HOUSE OF REPRESENTATIVES

Friday, May 05, 2006

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 requesting leave of absence from sittings of the House: the hon. Eric Williams, Member of Parliament for Port of Spain South, for the period May 04 to 14, 2006; the hon. Miss Gillian Lucky, Member of Parliament for Pointe-a-Pierre, from today's sitting of the House; the hon. Camille Robinson-Regis, Member of Parliament for Arouca South, likewise, from today's sitting; the hon. Dr. Fuad Khan, Member of Parliament for Barataria/San Juan, from today's sitting; and lastly the hon. Mr. Kelvin Ramnath, Member of Parliament for Couva South, likewise, from today's sitting. The leave which the Members seek is granted.

PETITION

Health and Safety Policy (Absence of)

Dr. Hamza Rafeeq (*Caroni Central*): Thank you very much, Mr. Speaker. I wish to present a petition on behalf of Vincent Cabrera of Lot No. 93 Acono Road, Maracas, St. Joseph, President of the Banking, Insurance and General Workers Union (BIGWU) and General Secretary of the National Trade Union Centre (NATUC); Brian Julien, of No. 4 Ragoo Village, Diamond, San Fernando, Labourer; and Rudranath Indarsingh of Gandhi Street, Caroni, President of the All Trinidad Sugar and General Workers Trade Union (ATSGWTU).

I now ask that the Clerk be permitted to read the petition and that the promoters be allowed to proceed.

Petition read.

Question put and agreed to, That the promoters be allowed to proceed.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago for the financial year October 01, 2004 to September 30, 2005. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

To be referred to the Public Accounts Committee.

2. Report of the Teaching Service Commission for the year 2004. [*Hon. K. Valley*]

ORAL ANSWERS TO QUESTIONS

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I have to ask the indulgence of the House to have the questions on today's Order Paper deferred for a two-week period.

The following questions stood on the Order Paper:

Coat-of-Arms
(Use of)

9. Could the hon. Minister of Works and Transport state what official vehicles are legally allowed to use the Coat-of-Arms instead of a number on the vehicle's licence plate? [*Dr. F. Khan*]

Swaha Hindu College
(Details of Contract)

10. Could the hon. Minister of Education indicate:

(a) Which firm was awarded the contract to build the Swaha Hindu College and whether there are sub-contractors involved in the project? If so could the Minister identify these sub-contractors?

(b) Whether there was a performance bond on the contract for construction of the school?

(c) If the answer to (b) is in the affirmative, would the Minister state whether the performance bond has been forfeited? [*Mr. H. Partap*]

Swaha Hindu College
(Delay of Construction)

11. Could the hon. Minister of Education state:

(a) Why has there been a long delay in the completion of the construction of the Swaha Hindu College in Sangre Grande?

(b) When will the school be ready for occupancy by the students? [*Mr. H. Partap*]

Elswick Presbyterian School
(Status of)

12. Could the hon. Minister of Education state the current status of the Elswick Presbyterian School in Tableland which was closed in September 2005? [*Mr. H. Partap*]

Questions, by leave, deferred.

BANKRUPTCY AND INSOLVENCY BILL

Order for second reading read.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker I beg to move,

That a Bill to revise the law relating to bankruptcy and insolvency; to make provision for corporate and individual insolvency; to provide for the rehabilitation of the insolvent debtor and to create the office of Supervisor of Insolvency, be read a second time.

Mr. Speaker, this legislation which is before us today, is but another block in the edifice that would become the modern economic landscape of Trinidad and Tobago.

Mr. Speaker, you are aware that for sometime now the Government has been busying itself with putting in place the reform necessary to take this economy to its Vision 2020 developed country status. Only last week, Mr. Speaker, I had the privilege of piloting the Fair Trade legislation in the other place. That legislation, of course, was debated here but was allowed to lapse because after it was passed here, the private sector wanted to have further input in the legislation.

You would recall also that the Government produced, after consultation, the White Paper on Financial Sector Reform and is at present implementing the proposals in this White Paper and, of course, the whole purpose of this initiative is to position Trinidad and Tobago as the Pan Caribbean Financial Centre, but is part of the modern economic landscape.

You would know also, that included in that financial sector reform is reform of the Financial Institutions Act. I mentioned that because in the legislation today, as in the Fair Trade legislation, one would see that the financial sector is excluded because it is governed by its own legislation with respect to fair trade issues as well as with respect to bankruptcy and insolvency issues. Members would know also, that part of that landscape is the reform of the procurement process. Again,

the Government has produced a White Paper on Government's procurement that emphasizes transparency, accountability and value for money.

Basically, our quest to position Trinidad and Tobago in a particular way in an environment of globalization and liberalization has warranted these reforms. Members would know that with respect to the business community, our trade agenda, we see clearly our medium term future as being integrated within Latin America, and therefore the market access initiative informs that.

There are other pieces of legislation, other pieces of reform that are still to come, there is the issue of a modern day investment policy and, of course, there is the issue of a services policy, because until now services have generally been sort of forgotten in trade. We talked about trade in goods and services but when we negotiated agreements in the past we considered merely goods.

I make the point also, Mr. Speaker, that this initiative to modernize the economic landscape of Trinidad and Tobago is not a recent phenomenon; it started, really, in the 1990s. Members would recall, of course, the liberalization of the currency—the dollar liberalization; they would recall trade liberalization when we moved from negative listing to an open economy. Members would recall, of course, in that period also, the rationalization of state companies, where we moved from 87 state companies to some 47 at the end of the period. One would recall the Companies Act which was legislated in 1995—[*Interruption*]

[*The Leader of the Opposition entered the House and sat next to the Chief Whip*]

Hon. K. Valley: Congratulations, my dear; congratulations.

Mrs. Persad-Bissessar: That is UNC legislation.

Hon. K. Valley: Not the Companies Act.

Mrs. Persad-Bissessar: Of course it is.

