**HOUSE OF REPRESENTATIVES**

*Monday, July 11, 2005*

The House met at 1.30 p.m.

**PRAYERS**

[MR. SPEAKER *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. Speaker:** Hon. Members, I have received communication from the following Members seeking leave of absence from today's sitting of the House: Hon. Eulalie James, Member of Parliament for Laventille West; Hon. Camille Robinson-Regis, Member for Arouca South and Dr. Adesh Nanan, Member for Tabaquite. The leave which the Members seek is granted.

**SUMMARY COURTS (AMDT.) BILL**
**Senate Amendments**

**The Attorney General (Sen. The Hon. John Jeremie):** Mr. Speaker, I beg to move,

That the Senate amendments to the Summary Courts (Amdt.) Bill, 2004 listed in Appendix III be now considered.

*Question proposed.*

*Question put and agreed to.*

*Clause 2.*

*Senate amendments read as follows:*

A. In subsection (5)(a) of the proposed section 63A:

(i) delete the word "statements" and insert the word "statement"; and

(ii) delete the word "and" and insert the word "or".

B. In subsection (5)(b) of the proposed section 63A, delete the words "and give evidence" appearing after the word "court" in line five and insert the words "to give evidence or to be cross examined".

C. In the proposed section 63C:

(i) In subsection (2)(c), delete the words "manager, or the secretary or clerk, or some other similar officer" and insert the words "corporate secretary"; and

(ii) delete the proposed subsection (4).

**Sen. Jeremie:** Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendments.

*Question proposed.*

*Question put and agreed to.*

**CRIMINAL PROCEDURE (AMDT.) BILL**
**Senate Amendments**

**The Attorney General (Sen. The Hon. John Jeremie):** Mr. Speaker, I beg to move,

That the Senate amendments to the Criminal Procedure (Amdt.) Bill, 2004 listed in Appendix IV be now considered.

*Question proposed.*

*Question put and agreed to.*

*Clause 3.*

*Senate amendment read as follows:*

In the proposed section 37A:

(i) in subsection (2)(c) delete the words "manager, or the secretary or clerk, or some other similar officer" and insert the words "corporate secretary".

(ii) delete the proposed subsection (4).

**Sen. Jeremie:** Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendments.

*Question proposed.*

*Question put and agreed to.*

*New clause 5.*

*Senate amendment read as follows:*

Insert after clause 4 the following new clause:

5. Section 50 of the Act is amended as follows:

(a) by renumbering section 50 as section 50(1);

(b) in the renumbered section 50(1), by deleting the words "and, subject to the provisions of the Corporal Punishment (Offenders Not Over Sixteen) Act and the Corporal Punishment (Offenders Over Sixteen) Act, to undergo corporal punishment".

(c) by inserting after the renumbered section 50(1) the following new subsection:

"(2) Without prejudice to the offences listed in the Schedule to the Corporal Punishment (Offenders Over Eighteen) Act, a person convicted under subsection (1) may also be sentenced to undergo corporal punishment in accordance with the requirements of the Corporal Punishment (Offenders Over Eighteen) Act."

**Sen. Jeremie:** Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

**INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL**

[Second Day]

*Order read for resuming adjourned debate on question* [July 08, 2005]:

That the Bill be now read a second time.

*Question again proposed.*

**The Attorney General (Sen. The Hon. John Jeremie):** Mr. Speaker, I want to place on record my gratitude to all those who have contributed during the course of the debate. When the Government proposed the package of measures designed to improve the administration of criminal justice in this country, we knew then that we were operating within a particular context. We knew that a legislative response was necessary, in addition to the measures which were proposed by the Minister of National Security.

The system of criminal justice in this country is outmoded and allows the accused, a predominant and unfair advantage. This is so, even as the society, the protective forces and the Government wrestle with dark and evil forces. As violent crime has increased, criminals have used the presumption of innocence to prey repeatedly on victims as they are out on bail. In some cases, some of our most notorious criminals have been granted bail on no new fewer than 10 to 14 occasions, in relation to matters ranging from kidnapping to other violent crimes against the person.

It is time for us to act, and time for us to act with innovation and urgency. We must not be paralyzed by the Constitution which protects us. The Bill before us does precisely this. It is designed to facilitate swift justice without offending the constitutional safeguards. We recognize that we are pushing the envelope. We recognize that we are ferreting out difficult lines of arguments and attacks, but that is what we must do.

