary to seek the protection of the Chair, I will give it. If in my own deliberate judgment, I do not feel that the asides which are coming from your side or the other side are sufficient to throw a reasonable, intelligent Member off, I will not bother.

**Mr. H. Bereaux:** Mr. Speaker, I will go on to give the comments as contained in *The Times Law* "Verdict under the heading on Woolf Shake-up" It is a qualified success, but a conference on Woolf held by CEDR found that although costs had increased at the start of litigation, (front-loading) overall they were down as settlements came sooner. It says that:

> "Overall, the findings are positive…Over half the respondents feel the speed of resolving disputes has improved. But there are concerns that the aims and aspirations are not matched by court resources."

Resources, Mr. Speaker. That is what is important. I continue to quote:

> "But 89 per cent of respondents backed the changes and said that litigation was quicker with fewer 'frivolous claims'. Nine in 10 thought clients were more involved in the management of the dispute…like the CEDR survey, the change singled out for the biggest impact is that which allows either party to make a formal settlement offer at any stage—or potentially face cost penalties."

So, Mr. Speaker, as I was saying, we have a situation here now in Trinidad and Tobago where a resolution that was brought in this honourable House—and was brought well in time and was well-meaning—could very well have been approved at the time, if the Government was more concerned about dealing with facts and dealing with a problem which they saw occurring in the country but, at that time, they had no concern about that. They had no concern at all. They were not concerned because they were close with the Chief Justice, but now that for some reason there is a break up, they want to come and make a serious error here in this Parliament.

They want to induce us to commit a legal indiscretion to support a Motion which will tend to bring back a certain set of rules that the profession, and a number of persons outside the profession, feel were not adequate for this country. Also, which a number of those persons, and even members of the profession, have started to correct.

The statement made by the honourable President of the Law Association in his letter to the hon. Attorney General is also instructive. As well-meaning and as proper as it might be, it has no place in dealing with these rules. I am quoting from page 2 of his letter of May 5, 2000. It says:

> "That the under-representation of the profession on the Rules Committee be raised with the Hon. Attorney General."

Under-representation, Mr. Speaker.

So, really and truly, the view is that the profession is under-represented on the Rules Committee. I believe that is true too, but that has no place in determining whether one likes the rules or not. It has no place. In fact, what comes out from this statement here—and I know this is not the view of the entire profession, but the Law Association represents all members of the profession. They represent me too, but I represent La Brea, and that is a big constituency.

The point is that we are put in a position here where there are other agendas in this, and not illegal agendas, but we are supposed to look at this, and I am saying that the government has the majority. If they want, they can annul these rules, but I am warning them that if they do it, they will not do the job. Do not take my word. Take the word of eminent counsel. If he is trying to coerce the hon. Member for Diego Martin Central and the PNM to agree in advance that if he brings a Bill, we will support it—*[Interruption]* No. Talk for yourself. If when the Bill arrives—you could write anything you want, because with respect to you, it is the singer, not the song. Nobody believes you.

**Mr. Speaker:** Speak to me.

**Mr. H. Bereaux:** It was said in the Sara polls. If the Sara poll was right to give you 17, it is right to say that nobody believes the Attorney General. It is right to say nobody believes the Attorney General, so he could write anything he wants and say whatever he wants, because nobody believes him.

**Mr. Assam:** Speak like a lawyer! You are wasting the Parliament's time! Sit down!

**Mr. H. Bereaux:** Mr. Speaker, I am trying to wind up, but I am having difficulty because I am being obstructed by the Member for St. Joseph.

**Mr. Speaker:** Order, please.

**Hon. H. Bereaux:** As I was saying, I just want to read further from one statement made by the hon. Chief Justice. *[Interruption]* The Member keeps obstructing me.

**Dr. Griffith:** Who is the leader on that side?

**Mr. H. Bereaux:** Basically, what it says is that there is a willingness being shown by the hon. Chief Justice and by the Rules Committee to have this matter settled, to have this matter thrashed out and to have the rules properly looked at by all parties.