Hon. K. Valley: No, no, no, you have it wrong. You did an amendment to the Companies Act in 1996, but in 1995 we legislated the Companies Act. Members would recall the Venture Capital legislation—critical legislation—which was recently amended providing, mainly, for most of the non-energy companies outside of the financial sector to access venture capital funding to allow for their growth and so on. [*Interruption*]

Mr. Speaker, these are initiatives in the non-energy sector with a quest to build long term sustainability. There has always been that argument, and we said

it quite clearly, that, we have oil and natural gas, and thank God today, the prices are quite good, and we have it for our country in some abundance, relatively, and therefore what we want to do is to use resources from these areas to build sustainability in the non-energy sector. We know we do not have all the time and that is why the Government is pursuing this reform agenda to put in place, as it were, the appropriate infrastructure so that there would be long-term sustainability.

In passing, we may note that, really, our current position, the healthy energy position was not mere happenstance, as it were; it was conscious decision of the Government. You know, from time to time, we hear the argument that the Government has money but not of its own making. Mr. Speaker, that is not quite correct, because I do not know whether you remember in the early 1970s T&TEC, for example, used fuel oil to power itself; today T&TEC is using natural gas. There was a time in that early 1970s when the companies did not know what to do with natural gas, and the companies told the Government: "Look, you take it, you do whatever you want with it," because it was an environmental problem.

Mr. Yetming: Are you piloting insolvency?

Hon. K. Valley: Yes I am, but I have to put it in perspective. I am saying that this is just another piece in the jigsaw, so I am painting the picture. [*Interruption*] Yes, I am going to come to the insolvency legislation. [*Interruption*] Yes, I have 75 minutes, and I think I need to provide you with the perspective of why we are doing this; this does not just hang by itself, it fits into an overall reform programme of the Government. I am simply making the point, en passant, that especially the natural gas revenue is the making of this Government. [*Desk thumping*] I wanted to make that point; I would expand on it later on. One needs to note that Trinidad and Tobago moved from an oil economy to an energy economy, and that is owing to Government's actions and not simply happenstance.

Now, one would remember also, Mr. Speaker, the energy sector tax reform which was undertaken in 1992, which provided incentives to the companies, and which saw increased exploration. I am saying these things to dispel that notion that we are just lucky.

Hon. Member: We are not lucky.

Hon. K. Valley: We planned. The implementation or the setting up of the energy subcommittee was a stroke of genius by my hon. Prime Minister. [*Desk thumping*] The ability that the energy subcommittee had to make decisions quickly, accounted for LNG being in Trinidad and Tobago. Venezuela is still fighting with—what is it called? Cristobal Colon? That is what it is, Mr. Speaker.

As we continue to build this edifice to take this country to that happy land of 2020 to developed country status, one would see more and more initiatives. Enough of that. [*Interruption*]

Mr. Speaker, specifically, with respect to the legislation before this House, we note that the current law does not provide for reorganization of businesses. The manner in which debtors have been treated over the years is rather interesting. You would recall the issue of debtor prisons and so on. You would know from your history of the commonwealth that Australia was really populated in the early days of prisoners in debtor prisons, and there has been some change over time. Our current legislation, for example, is based on legislation from England and Wales dating from 1834 and 1914, and therefore there is this urgent need to modernize that legislation.

As we move in this period of globalization and liberalization, when we know that some firms would have to transit industries, as a fact, some companies developed out of a paradigm of protectionism—the reality—some of them can be expected to make the change that is required; others, however, will die; that is the reality. But they must not, when they die, take everything with them: the old saying, throwing the baby out with the bath water. We ought not to kill that entrepreneurship spirit, and that is really the need for modern-day legislation with respect to bankruptcy and insolvency.

More importantly, Mr. Speaker, if we are to attract inward investment we must state clearly, and in modern terms, what happens when a company fails, because that is of extreme importance to creditors. So that the purpose of the legislation before us is: firstly, to provide a fair and orderly process for dealing with the financial affairs of both, insolvent individuals and companies; secondly, it seeks to provide mechanisms to enable both debtors and creditors to deal with consolidation of debts and release of liabilities in an impartial, efficient and expeditious manner; thirdly, Mr. Speaker, it provides sufficient flexibility to adapt to rapidly changing conditions so as to provide practical solutions to commercial problems.

Mr. Speaker, before I continue, I want to make the point, that it is not the Government's intention to take this Bill through all its stages, today. The intent is to refer this legislation to a Joint Select Committee so that we can allow for further consultation with stakeholders, specifically, the private sector. This Bill went out for comment in April 2005 and some 13 institutions were requested to provide comments, and I would just read what it says:

> "In April 2005 the Law Reform Commission sought comments from the proposed Draft Bill from stakeholders in the public and private sector, namely, the Central Bank of Trinidad and Tobago, the Judiciary, PricewaterhouseCoopers Limited, Ernst & Young, Lex Caribbean, Law Association of Trinidad and Tobago, Pollonais Blanc De La Bastide & Jacelon, Bankers Association of Trinidad and Tobago, Fitzwilliam Stone Furness-Smith & Morgan, J D Sellier and Company, Chamber of Industry and Commerce."

And the report is, the commission received comments from only two of those stakeholders: the Bankers Association and Ernst & Young.

We had a similar situation with the Fair Trade Bill and, of course, after that Bill was passed the Chamber wanted to make further comments. We feel certain that now that this Bill is introduced and that stakeholders realize that, yes, the Government is serious with moving forward with this legislation; only this time will we get their interest and we want to get their interest, because I think this is important legislation. We want to have the comments of all stakeholders, and that is why, rather than proceeding to a conclusion today, we have decided to go to a Joint Select Committee (JSC). The first sitting of that JSC would be in three weeks so that the stakeholders would have a two-week period to make their comments on the Bill available and then the JSC would examine those comments and come back to the Parliament with appropriate recommendations.

Mr. Speaker, some general comments with respect to the legislation. We note first of all that, as I said earlier, the law relating to insolvency and bankruptcy in Trinidad and Tobago has not changed over the past century. In fact, it dates back to 1916 and a careful analysis of the Act would reveal that its provisions no longer met with the needs of modern commercial life. Even the Act of 1916, as I said earlier, is in fact based on the 1838 and 1914 Statutes of England and Wales and has very little relevance to the economic and social realities of the 21st century.