We respect the Constitution, but we also respect the imperatives of the victims of crime to go about their business without fear of being attacked and eliminated in the time which it takes for certain preliminary enquiries to be completed. In those years, memories fade, witnesses are intimidated, and in some cases, liquidated. That is the stark reality.

Mr. Speaker, I would like to speak to two points which were made by the Member for Pointe-a-Pierre in relation to the Bill which is before us, and these points relate to the new clause 5.

The Member for Pointe-a-Pierre argued that the new power which is given to the Director of Public Prosecutions (DPP) in respect of the voluntary bill of indictment, deprives the accused of his right to cross-examine his accuser, or the chance to be discharged, for example, on the basis of a no-case submission. She argued that new clause 5 of the printed Bill—that is to say the proposed section 23(A)—which seeks to give the DPP the power to indict a person, without a preliminary enquiry and without reference to the court, therefore requires a special majority.

That argument is based, as I said before, on two premises. First, that the exercise of the DPP's power will deprive a person of the right to cross-examination; and secondly, that it would deprive the accused person of a chance to be discharged. It should be noted that clause 5 would not take away a person's right to cross-examination. The accused would have the right to cross-examination at his trial in the High Court. In addition, his right to be discharged is not being taken away. He would have the right at the trial to make a no-case submission and all of the ordinary rights which are given to him by the Constitution, and if he succeeds there, he would be entitled to be discharged.

It is important for us to keep in mind that all the preliminary enquiry does, is to provide a procedural step, at the end of which a decision is made as to whether or not a person should stand trial. There is no finding of innocence or guilt at the end of a preliminary enquiry. A magistrate is not required to decide on the guilt or innocence of the accused. That is a matter for a judge and a jury of his peers. All the normal rights of the accused will continue to apply and to be enjoyed by the accused.

The Member also pointed out that such a power—if given to the DPP—would be inconsistent with the United Kingdom's position. Well, there are two answers to that, Mr. Speaker. If we have a particular problem in this country, we must solve that problem; that is the first answer. The second answer is that to state that in isolation, is to ignore the recent amendments to the Administration of Justice Act, 1933.

In England, a voluntary bill of indictment—the Member for Pointe-a-Pierre said—is subject to judicial scrutiny. If you look at the 1933 Act and you do your update, what you discover is that section 2(2) of the Administration of Justice Act 1933 has been amended on a number of occasions over the years. A new paragraph (ac) in subsection 2(2) provides for a bill of indictment to be preferred where a person charged for an offence has been sent to trial for that offence under section 51 of the Crime and Disorder Act, 1998 (U.K.).

Section 51 of the Crime and Disorder Act 1998 provides that there shall be no committal proceedings for indictable-only offences. In any event, since April 01, 1997, England has abolished the use of preliminary enquiries in most instances. So that today paper committal proceedings are used only in relation to a very small number of cases. In the UK, the preferment of bills of indictment is regulated by the indictment procedural rules of 1971 as amended in 1997, and 2000. Rule 9, subrule (1) states as follows:

> "Where there have been no committal proceedings and no sending for trial, the application shall state the reason why it is desired to prefer a bill without such proceedings and
>
> (a) there shall accompany the application, proofs of the evidence of the witnesses whom it is proposed to call in support of the charges; and
>
> (b) the application shall embody a statement that the evidence shown by the proofs would be available at the trial and that the case disclosed by the proofs is, to the best of the knowledge, information and belief of the applicant, substantially, a true case."

In relation to the exercise of that new power by the Director of Public Prosecutions, the hon. Member enquired what criteria would be used by the DPP

to determine which cases would be subject to a preliminary enquiry, and which to a voluntary bill of indictment.

In the United Kingdom and Jamaica, there are no restrictions on the types of cases to which this power applies. It is recognized that where there has been no committal proceedings it should be borne in mind that such proceedings—though an important element of the protection of the accused—must be balanced against the interest of the State, acting on behalf of the community at large.

The hon. Member referred extensively to the Grant case, and said that I had sought to mislead the House by not being truthful about the case. She said that our DPP could not create or follow any practice to bypass a statutory power that existed before Independence. She said that the Indictable Offences (Preliminary Enquiry) Ordinance was a pre-independent statute which vested in the Attorney General and then subsequently passed to the DPP, by the later Constitution, the right to bring these proceedings.