On the last occasion it took two years to deal with the rules. It is now one year and nine months. Even if it takes another nine months in the year 2000—they do not have nine months—or another six months or, even if it goes into the year 2001, they could come back with it. But I do not believe that annulling the rules will show the *bona fides* that are necessary.

So, Mr. Speaker, notwithstanding the votes which they have, I am saying that the time has come when Trinidad and Tobago, when the persons involved in the administration of justice and the persons involved in the Executive, in the Government, need to show a different face to the public. Always remember that any time people lose confidence in the administration of justice, we will suffer, and we are open to an Act. So, I am saying to the hon. Attorney General, show a change of heart and forget the fighting.

Thank you, Mr. Speaker.

**Mr. Kenneth Valley** *(Diego Martin Central)***:** Mr. Speaker, really I had no intention of getting involved in this debate, but I thought, however, that I should

simply put on the record the position of the Opposition on this matter as simply as I can.

The rules were made in 1998 with respect to the courts. Representations were made to the Opposition and we listened to persons from the Law Association. They did not even get copies of the rules at the time that they were laid in the Parliament. They were brought here by the Attorney General, as he is bound to do under the Act, and we took the position that there ought to be more consultation. My honourable colleague from La Brea moved a Motion to have those rules annulled within the time.

As the Member said quite rightly, the Government at that time allowed that Motion on the Order Paper to lapse. We could have dealt with this matter two years ago and we would have been out of it. What has happened is that those rules were not annulled. There was no negative Motion in the Parliament within the time period, so, in fact, they are on the books as it stands at this time.

From the correspondence passing, we see clearly that those rules have since been amended, taking into consideration some of the objections raised by the Law Association and, perhaps, other persons. On May 5, we note that the Law Association wrote the Attorney General with respect to the new rules. I think we have to make that distinction. The original rules are of 1998. Today what we are really talking about are the amended rules of 1999. I think we need to note that. That is made clear by the initial letter signed by the President of the Law Association, Mr. Karl T. Hudson-Phillips, Q.C., to the hon. Attorney General dated May 5. I think the Attorney General made reference to this. It reads:

"I wish to acknowledge yours of the 11th April 2000 in the above matter."

The above matter being the proposed civil and family rules of the Supreme Court.

> "The above matter was discussed at meetings of the Council on Monday, 17th April 2000 and Wednesday 3rd May 2000. The attention of the latter meeting was drawn to the fact that on Friday, 28th April 2000, the Hon. Attorney General had laid in Parliament the following instruments:—
>
> 1. The Family Proceedings (Amendment) Rules, 1999.
> 2. The Family Proceedings (Amendment) (No. 2) Rules, 1999.
> 3. The Civil Proceedings (Amendment) Rules,1999.
> 4. The Civil Proceedings (Amendment) (No. 2) Rules,1999.

Of the above instruments, the Civil Proceedings (Amendment) (No. 2) Rules 1999 and the Family Proceedings (Amendment) Rules 1999 each contain a provision that the Rules of Court 1998, both Civil and Family, 'shall come into effect on a date in the year 2000 to be fixed by the Rules Committee'. It is to be noted that both of these amendments were made by the Rules Committee on the 6th October 1999 without the agreement of the Hon. Attorney General or the two (2) representatives of the Law Association of Trinidad and Tobago. The original commencement date specified in Rule 2.1 of the Rules of Court 1998 was the 1st January 1999. This was changed to 'a date in 1999 to be fixed by the Rules Committee' by the Civil Proceedings and Family Proceedings (Amendment) Rules 1998."

This statement is important, Mr. Speaker. The next sentence states: "No date was fixed for the coming into effect of the rules in 1999." I think that is where the problem really started.

**7.35 p.m.**

I think based on that, and the whole letter, the hon. Attorney General came with a Motion to annul all the rules, because as he claimed in his presentation, if in fact, no date was set for the coming into force in 1999, and we are now in 2000 therefore—we cannot go back to 1999 to say it is effective, and we are in 2000—therefore they are not effective. I think it was on that logic they were working and came with this Motion.