The Act has never been revised, and addresses only the bankruptcy of individuals and partnerships, so that if a company or corporation finds itself in financial difficulties, there is no other recourse at present for its creditors but to file for the winding up of the company under the Companies Act. The need for a coherent approach to insolvency practices has become critical to the proper functioning of the corporate and financial sectors. To keep abreast of a rapidly changing environment driven by globalization the Government must put in place a sound legislative framework which would allow for certainty and reliability in

commercial relationships. In the financial sphere a sound insolvency system plays an important role in attracting both domestic and foreign investment, as well as promoting entrepreneurship and innovation.

Indeed, during the last 20 years or so, many jurisdictions such as the United Kingdom, Australia, New South Wales, Singapore, Hong Kong, Canada and even Barbados have taken steps to strengthen and modernize their insolvency system. As a fact, Mr. Speaker, bankruptcy has always been viewed negatively, as signifying failure. The effect of bankruptcy is usually disruptive on all those involved in the business; employees lose their jobs or remain unpaid, suppliers must absorb loss; lenders do not recover amounts owed and many groups are put at risk, including the debtor's family.

2.00 p.m.

The major consideration in an era of increased competitiveness, is the manner in which the insolvency process can be made as efficient as possible, while not losing sight of those individuals who are affected by this event and who must be dealt with fairly. We must not kill entrepreneurship; and most importantly we need to stop seeing bankruptcy as failure.

Mr. Speaker, to this end, the principal role of the new Insolvency and Bankruptcy Bill will be to establish effective and straightforward procedures for dealing with and settling the affairs of both corporate and personal insolvents in the interest of their creditors. It will provide a statutory framework which would encourage companies to pay careful attention to their financial circumstances and to recognize their difficulties at an early stage before the interest of the company and those of its creditors are seriously prejudiced. The Bill will ensure that while irresponsible behaviour on the part of those who manage a company's affairs is penalized, entrepreneurship will not be stymied. Thus, the proposed legislation would facilitate the re-organization of companies to minimize unnecessary loss to creditors and to the economy when insolvency occurs. Members would observe that very detailed procedures are introduced in Part V of the Bill which is designed to facilitate the rehabilitation and re-organization of companies in financial difficulty.

Mr. Speaker, the philosophy behind the legislation is based on the concept of rehabilitation and creating trust and confidence. Its focus is to afford an insolvent person the opportunity to address financial difficulties at an early stage. Apart from putting in place the administrative machinery necessary to ensure the effective and timely administration of the bankrupt's estate, the Bill also seeks to

protect certain groups of creditors, such as fishermen, farmers and those supplying perishable goods. There are also other provisions which would offer protection to the bankrupt's family, to young persons and to employees of an organization.

The Bill essentially provides for:

1. A fair and equitable system for the ranking of all claims.
2. An improved delivery of insolvency services.
3. Simplified procedures.
4. An investigation into the causes of failure and a determination of the culpability of the debtor—meaning of course, if one is found culpable, then one is treated different to a situation where bankruptcy is simply the result of economic circumstances.
5. The protection of primary industries, such as fishing and farming.
6. Establishing preferences aimed at protecting young persons and the debtor's families, which include those persons living in cohabitational relationships.
7. The avoidance of transfers aimed at prejudicing the rights and claims of creditors.
8. The procedure in respect of international insolvencies.

Mr. Speaker, the aim of the legislation is to create a balance between the interest of the debtor and that of its creditors by providing both a bankruptcy regime and an effective re-organization procedure. Under the proposed legislation, any company, individual or partnership carrying on business in Trinidad and Tobago can be subject to bankruptcy proceedings which can occur either voluntarily, as a result of action taken by an insolvent debtor, or involuntarily, as a result of action taken by creditors to force a debtor into bankruptcy.

Bankruptcy proceedings will take place in an administrative framework managed by a new official, the Supervisor of Insolvency who would be responsible for the operation of the entire insolvency system. The other main insolvency official will be the trustee in bankruptcy who would be the single most important participant in the process. It is expected that trustees will be insolvency practitioners who would be licensed and monitored by their supervisor. Their functions and duties are cast throughout the legislation and they would generally be responsible for collecting and disposing of the bankrupt's property, reviewing and settling the claims of creditors and distributing the proceeds of the bankrupt's estate among his creditors.

It is to be noted that trustees are also appointed where there is a proposal under Part V of the legislation and these officials are obligated, among other things, to assist in the formulation and implementation of the plan of re-organization and the claims of creditors. Further, Mr. Speaker, it is to be noted that the Courts also play an important role and would exercise general oversight and supervision in bankruptcy proceedings and also where proposals are made under Part V. The Courts would be called upon to facilitate and resolve disputes between both debtors and creditors or between trustees and creditors and also to give directions to trustees in the course of the administration of the estate of the debtor.

This Bill is all encompassing. Its deals with both the personal and corporate insolvencies and offers various alternatives which are meant to reflect the seriousness of the financial problem being experienced by the debtor and the degree of protection which should be offered to creditors. It is based on the Bankruptcy and Insolvency Act of Canada which would be useful to our jurisdiction as our Companies Act is also based on the Canadian model.

Under the proposed Act, three remedies are available in relation to an insolvent person. The first one, a creditor of insolvent person can file in Court a petition for a receiving order; or secondly, an insolvent person himself can file an assignment with the Supervisor of Insolvency and with the leave of the Court, make an assignment of all his property for the general benefit of his creditors. Thirdly, Mr. Speaker, an insolvent party may make a proposal to its creditors or file a notice of intention to do so with the Supervisor of Insolvency.

Where receiving orders or assignments are made, these are referred to as bankruptcy proceedings, as under the new law, a bankrupt would be a person who either made an assignment or against whom a receiving order has been made. Where a proposal is made, this is generally referred to as a re-organization. Mr. Speaker, permit me now to make some general comments on the different parts of the Bill. We shall not look clause to clause but quickly look at the different parts of the Bill.