The Member stressed that in Trinidad and Tobago there was no practice at common law, which allowed the DPP or the Attorney General to prefer a voluntary bill of indictment, but such a practice always existed in Jamaica. The difficulty with that argument is that what the Constitution does is to preserve laws in relation to sections 4 and 5 invalidity. It does not confer any additional rights in and of itself by virtue of the fact that the law was a pre-existing law. That in itself is not sufficient to prevent the Legislature from repealing the law. The law is not protected from repeal simply because it was a pre-existing law. All that the Constitution does is to protect from invalidity any laws which are inconsistent with the Constitution at the time it was brought into force.

Mr. Speaker, in New South Wales, there is a case, the Commissioner of Police v. Reed, in which the New South Wales Supreme Court of Appeal held that a judicial officer when asked to grant leave to prosecute is acting purely in an administrative and not a judicial capacity. That case concerned the granting of leave under section 341 of the Crimes Act, 1900 of New South Wales to prosecute for perjury. The court ruled that the step of obtaining leave before any decision to prosecute was taken of itself, did nothing, and did not imperil any relevant right or interest of the accused. Mr. Justice of Appeal Meagher held that it was well recognized that a decision to commence criminal proceedings did not require the observance of the principles of natural justice. Police officers charged persons every day.

The Member also referred to comments of Mr. Justice of Appeal Carberry in the Grant case, in which the learned Justice of Appeal said that section 2(2) of the Criminal Justice (Administration) Act which is the very legislation we are seeking to model our provisions on, should be reworded along the lines of the UK position, where leave of the court is required. But, what we should note is that those comments in that Grant case were made in 1980. The Jamaican Parliament has not—to this date, 25 years later—seen it necessary to amend the law.

Furthermore, section 51 of the Crime and Disorder Act, 1998 provides that there shall be no committal proceedings for indictable-only offences. So that even in the United Kingdom, there is a recognized need for the power which we seek.

The second ground on which the Member for Pointe-a-Pierre sought to impugn the legislation was with respect to the Brad Boyce case. She argued that the right given under clause 6 of the printed Bill—that is to say, the proposed section 23G, which gives the DPP the right of appeal against the refusal of a judge to issue a bench warrant under section 23(6) of the parent Act—is unconstitutional.

In the Brad Boyce case, our Court of Appeal held that the relevant section of the Supreme Court of Judicature Act, which confers the right of appeal on the State in criminal matters was unconstitutional, only because it was passed in such a way which was ad hominem—it focused on Mr.Brad Boyce. And it focused on him in circumstances where he had been set free by the High Court. So the appeal by the DPP placed him in double jeopardy. He was placed in jeopardy once more of being deprived of his liberty, should the appeal succeed.

It is to be noted that our proposed section 23G would apply in a case where there has been no trial, so that the accused would not be in jeopardy of being deprived of his liberty on a first, or on a second, occasion.

Mr. Speaker, the preliminary enquiry jurisdiction is similar to the committal proceedings jurisdiction under the Extradition (Commonwealth and Foreign Territories) Act 1985 (Act No. 36 of 1985). What we say is that—in relation to extradition proceedings—since those proceedings are akin to committal proceedings in a preliminary enquiry, the right of appeal created thereby, which is passed by a simple majority and has been upheld by our High Court in the Farouk Warris case and in the Enyahooma-El case last year, those decisions are demonstrative of the fact

that in committal proceedings, there is no breach of fundamental right provisions. So that in both instances the accused may be rearrested, but there would be no abuse of process because he would enjoy due process of law by having an opportunity at the trial stage to be heard.

Mr. Speaker, with those few words, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*House in committee.*

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

*Clause 4.*

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

**Sen. Jeremie:** Mr. Chairman, I beg to move that clause 4 be renumbered as clause 7.

*Question put and agreed to.*

*Clause 4, renumbered clause 7, ordered to stand part of the Bill.*

*Clause 5.*

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

**Mr. Chairman:** Hon. Members, the amendment is that clause 5 be renumbered as clause 9.

*Question put and agreed to.*

*Clause 5, renumbered clause 9, ordered to stand part of the Bill.*

*Clause 6.*

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

**Mr. Chairman:** Hon. Members, the amendment is that clause 6 be renumbered as clause 10.

*Question put and agreed to.*

*Clause 6, renumbered clause 10, ordered to stand part of the Bill.*

*Clause 7*.

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

**Mr. Chairman:** Hon. Members, the amendment is that clause 7 be renumbered as clause 11.

*Question put and agreed to.*

*Clause 7, renumbered clause 11, ordered to stand part of the Bill.*

*Clause 8*.

*Question proposed,* That clause 8 stand part of the Bill.