However, the Chief Justice had to correct the President of the Law Association. The Chief Justice, writing to the President of the Law Association on May 11, 2000, which as you know was yesterday, informed the President of the Law Association, I quote:

"Re: Civil Proceedings Rules 1998
and Family Proceedings Rules 1998

I acknowledge receipt of your letter dated May 10, 2000 with reference to the above. I note that you have written to the Attorney General requesting that he file a negative resolution to annul the 1999 amendments of the above rules and also to the Leader of the Opposition, soliciting his support for such a resolution.

If such a resolution is passed it will have the unfortunate result of defeating the intention of the Rules Committee to defer a final decision on whether, and if so, when, to implement the new rules until it has received and considered the report of the Advisory Committee. The legal effect of such a resolution will be to

annul the amendments whereby the coming into force of both sets of rules was further deferred until a date in the year 2000 to be fixed by the Rules Committee."

He then went through the history of this matter. In paragraph three, page two he says:

> "Pursuant to the commencement provision as amended, the Rules Committee at a meeting held on the 12th July, 1999, at which the Attorney General and both nominees of the Law Association were present, fixed the 31st December, 1999, as the date on which the new Rules should come into force."
>
> Mr. Speaker, first of all, what the Chief Justice is saying is that there was this meeting, the Attorney General was present, they agreed that the new Rules would come into effect on December 31, 1999; that is the 1998 Rules, those are the Rules which the Law Association was against. Those are the Rules which we filed a Motion to annul. Our position is that those Rules do not appear to be in the public's interest: the 1998 Rules. However, those Rules which the Attorney General sanctioned, the Chief Justice is saying, are supposed to come into effect on December 31, 1999.
>
> "This decision was gazetted in relation to the Civil Proceedings Rules on the 20th July, 1999,..."

Gazetted. Now you would note, Mr. Speaker, that in the President of the Law Association's letter to the Attorney General on May 05, he said categorically, that no date was fixed for the coming into effect of the Rules in 1999. But the Chief Justice is now informing him, no, that is not so. In fact, at that meeting on July 12, at which the Attorney General was present, December 31 was fixed as the date. Not only that, it was gazetted.

"(a copy of the relevant Gazette is enclosed for your convenience)."

So it is in force, gazetted, legal. The Attorney General made the point that we pass laws in Parliament and the commencement is the date proclaimed by the President. When it is proclaimed by the President, of course, it takes legal effect. Similarly in the past legislation or subsidiary legislation, the Rules Committee can decide when this thing would be effective. They decided on December 31 and it was gazetted. Therefore it took legal effect as of December 31, 1999. As I said, this letter and the gazetted notice dated May 11, 2000.

On receiving this, there is the further correspondence from the President of the Law Association to the Attorney General, dated May 11, 2000 again, yesterday. Mr. Speaker, you are aware that the Attorney General spent the day in the

Parliament yesterday, I do not know when he got this piece of correspondence—this morning or perhaps very late last night. But obviously—*[Interruption]*

**Mr. Maharaj:** Yesterday morning.

**Mr. K. Valley:** Yesterday morning, that is quite good, because it is a good thing we have a Chief Justice who knows what is happening in Trinidad and Tobago, because the President of the Law Association does not seem to know when things are gazetted or not. On May 11, 2000, the same day, he writes the hon. Attorney General "S.C."—*[Interruption]*

Letters missing, "MP". May 11, 2000, the President of the Law Association, Mr. Hudson Phillips writing to the hon. Ramesh Lawrence Maharaj. I quote:

> "Further to my correspondence concerning the above, my attention has been drawn to Extraordinary Gazette of the 20th July 1999 Vol. 38 No.131 in which the date of 31st December 1999 was given by the Rules Committee as the commencement date(s) of the Rules."

But the Attorney General ought to have known that, because he was in the meeting that decided that, Mr. Speaker. You see?

> "I apologise for not having drawn this to your attention before. Neither of the present representatives of the Council of the Association was aware that any date had been fixed."

Mr. Speaker, what I am saying is that this thing all started on a false premise, which the goodly Chief Justice has now corrected.