Part I of the Bill is Preliminary and deals with the various definitions which would facilitate an interpretation of the provisions. Few need to be highlighted. I would draw attention to the definition of "books" and "records" which is a very up-to-date definition, taking into consideration the various new forms of storing material. "Corporation" has been defined as any incorporated company that is authorized to carry on business in Trinidad and Tobago, but again, as I mentioned earlier, it does not apply to financial institutions or insurance companies as these

entities operate under special rules created by special laws. The definition of "cohabitant" and "cohabitational relationship" accords with that under the Cohabilitational Relationship Act and signifies that the legislation will also encompass or extend to such persons.

Finally, it is to be noted that an insolvent person is not a bankrupt as a person is insolvent only if his liabilities to his creditors exceed $4,000 and he is unable to meet those obligations. Whereas a bankrupt is a person against whom a receiving order has been made by the Court or who has made an assignment of his property under Part IV.

Part II of the Bill is the same as the existing legislation and merely sets out or lists the various Acts which would amount to an act of bankruptcy. An act of bankruptcy is the basis upon which the petition is granted and it is this Act which gives the Court the jurisdiction to make a receiving order. An act of bankruptcy therefore amounts to a statutory recognition of insolvency and Members would observe that under clause 5, such an Act must have been committed within six months of the presentation of the petition by creditors.

Part III of the legislation sets out the procedure for this first remedy, which is to petition the Court for a receiving order when an act of bankruptcy has occurred. This part addresses such things as the appointment of an interim receiver; his duties and those of the debtor once the receiving order is made. The creditor must prove that the debt owing to him amounts to at least $4,000 and the debtor has committed an act of bankruptcy? By comparison, this amount is £750 in the United Kingdom. When the Court is satisfied as to the merits of the petition, it must make a receiving order declaring the debtor to be formally bankrupt and this commences the bankruptcy proceedings. The Court would appoint a licensed trustee to administer the estate and the debtor's property automatically vests in the trustee. During the interim, between the filing of the petition and the making of the receiving order, the Court may appoint a trustee as an interim receiver, it is necessary to protect the debtor's interest and the interest of the creditors. For instance, if there are perishable goods involved, an interim receiver must be appointed to deal with this situation immediately.

Mr. Speaker, of significance is the fact that once bankruptcy proceedings commence, an automatic stay of proceedings prevents creditors from pursuing other remedies; so that no creditor has any remedy against the debtor's property or can commence or continue any action for the recovery of a claim until the trustee has been discharged. This stay is intended to protect the bankrupt's estate

and the rights of all other creditors but does not prevent a secured creditor from realizing or otherwise dealing with his security.

Under Part IV of the Bill, an insolvent person has a second remedy which is tantamount to a voluntary bankruptcy. This can occur if the insolvent debtor decides to file an assignment into bankruptcy which becomes effective from the date the assignment is filed with the Supervisor of Insolvency. Where the supervisor accepts the assignment, he must immediately appoint a trustee who would then make an application to the Court showing the debtor's property, divisible among creditors, the names and addresses of all creditors and the amounts and nature of their respective claims. Like a receiving order, all the debtor's property, wherever located, vests in the trustee named in the assignment.

The purpose of this remedy is to allow a debtor to meet his financial situation, either before or during the filing of a petition by creditors. An assignment may be made pending the filing of the petition by creditors, or where a petition is already before the Court, or even where a proposal has been made. Where the Court grants leave to make the assignment, the bankrupt's property vests in the trustee who must administer the property and distribute the proceeds to its creditors.

The general effect of a receiving order being made or an assignment being filed, is that the bankrupt debtor no longer has the ability to dispose or otherwise deal with his property, which, subject to the rights of secured creditors now vests with the trustee. If the trustee changes, the law provides for the property to pass from trustee to trustee without the need for any conveyance or transfer. There are provisions in this part as to who may make an assignment and for the filing of a sworn statement of affairs, so as to enable the trustee to notify creditors and commence administration.

Mr. Speaker, we go next to Part V of the Bill, which to my mind is most important. It is this part which introduces the concept of a proposal which is an innovative and flexible remedy that enables a debtor to take matters into his own hands. And this is new in the law. It affords him the opportunity to re-organize his business while it is still a viable concern. This is the third remedy which allows a debtor to propose and implement a scheme, which if acceptable to his creditors, allows him to carry on his business operations while re-organizing his financial affairs. It is an alternative to bankruptcy and liquidation as it allows the debtor company to enter into an arrangement with its creditors, to keep on doing business with a view to maximizing the returns to creditors.

Mr. Speaker, it is now recognized both in the United Kingdom and North America, that insolvency law should provide the names whereby a viable

commercial enterprise may be rescued, and the concept being put forward in this part is similar to what is known as Chapter 11 proceedings in the United States. The detailed provision found in this part of the Bill would enable an insolvent debtor to obtain the approval first of its creditors and then the Court, to enter into a proposal which would allow for the following:

An automatic stay on all proceedings against the insolvent debtor;

time for the reorganization of the company's affairs;

the continuation of the company by the existing management; and

the formulation of a workable plan outlining the manner in which creditors would be dealt with.

The benefit of including such a remedy in the law is as follows:

It allows for the continuation of the company as opposed to liquidation;

it enables the preservation of the company as a going concern; and

it gives the insolvent debtor the ability to minimize losses both for his creditors and his employees.

A proposal is commenced either by filing a notice under clause 30 or actually filing the proposal with the supervisors prescribed under clause 44. Although the debtor is allowed to continue to manage the business, there are checks and balances as the trustee is appointed to oversee the implementation of the proposal and report on an ongoing basis, both to the creditors and the Court on the debtor's financial circumstances. So there is a supervisory process. A proposal once accepted by the Court is binding on all creditors and it is to be noted that under a proposal, the stay of proceedings also prevents landlords and other service providers from terminating leases or contracts or cutting off services so as to enable the debtor to carry on business in much the same way as they did prior to the proposal and thus to the benefit of his creditors.

Mr. Speaker, perhaps I should draw attention to clauses 41 and 42 which provide that a proposal would be rejected by the Court if it is not calculated to benefit the general body of creditors, or if the debtor is shown not to keep proper books and records, or if it fails to provide for priority payments in respect of trustee fees, the Court proceedings and the wages of employees. Additionally, the Court may annul a proposal if there is a default made in respect of the carrying out of the proposal, or the proposal was obtained by fraud, or the continued implementation of the proposal would lead to an injustice, or the debtor commits an offence, or a request is made by a trustee or creditor to annul.