**Mr. Chairman:** Hon. Members, the amendment is that clause 8 be renumbered as clause 12.

*Question put and agreed to.*

*Clause 8, renumbered clause 12, ordered to stand part of the Bill.*

*Clause 9*.

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

**Mr. Chairman:** Hon. Members, the amendment is that clause 9 be renumbered as clause 13.

*Question put and agreed to.*

*Clause 9, renumbered clause 13, ordered to stand part of the Bill.*

*Clause 10*.

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

**Mr. Chairman:** Hon. Members, the amendment is that clause 10 be renumbered as clause 14.

*Question put and agreed to.*

*Clause 10, renumbered clause 14, ordered to stand part of the Bill.*

*Clause 11*.

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

**Mr. Chairman:** Hon. Members, the amendment is that clause 11 be renumbered as clause 15.

*Question put and agreed to.*

*Clause 11, renumbered clause 15, ordered to stand part of the Bill.*

*Clause 12*.

*Question proposed,* That clause 12 stand part of the Bill.

**Mr. Chairman:** Hon. Members, the amendment is that clause 12 be renumbered as clause 16.

*Question put and agreed to.*

*Clause 12, renumbered clause 16, ordered to stand part of the Bill.*

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

**Mr. Chairman:** Is it the wish of Members that we defer the reading of these new clauses?

**Hon. Members:** Yes.

**Mr. Chairman:** The Clerk will not read these new clauses. These clauses are circulated in the amendments; so the Clerk will just call the numbers.

**Mr. Singh:** He might be slow in reading.

*New clause 3*.

*New clause 3 read the first time*.

*Question proposed,* That new clause 3 be read a second time.

*Question put and agreed to.*

*Question proposed,* That new clause 3 be added to the Bill.

*Question put and agreed to.*

*New clause 3 added to the Bill.*

*New clause 5*.

*New clause 5 read the first time*.

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

*Question put and agreed to.*

*Question proposed,* That new clause 5 be added to the Bill.

*Question put and agreed to.*

*New clause 5 added to the Bill.*

*New clause 6.*

*New clause 6 read the first time.*

*Question proposed,* That new clause 6 be read a second time.

*Question put and agreed to.*

*Question proposed,* That new clause 6 be added to the Bill.

*Question put and agreed to.*

*New clause 6 added to the Bill.*

*New clause 8.*

*New clause 8 read the first time.*

*Question proposed,* That new clause 8 be read a second time.

*Question put and agreed to.*

*Question proposed,* That new clause 8 be added to the Bill.

*Question put and agreed to.*

*New clause 8 added to the Bill.*

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

*House resumed.*

*Bill reported, with amendment.*

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

*The House divided* Ayes 14 Noes 8

AYES

Valley, Hon. K.

Rowley, Hon. Dr. K.

Imbert, Hon. C.

Narine, Hon. J.

Boynes, Hon. R.

Beckles, Hon. P.

Bereaux, H.

Roberts, Hon. A.

Hart, Hon. E.

Callender, Hon. S.

Seukeran, Hon. D.

Hinds, Hon. F.

Khan, F.

Achong, L.

NOES

Singh, G.

Panday, B.

Persad-Bissessar, Mrs. K.

Ramnath, K.

Ramsaran, M.

Rafeeq, Dr. H.

Baksh, N.

Moonilal, Dr. R.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**EDUCATION (AMDT.) BILL**

*Order for second reading read.*

**The Minister of Education (Sen. The Hon. Hazel Manning):** Mr. Speaker, I beg to move,

That a Bill to amend the Education Act, Chap. 39:01, be now read a second time.

Mr. Speaker, today I rise to debate the Education (Amdt.) Bill, 2005 that seeks to facilitate the transfer of officers from the civil service to the education teaching

service in accordance with the plan for the unification of the teaching service and its delinking from the public service. The purpose for which the Education Act, Chap. 39:01, is being amended is to create the necessary legal framework required to streamline and to integrate the teaching service into a more cohesive, visible and dynamic entity, capable of sustainable delivery of quality education for all of our nation's children.

Quality education for all represents one of the critical success factors for national development and for the attainment of developed country status in alignment of the visions and the goals of Vision 2020. Put differently, without the proposed amendment to the Education Act, it will be difficult and probably impossible to remove the present fragmented structures within the education system. This is one of the main factors hindering the Ministry of Education's delivery of quality service.

It is also a fact that the education service is indeed a very unique service that underpins every dimension of life of the citizens of Trinidad and Tobago and therefore, through this amendment Bill a fuller integration of this service is foreseen to deliver an even more effective and a more efficient response to the many needs of this country.