Mr. Speaker, as the Chief Justice has said, if in fact, we proceed with what was planned today, the effect would be worse than where we are. It would mean that the original Rules: the Rules of 1998, which are in effect—as a fact it appears as though they are not carrying it out, because they are continuing discussions and so on. They were working on the amendments and so on, so they have not been carrying it out. But it has legal sanction. That is the point the Chief Justice is making: if you do this then you are going to get that. That is what started the whole controversy. This is not what we want to do. If we want to do anything at all, we want to get rid of the 1998 Rules. The only way we can do that is, as suggested by my colleague, coming with legislation.

I think the President of the Law Association said a similar thing in this correspondence. I will continue reading this, Mr. Speaker.

"I apologize for not having drawn this to your attention before. Neither of the present representatives of the Council of the Association was aware that any date had been fixed. Indeed, no mention of this was ever made in any of the discussions concerning the Rules."

The Attorney General was at the meeting. The Chief Justice said the Attorney General was at the meeting.

"Having regard to the above," having realized the error that we are working all the time under false premise it now appears—let me take that out because, of course, that is not in the letter, those are my words.

"...it now appears that to pass negative resolutions concerning all of the above will immediately bring the Rules into effect retroactively from 31st December 1999."

Understand that.

**Dr. Rowley:** Who is saying that?

**Mr. K. Valley:** It is the President of the Law Association. We are guided. I do not know why we are continuing this charade here this evening. I think the Attorney General knows what he has to do; he has to withdraw this Motion. If he wants, he has to come with a Bill, that is what he has to do *[Desk thumping]* Why are we wasting parliamentary time? We have work to do here, Mr. Speaker.

**7.45 p.m.**

"It would appear therefore that debate should be restricted to negativing the Family Proceedings (Amendment) (No. 2) Rules 1999 and the Civil Proceedings (Amendment) Rules 1999 and **not…**

The word "not" is in bold and it is underlined. You cannot miss it.

"…the Civil Proceedings (Amendment) (No. 2) Rules 1999 and the Family Proceedings (Amendment) Rules 1999.

It would appear that the only way to annul the Civil Proceedings and Family Proceedings Rules 1998 is by an Act of Parliament."

Mr. Speaker, this letter is dated May 11, 2000. The Attorney General said in his presentation that he got this letter, and May 11 was yesterday. He got some opinion and said do not worry with that, the President of the Law Association does not know what he is talking about, I get some opinion to say we can cut you on the wall of this.

Mr. Speaker, we know the Attorney General. He refuses to back down, but he has to, otherwise he is going to put the lawyers in a position that they do not want to be, in a position that we said from day one that we do not want. Understand what he is doing. He is running with the hares and hunting with the hounds.

July 12, he goes with the Chief Justice and agrees that the rules should take effect from December 31 and now he is playing he does not know that. Leading up our garden path, and when the Chief Justice says he was there, the poor President of the Law Association feels he is giving him information. But he knew all along, because he was there at the meeting, he signed saying…into effect. Running with the hares and hunting with the hounds. *[Desk thumping]*

Mr. Speaker, I want to amend this Motion and say: "I would act on the advice of the President of the Law Association."

On advice given, tendered only yesterday. It is still most current, warm. So I would like to amend this Motion by saying:

*Be it Resolved:*

That the following Rules namely:

We would want to delete (4) the Family Proceedings (Amendment) (No. 2) Rules, 1999 and (1) the Civil Proceedings (Amendment) Rules, 1999. I think I will have to go higher up, Mr. Speaker, I will have to go to:

*And Whereas* it is expedient that:

(1) the Civil Proceedings (Amendment) (No. 2) Rules 1999, and

(2) the Family Proceedings (Amendment) Rules, 1999, be annulled,

*Be it Resolved* that the said Rules namely:

(1) the Civil Proceedings (Amendment) (No. 2) Rules 1999, and

(2) the Family Proceedings (Amendment) Rules, 1999, be annulled.

Mr. Speaker, I beg to move those amendments. I am relying on the advice tendered by the President of the Law Association whose job I am assured is to seek the interest of members of that body.

Thank you, Mr. Speaker.