When a Court decides to annul a proposal, the insolvent debtor would be deemed to have made an assignment into bankruptcy and would thereafter be subject to the provisions of Part IV. Members would observe that there are very detailed provisions with respect to the content of a proposal, the voting procedure, the proceedings before the Court and the duties of trustees and inspectors.

Part VI of the legislation speaks to the property of the bankrupt. It identifies the property which would be available to his creditors and that which would be exempt from seizure. Part VI therefore establishes the law which would govern the distribution of the bankrupt's property by establishing priority claims and specifying which property may or may not be available for division among creditors.

Following the Canadian legislation, certain key sectors are protected so that the unpaid suppliers of goods, fishermen and farmers would be able to retain possession of property which they have supplied to the debtor once these goods have not already been paid for and can be identified. The intent is to afford special protection to those industries which are vulnerable and which are important to our economy, so that the claims of farmers and fishermen would rank above the claims of all other unsecured creditors. It also exempts from seizure the income of the debtor necessary for him to maintain a certain standard of living and all debts relating to maintenance and alimony.

Additionally, Mr. Speaker, this part also seeks to protect the interest of authors who have a vested interest in work which has not been published. Conversely, clauses 80 to 92 are aimed at protecting the claims of creditors and prevent the bankrupt person from defeating those claims by entering into questionable transactions. Any conveyance of property made within three months of bankruptcy or the assignment of book debts or settlements made one year prior to bankruptcy would be void.

Part VII outlines in detail the actual procedures for the administration of the debtor's estate. It deals with such things as the meeting of creditors, the procedure at such meetings and the appointment of inspectors in the scheme of distribution. It is to be noted that very limited time frames are imposed for accomplishing all these procedures. For instance, notices must be sent within 10 days and reports must be submitted within 21 days, all to ensure the expeditious administration of the estate so as to allow the bankrupt the opportunity to start over as early as possible.

Clause 127 sets out clearly the scheme of distribution, listing the order of priority for claims. It is important that this be included in the legislation so that

those who are involved in administering the estate would have no difficulty in identifying priority claims. This part also makes provision for the summary administration of estates which is a simplified procedure to govern small bankruptcies. Where for instance, the asset value of the bankrupt is less than $10,000, certain steps would not be required and this is aimed at protecting small businesses and affording them the opportunity to be re-integrated into the business community at an early stage.

Mr. Speaker, in the interest of time, I would simply seek to highlight a few of the additional features of this proposed new law, which is very extensive in its scope. In an attempt to bring our legislation in line with more contemporary practices, it introduces the idea of counselling for individual first-time bankrupts who must undertake mandatory counselling sessions before obtaining a discharge. It also makes provision for the automatic discharge of a first-time bankrupt after nine months; all of which is intended to facilitate the recovery of the bankrupt person and expedite his re-entry into the business environment.

A new licensing regime is introduced in Part IX, establishing the office of the Supervisor of Insolvency. This would be the Government's authority, now responsible for the administration of all estates and matters to which the Act applies. The supervisor would generally be responsible for the licensing of trustees; inspecting or investigating the insolvent's estate, examining the accounts of trustees and appointing inspectors who would essentially be the trustees' watchdogs. It is to be appreciated that the function of the supervisor is to take whatever steps necessary to protect the estate and the rights of creditors.

Part X is straightforward and simply declares the jurisdiction of the Courts in all proceedings relating to the bankruptcy and insolvency. As expected, the Court would have the power to make, review, rescind or vary any order and to impose penalties for the refusal to carry out any order or direction.

Finally, Mr. Speaker, there are provisions in Part XI which would address the situation where there are foreign proceedings in relation to a debtor who has property in Trinidad and Tobago. There are complex and varied situations which can arise in cross-border insolvency and although the law must be tailored to suit the domestic needs, it must also pay heed to the international dimension. It is a fact that many corporations carry on trading activities in more than one country and it is therefore important for other jurisdictions in which business is carried out to be able to respond.

2.30 p.m.

The aim of the provisions included in this part is to eliminate the problem of having to decide which law governs the debtor and to simply allow the courts to coordinate and harmonize the administration. Mr. Speaker, this is a positive step towards increased levels of cooperation, which would enable us to respond effectively to our obligations under the Caribbean Single Market and Economy.

I have attempted to go into some broad details of this legislation with a view to engaging, especially, the stakeholders who are not in this House, so they could view the broad outline of the legislation and, therefore, be directed to their concerns, so they can comment appropriately.

The maxim, "Prevention is better than cure", is the central tenet of this legislation, as many of its radical proposals are designed to prevent businesses from going into liquidation. This legislation, when enacted, would be a landmark reform in the commercial law of this country, hence the reason for exercising care in engaging all stakeholders to get their comments. It is important framework legislation, the lack of which would impair the development of our economy. Reforming the dated bankruptcy law is an initiative that this Government has undertaken with a view to diminishing financial hardship. We believe that these substantial changes are both necessary and highly desirable and it is imperative that we follow the United States and Canada in developing a reorganization culture.

In closing, may I just repeat that the proposed law is designed to bring about an improved way of managing bankruptcy and insolvency, both in the interest of the debtor and the creditor. It envisages a unified procedure for both individual and corporate insolvencies, which is sufficiently flexible to provide the means for preserving viable enterprises while balancing the needs of competing creditors and ensuring the speedy administration of an estate.

Mr. Speaker, I beg to move.

Question proposed.

Mrs. Kamla Persad-Bissessar (*Siparia*): Mr. Speaker, I am very glad I caught your eye today. [*Laughter*] I take this opportunity to congratulate Dr. Hamza Rafeeq who sits today as the Chief Whip of the Members in Opposition to the Government. [*Desk thumping*]

Mr. Valley: You got the better of Dookeran again. [*Laughter*]

Mrs. K. Persad-Bissessar: "Dey" say do not interfere in what does not concern you.

Before I go into the specifics of this Bankruptcy and Insolvency Bill, I would just make a few comments, because of the words coming from the Member for Diego Martin Central, putting this into the general context of the state of the economy in Trinidad and Tobago today.