As Minister of Education and a Member of this Government, it is my pleasure to pilot this Bill, which has been long in coming. In 1993, the National Task Force on Education produced a White Paper 1993—2003, which in 1997 was adopted as policy by the Government of the Republic of Trinidad and Tobago. The task force recommended among other things, the unification of the education service and its delinking from the wider public service. The rationale underpinning that recommendation was, that it was necessary to develop professionalism in the teaching service and to create a career ladder, providing for greater promotional opportunities. The specific recommendations of the task force were as follows:

1. to develop a unified education service, including all positions in the Ministry of Education from the level of Chief Education Officer down to teacher;

2. to include all these positions in a single bargaining unit;

3. to delink the pay and other compensation of the education service from those of civil servants and other public servants;

4. to develop a new governance structure for education, including revised functions for a renamed Teaching Service Commission which will address human resource matters only, in relation to the levels above principal;

5. to establish a human resource division in the Ministry of Education dealing with all levels of staff, but applying changed rules and regulations; and

6. to delegate all school human resource responsibilities to principals.

These recommendations were later reviewed and modified by a Cabinet-appointed committee which was mandated to consider all of the issues relating to unification and delinking. These issues were, the issues of feasibility of cost and timing, the issues surrounding the legal and constitutional implications and requirements of the unification and delinking exercise, the issue of the impact on the private and assisted education institutions and the response of the current stakeholders to the new concept, and the issue and the extent to which the new direction was in harmony with the public service reform agenda.

And so, the Cabinet-appointed committee had the widest possible representation, comprising of a representative of the National Advisory Committee on Education, the Permanent Secretary of the Ministry of Education, the Chief Personnel Officer, the Director of Personnel Administration, the assistant Chief State Solicitor, Primary Schools Principals Associations, Association of Principals of Public Secondary Schools, Association of Principals of Private Primary Schools, Association of Principals of Private Secondary Schools, representatives of Denominational Boards, the Trinidad and Tobago Unified Teachers Association, the Teaching Service Commission, The Public Service Commission and the National Parent-Teachers Association of Trinidad and Tobago.

The committee's report which was accepted by the then Cabinet, recommended unification and partial delinking of the education and teaching service from the wider public service. The committee came to this conclusion on thoroughly interrogating the merits and demerits of this issue of unification and delinking. As the committee saw it, unification meant the establishment of a unified education service, where all the actors in education would be brought into one service, that is teaching, administrative and technical officers, as well as all other officers who interact directly with the education process. All actors would share a common vision.

Delinking meant for the committee the separation of the teaching and education service from systems, procedures and rules which were the common features— [*Loud sirens*]

**Mr. Valley:** At least it is not inside here.

**Sen. The Hon. H. Manning:**—which regulated the public service. The committee therefore recommended unification, but only of those offices peculiar to the teaching service. Accordingly, it did not recommend the inclusion of positions, such as manipulative, secretarial and clerical positions and certain other offices which were not found to be peculiar to the teaching service. Those offices which it saw as peculiar to the teaching service were, and are: teaching, educational administration, educational management, curriculum planning, development and implementation and school supervision.

The committee further recommended partial delinking since it found that total delinking had certain sensitive implications, such as the need for constitutional amendments, as far as the teaching service was concerned. Other apprehensions were based on the human resource concerns, such as the locking-in of technical, secretarial and manipulative staff into a delinked education service with limited career opportunities for them. Partial delinking involved the establishment of a separate classification and compensation plan and the introduction of certain components of reorganization, such as further decentralization, devolution and delegation of certain functions, supported by appropriate monitoring, auditing and accounting procedures.

Mr. Speaker, in laying the groundwork for this Bill, we have maintained these perspectives, and therefore the Education (Amdt.) Bill which we present in the House today, covers arrangements for the unification of certain arms of the education service and for partial delinking. The tabling of this Bill is a milestone achievement for the Ministry of Education in terms of the major improvements which will now be brought about in the education and teaching service in this country.

Mr. Speaker, the transfer of the group of officers from the civil service to the teaching service and their delinking from the public service which is being facilitated by this Bill, would address certain longstanding irritants and drawbacks in the system, that for too long, stood in the way of quality service—

**ADJOURNMENT**

**The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley):** Mr. Speaker, I beg to move that this House be adjourned immediately to Friday, July 15, 2005 at 1.30 p.m.

*Question put and agreed to.*

*House adjourned accordingly*.

*Adjourned at 2.20 p.m.*