**Dr. K. Rowley:** Mr. Speaker, I second the Motion and reserve my right to speak in the debate.

**PROCEDURAL MOTION**

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, notwithstanding the hour, I beg to move that this House continue to sit until the conclusion of this Motion.

*Question put and agreed to.*

**RULES OF COURT**

**Mr. Speaker**: What has now happened is that there is an amendment to the Motion and it has been seconded, so I would now propose that amendment.

*Question proposed.*

That the Motion be amended by deleting (1) the Civil Proceedings (Amendment) Rules, 1999 and (4) the Family Proceedings (Amendment) (No. 2) Rules, 1999. And the amended Motion should read:

*And Whereas* it is expedient that:

(1) the Civil Proceedings (Amendment) (No. 2) Rules 1999, and

(2) the Family Proceedings (Amendment) Rules, 1999, be annulled,

*Be it Resolved* that the said Rules namely:

(1) the Civil Proceedings (Amendment) (No. 2) Rules 1999, and

(2) the Family Proceedings (Amendment) Rules, 1999, be annulled.

It is permissible for Members who desire to speak on this, to speak on both at the same time, notwithstanding that the vote will be taken on them differently.

**Mr. Bereaux:** Mr. Speaker, those who have spoken already can speak again?

**Mr. Speaker:** Indeed.

**Mr. Bereaux:** Thank you. I reserve my right.

**Dr. Keith Rowley** *(Diego Martin West)*: Mr. Speaker, I rise for one brief moment in the context of what we have before us and how the Motions are positioned. I rise to appeal to the Attorney General to not permit my other colleagues and other Members of the House to continue this matter, and I appeal to him to let reason prevail.

The reason I rise at this moment is that not too long ago, there was a situation in this country where the Prime Minister and the President were involved in a public debate as to who was speaking the truth and that had the effect of bringing

our institutions into serious disrepute. The text before us today, the Motion, the advice and so forth, if the Attorney General stands on the position that he has taken when this Motion was put on the Order Paper and seeks to defend himself and to justify what he is trying to do, he will have to call into question the veracity of statements made by the Chief Justice and here we have the potential for the Chief Justice and the Attorney General to enter into a debate much of the nature that happened between the President and the Prime Minister as to who is calling who a liar.

Mr. Speaker, I fail to see how that document could have been gazetted and is now in fact, in force if the Chief Justice and his colleagues in the Rules Committee did not take a certain line of action. It is unfortunate that it came to the head of the Law Association as late as it did, but his advice is clear and I simply rise to appeal to the Attorney General to spare the country that debate and let us take a different route.

We know what we want to do, and I do not see a great divergence in view in this matter. What I see is great difference in procedure and the potential for further traumatizing the public and bringing our institutions into disrepute. I ask the Attorney General to accept the advice given, accept the Motion by my colleagues, let us come back with this matter and treat with it in a way that would not traumatize the country and bring any disrepute to our institutions or our office holders. I hope the Attorney General will take my advice in the context in which it is given.

Thank you.

**The Attorney General and Minister of Legal Affairs (Hon Ramesh Lawrence Maharaj)**: Mr. Speaker, may I thank hon. Members for their contribution. This issue has nothing to do with the veracity of anyone. There is no dispute that there was a meeting of the Rules Committee, much emphasis had been put on this. The minutes of the meeting are there to show and it will show who voted for and who voted against.

The Member for Diego Martin Central was prepared to say that the Attorney General voted for that. As a matter of fact, the records would reveal that the Law Association and the Attorney General took a certain position. There was one member representing the Law Association. As a result of that, a motion of no confidence was moved by the Law Association and that member. But that has no bearing really on what we are dealing with here. There is no dispute that even if—we are not doing a case here, but on what the hon. Member for Diego Martin Central has said, the rules are in force, therefore, since 1999.