The Member pointed out that natural gas was now the mainstay of the Government and that this was an energy economy; and that is so. The economy is driven by the energy sector, but it is my respectful view that this is to the detriment of the manufacturing and services sectors. [*Interruption*] Sure, we welcome your comments.

The Member said that we had gone from an oil-based economy to a natural-based economy.

Mr. Valley: Energy economy.

Mrs. K. Persad-Bissessar: From oil to natural gas.

Mr. Valley: I did not say that; you are misrepresenting what I said.

Mrs. K. Persad-Bissessar: You will have your opportunity to respond.

The Member said that we had gone from oil to natural gas and that we had become an energy-based economy. We were there once with sugar; sugar was replaced by oil. The Member said that oil was being replaced by natural gas as the largest revenue earner in the economy. In effect, the economy has not changed at all, because from sugar it was a plantation economy, what is known as the offshore economy, being the factor that pulls the economy, rather than from within the domestic situation. In the same way the oil-based economy is the main revenue earner, again offshore. It is the same characteristics of the plantation economy and we have come into natural gas as the revenue earner. It is the same point again: we are offshore and driven by these outside influences.

So when natural gas is up, as it was and still is with oil, we do well; with external factors and not internal factors in our own economy driving our economy. Whilst we are very happy for the windfall of oil dollars, happy for the windfall of natural gas dollars, we need to plan and develop an economy that is sustainable even in times when the outside influences affect our natural gas or oil prices. Therefore, with these dollars, in my respectful view, more should be utilized towards dealing with the services and manufacturing sectors so they could also be brought forward.

Mr. Speaker: Order!

Mrs. K. Persad-Bissessar: I do not have the statistics; from the review of the economy presented by the Government during the budget debate we could see that the manufacturing, services and agricultural sectors are way below in terms of revenue earners, in terms of the part they should play in the economy. So while I agree that we are very happy for these dollars, we need to pay more attention if we want sustainable development. Whether it is a wet day or a dry day, we have to pull forward other sectors of the economy.

Today in Trinidad and Tobago, the national debt is 41 per cent of the gross domestic product (GDP), just below half. I would like the hon. Minister to tell us whether that is a good ratio. Is that a ratio we could survive with? [*Interruption*]

Mr. Manning: I thank the hon. Member for Siparia for giving way, Mr. Speaker, and for being very gracious in this her first contribution before this honourable House as Leader of the Opposition.

I wondered if the hon. Member was condemning a 41 per cent debt to GDP ratio. If so, I myself was about to ask her what does she consider an acceptable debt to GDP ratio.

Mrs. K. Persad-Bissessar: There were no words of condemnation. The Member is being a little reactive; it was a question. I asked the Minister to tell us, in his reply perhaps, whether this is acceptable and why.

Mr. Manning: As long as it is below 50 per cent, it is considered very good. When it goes above 50 per cent, then you begin to get a little concerned; when it goes above 60 per cent, then there is real concern.

Mrs. K. Persad-Bissessar: I thank the Minister of Finance for answering and that is an issue we would debate, at some point in time, when we have a debate on the state of the economy. I am dealing here with this issue: we have a 41 per cent debt to GDP. I am asking, given the windfall in natural gas dollars, whether this is the place we want to be. What may be acceptable may not be the best for the economy. I ask that these matters be given consideration.

On the general state of affairs on the economy, while the dollars are pouring in, last year's inflation rate, which is the figure we have, was double the year before. Food prices have skyrocketed. In this year thus far, there has been a 24 per cent increase in food prices. The dollars are coming in, but are those dollars being utilized in a manner that would benefit the ordinary citizen in Trinidad and Tobago? I am of the view that the dollars are not being so expended.

We have mega projects being put forward; a tsunami-type stadium down in Tarouba; all that concrete and steel, wanting to cover every piece of the green earth here in Trinidad and Tobago, but it is not redounding to the benefit of the ordinary citizen. We will speak on those matters on another occasion, but I just wanted to place in context the state of the economy. We are seeing the macro economic indicators; while on the outside we are looking good, some of those macro economic indicators are not in our favour; inflation is one of them. The economy is heating up; there is combustion and it could explode. We can see inflation taking us to heights and to collapses, that we really do not want in this country. So the bankruptcy laws come into effect.

In principle, it is good legislation, long overdue, replacing 1916 bankruptcy laws of this country, Chap. 9:70. This is designed to protect the creditor and the debtor; to allow some rehabilitation for debtors, but also to allow creditors to have some measure of recourse and remedies where debts are not being paid. It is good legislation for this land, because not every person in Trinidad and Tobago has a Godfather, as did a former Minister, to get debt forgiveness to the tune of millions of dollars. We need legislation like this. I am sorry it was not in place when that issue of debt forgiveness to Southland Mall rocked this country, when millions of dollars were forgiven in debt. So these bankruptcy laws are important for the ordinary citizens out there; that they would have protection as debtors and they would have ways in which they can rehabilitate and restore themselves, rather than going into criminalization. This law, in fact, moves to decriminalize insolvency and bankruptcy. We must pick out what is the best way that this legislation would work both for the creditors and the debtors; there must be checks and balances.

We have to remember the experience of Russia in the 1990s under Yeltsin. In the Russian experience, there was a sell-out of state assets at rock bottom prices to friends and family due to declarations of bankruptcy. May I remind you, Mr. Speaker, that there were massive state companies which were chopped up and sold off in a single bids sale. This Bill seeks to establish, for example, the post of supervisor who is responsible for the administration of it. In the Bill, the supervisor is being given that power, but there is no criteria as to his qualifications, one and secondly, the supervisor is to be an appointee of the Minister, which is a clear political appointment. We saw the experience in Russia; we need checks and balances, so that our public assets, our state companies and so on are not sold and auctioned off where bankruptcy has been declared.