**8.00 p.m.**

On the basis of what the hon. Member for Diego Martin Central has said, that since December 31, 1999, these Rules have been in force, but there are other Rules which are being administered in the court. So that if the Rules had been in force, why does the Rules Committee need this instrument? You see, Mr. Speaker, the hon. Member for Diego Martin Central, really, with the greatest respect, does not understand what is happening. What is happening is that there are two issues here: one, the amending Rules which are amendments to the Civil and Family Proceedings Rules. The Family Proceedings Rules consist of about 15 amendments which purely does cosmetic changes to what the original Rules had. The Rules of the Court are a voluminous document.

We also have the Civil Proceedings Amendment Rules: this consists of 33 pages. Again, cosmetic amendments. So these two amendment Rules do not, in any way, alter the policy and the philosophy which the hon. Member for La Brea and the PNM asked to have a negative resolution about. It does not alter it. It is purely cosmetic changes.

Then there are two instruments: They are labelled "Civil Proceedings (Amendment) (No. 2) Rules and Family Proceedings (Amendment) (No. 2) Rules consisting of two pages each. In these two instruments one says, "the Rules shall come into effect on a date in the year 2000 to be fixed by the Rules Committee." The other one says, "the Rules shall come into effect on a date in the year 2000 to be fixed by the Rules Committee." So here are these two asking for the Rules to become operative.

We all know that when Rules or any legislation are laid in the Parliament, subject to a negative resolution, they take effect from the date they are laid. But when there is an annulment it goes back from the date that they were laid.

So what has happened here is that there is no doubt about it that the Rules which are laid are on the statute book, but the instruments for them to become operative are part of the Rules. So you could have Rules on the statute book that are not operative, just as you could have laws on the statute book that are not operative. And what this is asking to do is to give to the Rules Committee the power without coming to Parliament on a fixed date to merely fix the date of the Rules. That is what this is giving, and I will read it:

> "These Rules shall come into effect on a date in the year 2000 to be fixed by the Rules Committee."

The meeting which the hon. Member for Diego Martin Central is relying upon, is the meeting in 1999 in which there was an instrument laid which said that "the Rules shall come into force on a date to be fixed by the Rules Committee in the year 1999." What happened is that the meeting the hon. Member for Diego Martin Central is talking about—which was *gazetted*—the Rules Committee met and the Law Association representatives and the Attorney General did not support that date. But because it was laid in the Parliament and it was not annulled, if those Rules became effective in 1999, they would have been effective. What happened is that after they met on October 06, 1999 they extinguished that decision, so there is no effective date.

The annulment of these amendments and instruments, therefore, which purport to allow a commencement date to be fixed in the year 2000, will mean that the principal Rules cannot take effect—they would remain on the statute book—unless it is laid and the Parliament does not pass a negative resolution. The annulment of the amendments for any alterations would leave the principal Rules in place, but would not be enforceable by an operative date, which has not been annulled. If no commencement date can be set for them the principal Rules would remain on the statute book and would, therefore, have no date for them to come into force.

I want to say that the hon. Member for La Brea has made some statements which I must put on record. He said that there have been no comments from the Law Association. The Law Association's position and the position of the Government is that the principal Rules—*[Interruption]*

**Dr. Rowley:** Mr. Speaker, I thank the hon. Member for giving way. Before he goes on dealing with the substantive points of my colleague from La Brea, I just want to ask him if he can help me, in the context of what he said—I am not a lawyer so, maybe, I do not understand it; and my colleague is not a lawyer either—how does the Minister explain the advice given to him yesterday by the President of the Law Association? Is it that he, too, does not understand it? Or, he was not informed?

**Hon. R. L. Maharaj:** Mr. Speaker, I do not think I want to disclose all the discussions that I had with the President of the Law Association. What I would say, however, is that when I got his letter I spoke to him since and I got a written opinion from Dr. Ramsahoye, and based on that written opinion and what I have done in the ministry, we have taken the position that if the state does not take steps to annul the Rules, the Rules would come into force.

Therefore, if it is that the other side is saying that they are against the policy of the Rules—I heard about crocodile tears here today, but what I want to put on the record, is that according to the stance taken by the Opposition, where if the poor man of La Brea gets involved in a motor vehicular accident and he cannot go and have his case litigated—and based on what he is saying—because I want him to say by this vote today what he wants to do—if he does not want that to happen he must say that what the Rules Committee does is more important as far as he is concerned, than the rights of the poor people in La Brea.

Mr. Speaker, this shows that we can talk about an independent profession but it shows that we must have lawyers who are prepared to stand up for what they believe in. Here it is that the hon. Member for La Brea filed a Motion and he is trying to use the fact that the Government did not allow that Motion to be debated. The Opposition had Private Members' Day, from the record which has been quoted here, it shows that there were certain positions being taken by that time and the Government was hoping— as the hon. Member for Diego Martin West has been hoping—that there would have been some reason in this matter that the Rules Committee would recognize that if the profession and the Executive is saying that these Rules are against the public interest—even the Opposition was saying that—that there would be reason and people would not try to "ram" these Rules down people's throat.

I would have thought that the hon. Member for La Brea would have got up today and say that he stands on the side of poor people of this country. He is not afraid of anybody who is in power, when he took his oath in this Parliament to uphold the Constitution and the law, I would not allow anybody—but is it that the hon. Member for La Brea is saying that because he has to go to the court, and may have to appear before judges and magistrates, he does not want to take a position in which he would appear to be criticising or taking a position against persons who are members of the Rules Committee?

**8.10 p.m.**

Mr. Speaker, they are quick to say "uncharitable", but this is an issue that does not involve personalities. This is an issue that involves the rights of the people of Trinidad and Tobago [*Desk thumping*] and they must not try to cover it with talking about publishing in the *Gazette* and "they have issues between Chief Justice and Attorney General, the Prime Minister and the President". This has nothing to do with that. This has to do with whether legislators are prepared to seek the interest of poor people and stand up and say, "I would not allow the

rights of poor people to be taken away." [*Desk thumping*] That is what this is about, Mr. Speaker. This is about legislators agreeing to give away the birth right of litigants in Trinidad and Tobago.

Are hon. Members on the other side saying that the representatives of the Law Association are here today—look in the public gallery—because they do not want action to be taken about this? They are here today because they want action to be taken to prevent these rules from coming into force. If they really wanted to help they would not have come and taken this position to get political mileage. They would have come and said, "Listen, Mr. Speaker, we believe the Government is taking the wrong position. We would say that if the Government wants to go ahead it can go ahead but we will support any Bill or legislation that comes to annul the rules". Any legislation—[*Interruption*]

**Mr. Speaker:** May I appeal to the Member for Diego Martin West and the Member for La Brea, please, you may not like what the Attorney General is saying, but allow him to make his contribution.

**Hon. R. L. Maharaj:** Mr. Speaker, if they want to put their money where their mouths are, and they say that they are against the policy—because we cannot have it two ways. You know, it is the quickest thing for people on that side to accuse this side of being two-faced, of having two positions and having two mouths, things like that, but we cannot have it two ways. However, I am not going to use this debate to answer some of those allegations. This debate is too important. This debate is for rights of poor people and we will see who are for the people's side and who are against the people.

This clearly shows that the hon. Member for La Brea, really, for some reason which he must tell us at some time, has decided not to go along with his own resolution. Here it is he has got a once in a lifetime opportunity. Members of Parliament do not get that, Mr. Speaker. Here he comes on behalf of the Opposition and files a negative resolution. It was not debated but right in his lap he got an opportunity to debate the same rules to which he was opposed, in which he believed an injustice was being done to the people and his party believed that this had to be done in order to stop this injustice yet he comes today and says, "It was because they want more time for consultation and the Law Association had—he quoted the period of time that they had consultation and he said the rules were amended.

He is saying that these rules were amended and the amendments cured the defects in the rules substantially. But, Mr. Speaker, anybody who reads these

amendments—and one does not have to go to a law school to see that—when this is compared it has nothing to do with the fundamental matters in the rules or the resolution. What is it, why is it, that in a matter like this in which it is recognized that if you put laws and rules which, when they become operative, they would operate against the public's interest, you do not want to support the Government? We all know, no matter how we look at this, that what is happening here is that people are trying to save face.