We are told, for example, that BWIA is going bankrupt; it is not already bankrupt. The Water and Sewerage Authority (WASA) cannot meet its liabilities. If it is not de jure bankrupt, it is de facto bankrupt. There are also other state companies that cannot meet their liabilities and they are de facto bankrupt. They have not been declared de jure bankrupt, but they are bankrupt. Are we going to see these companies sold off at rock bottom prices to friends and family? For this legislation we must see the checks and balances to prevent that. That supervisor is going to be given tremendous powers in the administration of this legislation; there must be criteria; there must be qualifications for the appointment of that person.

Recent literature and research of the law relating to bankruptcy and insolvency, which is, basically, the importance of creditor and debtor rights, show that it is very influential when it comes to dealing with the development of financial systems and very important when it comes to dealing with the effects on corporate governance and with respect to financing patterns in an economy. We see that in recent times there has been a great deal of focus and attention being paid to the regulatory framework for bankruptcy and insolvency.

Tests have been developed and they are very important when looking at the proposed legislation for bankruptcy and insolvency in Trinidad and Tobago. This 205-page Bill must have taken a lot of work, but we want to make sure that it was done properly. We would test this Bill against the La Porter Test, which gives us four things to look to determine whether this will be beneficial and if it is to be, to what extent. The first variable, if you look at the index of creditor rights, is time. Each one is given a maximum value of one; so if you score a maximum of four, looking at global trends, you are well on your way to having a piece of legislation that would be more beneficial to your people.

The time variable says that time is equal to one, if the timetable for rendering a judgment is less than 90 days and otherwise your time index would be zero. Let us look at the court system in Trinidad and Tobago. Can we get a judgment in 90 days? The answer is, obviously, no, it cannot happen in this country. If we look at the whole judicial infrastructure—we are talking about funding of the Judiciary; we are talking about the physical infrastructure for the judiciary; we are talking about the backlog of cases; I have talked about that on many occasions.

When you look at the legislation, the enforcement of it is clearly the court system; therefore, when you look at time, factor one, we fail that test; the legislation would not help us with that. We cannot get a judgment in 90 days, where someone has declared bankruptcy, to get a petition to put in a receiver or

for winding up. We cannot get that judgment in 90 days in this country, given the inefficiencies in our judicial system; so we fail Test 1 in this legislation.

In Test 2 the variable is manager. This is equal to one, if the incumbent management does not stay during a restructuring or bankruptcy. If the incumbent management does not stay, you get full marks of one; if they do stay, then you get zero. What happens where the company is going into bankruptcy proceedings or where there is insolvency and you are going into restructuring? For insolvency you would go to the supervisor and make a proposal and there would be a restructuring of the assets and the workings of the company. Do you keep the existing management who may have been the ones at fault, in the first place, who brought the company into bankruptcy or do you let them go? It is a balancing and that is an issue which the legislation needs to address. Do we score one on manager or do we score zero? I see no provision in the Bill with respect to what happens with the existing management during the proceedings, so we score zero on Test 2 in terms of proposals.

We go to Test 3, stay. Stay is equal to one, if there is no automatic stay on assets, and zero otherwise. With due respect, in the proposed draft there is no automatic stay with respect to the assets. So that when the proceedings are going on you would have to apply to the court again for stay and, again, you going back to the inefficiencies of the judicial system. By the time you get the stay, the assets have gone, have disappeared or have been frittered away, so zero on Test 3.

We go to the final one, Test 4, creditor. This is equal to one if secured creditors have the highest priority in payment and zero otherwise. We score one, full marks on Test 4. So we scored one out of a possible four for these variables, using the La Porter Test in terms of the proposals in the Bill. If we look at it, secured creditors are given priority. I believe there is a section that sets out the distribution and secured creditors are given priority, as is usually the norm. Of course, secured creditors are those with registered mortgages, registered judgments and so on, as against the company that is going into bankruptcy or insolvency. I would speak on that a little later.

The Minister told us that this is the Canadian model and, indeed, there is a view there that the secured creditors are important in the distribution of assets, but you also have to look at others and one other major grouping has to be workers. That has come out of Canada, which I would share with you in a short while. In 2005, they restructured insolvency/bankruptcy laws, but they paid very close attention to workers; our present Bill does not do that at all. So in respect of the four-point test, the four variables, the legislation does not satisfy it. More

discussion is needed; more consultation must take place with respect to putting a piece of legislation that would really be for the benefit of the nation.

When we look at the stay, if we talk in a little more detail about the test, it is a stipulation in insolvency law that provides creditors with the right of no automatic stay on assets. For example, it provides creditors with some more bargaining power that may allow them to more easily negotiate debt restructuring out of court. There is no immediate stay; it means that the debtor and creditor could sit out of court and talk about it and find a way that may best suit them. But in the absence of the automatic stay, there is the contra view. The stay may lead to a creditor race to seize assets, accelerating the possibility of financial distress or bankruptcy. Let us look at it. If you have a run on the assets of a company that is floundering, that would take the company further into financial distress and, indeed, lead to its collapse. Do you have an automatic stay or do you not? We need to give careful consideration to that in drafting this piece of legislation.

The work at the global level—developing principles and guidelines for effective insolvency and creditor rights system suggest that there should preferably be an automatic stay on assets for, at least, some initial period. In a World Bank study looking worldwide in 2001, they said that there should be an automatic stay on assets, even if it is for a limited period, to prevent a run on the assets of a floundering company. Remember we are saying that we want to give protection to these debtors, persons owing and cannot pay, insolvent companies and companies going into bankruptcy, likewise individuals.

So if there is a period of a stay, the company can gets its act together, putting things in place that it does not die or collapse. We need to consider which way we would go. Would we go the way of automatic stay, no automatic stay or take a compromise position of an automatic stay for a limited period, with the right of the creditors to thereafter go to court and have that stay extended. If it is in the nature of an interim injunction, yes, but if it is automatic, you do not need the court system, you would have to preserve the status quo of the assets and then have further challenges down the road to go and have that stay continued.

Mr. Speaker, we need to look very carefully at the distribution, secured creditor priority and the absence of absolute priority of claims in bankruptcy or in insolvency where you have restructuring. I want to come now to the Canadian experience. This Bill is woefully lacking with respect to workers getting any benefit where their company is going into bankruptcy—their wages, pensions, collective agreements and notification. Let me give you the Canadian and I strongly

suggest that we look at this, because nowhere in the draft Bill do we have any concern or consideration with respect to workers of a company that is in trouble. [*Desk thumping*]

Without discrediting, the lack of provision for workers in this Bill, reminds me of the petition we moved earlier. Here you have the Occupational Safety and Health Act (OSHA); we have not paid attention to the rights of the workers. We have passed the law in the Parliament, but we have not implemented it; again, that lack of respect for workers' rights.