We have taken the position, "Yes, we signed these rules". When we signed them, we said, "Yes, we believe afterwards that these rules were not in the public's interest". We said, "Yes, we tried our best in order to assist in getting the profession together so that there could have been *ad idem* on these rules and the policy". As a matter of fact, I have read the letters from the Law Association which show clearly that what is happening is that although on one hand it is being said there will be an advisory committee to look at these Rules, on the other hand you see action being taken for the Rules Committee, sitting in a room, to decide to make a date when it is to become effective.

Mr. Speaker, is it that we are so blind we cannot see? Is it that we are so deaf we cannot hear?

**Mr. Imbert:** Mr. Speaker, I thank the Attorney General for giving way. Before he gets too far down the road in beating up on my colleague from La Brea, I just need some clarification. I gather that there was a meeting in July 1999 at which a decision was taken for the rules to become effective in December 1999 and, subsequent to that, this decision was gazetted, okay? Subsequent to that gazetting, another decision was taken which appears to be reversing that process. Is this possible? Is this legal? Could you just explain what is going on?

**Hon. R. L. Maharaj:** Well, Mr. Speaker, I do not think you need a lawyer for that. If a body takes a decision for something to come into force on a certain date and, even before that date comes—[*Interruption*] and publishes it, yes. You could publish it 10 times, the whole world—and before that date comes it is recognized that that date should not be the effective date, and another decision is taken to revoke that decision and change that decision for a different date—and if you look at the same document you are talking about, that is what it also does. But, Mr. Speaker, all I say is that they are just using these things as an excuse. The fact of the matter is that these rules they know would offend poor people and what has happened is, they are in a position now where they are not prepared to support poor people. Mr. Speaker, I beg to move. [*Desk thumping*]

**Mr. Speaker:** Hon. Members, I shall first put the question on the proposed amendment.

*Be it resolved* that we delete items 1 and 4 in the final recital in the resolution and renumber items 2 and 3 as 1 and 2 and that there be inserted the word "and", at the end of the renumbered 1 and delete the word "and" appearing at the end of the renumbered 2.

*Question, on amendment, put and negatived.*

*Question on original Motion put.*

*The House divided:* Ayes 18 Noes 11

AYES

Maharaj, Hon. R. L.

Persad-Bissessar, Hon. K.

Lasse, Hon. Dr. V.

Griffith, Hon. Dr. R.

Humphrey, Hon. J.

Sudama, Hon. T.

Rafeeq, Hon. Dr. H.

Assam, Hon. M.

Job, Hon. Dr. M.

Khan, Dr. F.

Singh, Hon. G.

Nanan, Hon. Dr. A.

Partap, Hon. H.

Mohammed, Hon. Dr. R.

Singh, Hon. D.

Ramsaran, Hon. M.

Sharma, C.

Ali, R.

NOES

Valley, K.

Rowley, Dr. K.

Imbert, C.

Hart, E.

James, Mrs. E.

Bereaux, H.

Joseph, M.

Sinanan, B.

Boynes, R.

**Mr. Speaker:** No, hon. Members, the question is not whether you voted. You have not been heard, and rather than put it as an abstention—[*Interruption*] Order please—we are simply asking you politely to say whether it is "yes" or "no".

*Division continued.*

Hinds, F.

Williams, E.

*Question agreed to.*

*Resolved:*

That the said Rules, namely:

1) the Civil Proceedings (Amendment) Rules, 1999;

2) the Civil Proceedings (Amendment) (No. 2) Rules, 1999;

3) the Family Proceedings (Amendment) Rules, 1999; and

4) the Family Proceedings (Amendment) (No. 2) Rules, 1999, be annulled.

**ADJOURNMENT**

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I beg to move that the House do now adjourn to next week Friday, May 19, 2000 at 1.30 p.m.

Mr. Speaker, on that date we shall be doing the Equal Opportunities Bill together with the Dangerous Drugs Bill and the Judicial Review Bill, the two Bills that we were supposed to do today. [*Interruption*] Well, we will see what happens. That is what we are hoping to do, Mr. Speaker.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 8.24 p.m.*