Let me read the Canadian provisions with respect to this. This article is dated June 03, 2005:

> "The…Minister of Industry, and the…Minister of Labour…announced that the Government of Canada has introduced a comprehensive insolvency reform package in Parliament to modernize the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act (CCAA), as well as to create the legislative framework for the Wage Earner Protection Program (WEPP)…"

This was announced previously.

> "Extensive consultations with stakeholders showed a broad consensus that reforms were needed to ensure that Canada's insolvency system better responds to the needs of business, consumers and investors.
>
> 'This reform is about better protecting those adversely affected by bankruptcy and about facilitating restructuring as an alternative to bankruptcy to save jobs and keep businesses viable,'…'Good insolvency law is critical to a fair and efficient marketplace.'"

The first thing the Canadians did in trying to reform their insolvency and bankruptcy law was extensive consultation. I appreciate what the Minister said, that, at least, 13 organizations were sent to requesting that they give their comments and suggestions. While that was fine, he said that only two organizations responded.

I want to indicate here that, perhaps, something is wrong with the consultative process. The Minister gave a good reason and I accepted it, "Because we send it out, does not mean that it is coming up for debate right away and it is going to be passed." People sometimes delay in sending their comments, but when they know that it is actually coming to the Parliament, they get busy and want to give their comments. That is one part of it, but the other part of the consultative process that I think sometimes we do wrong, is that when we ask for comments from stakeholders

and other groups, non-government organizations and whatever, we take those comments, draft the bill, but we never let them see the final copy so they could then give their comments.

I am advised that out of the communities that were consulted on this Bill, they had objected to several proposals now contained. So consultations went ahead, and Government is entitled to do that; any decision maker is entitled to do that; you consult with people and then you have to make the decision which proposals you would keep and which you would give. But out of due respect and for proper consultative process, that when the decision is made, one way or the other, as in this Bill, the final bill should actually go back out to persons you asked for consultation. [*Interruption*]

Mr. Valley: [*Inaudible*]

Mrs. K. Persad-Bissessar: You are now doing it, but did not do it before. Mr. Valley, I do not want to talk about what happened in the last two days in terms of where we have arrived now. I am very happy that we are going in this direction.

Mr. Imbert: What direction are we talking about?

Mrs. K. Persad-Bissessar: I am suggesting for future progress, that maybe we need to approach the consultative process—with due respect, Minister, we will not go there.

Mr. Valley: Anywhere you want to go, I would go. [*Laughter*]

Mrs. K. Persad-Bissessar: Where I would like to go is to have the consultative process reconsidered, with a view to improving that process. [*Laughter*] I saw it happen with the Copyright Bill, which is another one on the Order Paper. The same thing happened; the draft Bills were sent out; people were asked for comments; they sent back their comments and then the Bill was laid here. We were going to debate it; we asked for and the Government also asked and we agreed, to a joint select committee. That was done and when we went out speaking to the stakeholders, they said that they had never seen the final copy of the Bill. Perhaps, the reason we do not get too many comments is because when the final thing comes, that is what people are interested in, the final Bill before the House, before it is passed.

Let us get back to the Canadian model with respect to workers. The first thing they did was extensive consultations. I appreciate that the Minister tried; maybe he could try something else, which is to give them the final copy, not only this one, but future bills as well. Here we are now with this Bill in the Canadian model:

> "The Bill provides significant improvements to the protection of employees, notably introducing the Wage Earner Protection Programme Act. This will provide workers with guaranteed payment of wages. Payment will no longer depend upon the amount of assets in their employers' estates. It will also ensure that workers get paid their wages quickly, so that they will get their money when they need it most. It is anticipated that 97 per cent of unpaid wage claims would be fully paid under the WEPP."

Mr. Speaker, we have had the experience in this country where companies go bankrupt and the workers are lost; they have no wages, no pension rights; their collective agreements gone to nothing.

The Canadians have recognized that, because they held consultations. Did the Government hold consultations with the Bank and General Workers' Union? I am told no; you did not consult the labour movement. You did not consult with Natuc. They would have told you that the workers need to be protected, because for too long in this country, when a company goes bust, the first set of people who get hit hardest, are the workers of that company. If we are following the model and looking at our own interest—the mass of the people in this country are workers; they are the backbone of the society, the backbone of the economy—therefore, we must give them that protection. In the same way we are protecting creditors and debtors, what about workers?

The Canadians have done it; we say that we have their model; let us take their model on board and do the same. Their programme is one that:

> "'…will protect workers by providing a guaranteed payment of wages should their employer declare bankruptcy',… 'Meeting the needs of workers is important to the health, well-being and financial success of all Canadians.'
>
> The legislative package is an example of smart regulation in bringing more efficiency to the insolvency process. It will provide greater predictability to the corporate restructuring process under the CCAA…"

Mr. Speaker, out of the Canadian model, I go one step further to describe what they did.

Firstly, they guaranteed wages to the workers, where their company is declaring bankruptcy. They said that 97 per cent of all unpaid wages would be covered by that. How did they do it? The programme, which was part of a deal, agreed to set up a fund, which would provide wage protection up to Can $3,000 per worker.

"The goal is to make payments within a period of about six weeks…"

So when the worker is hit immediately after the company collapses and there is job loss, within six weeks the payments would be made. The overall cost of the programme was estimated at $30 million annually. So they set up a fund of $30 million annually for this, within the budget. The programme would allow for the following to be met:

"Pension protection—workers retirement income expectations deserve a secured priority creditor status."

That is the issue in the Canadian model and we are asking that this be considered and included.

Secondly, Mr. Speaker:

"Respect for collective agreements and other executory contracts—neither the courts nor the bankruptcy trustee should have the power to vacate or amend a collective agreement."

Again, this was a collective agreement, employer/employee; trade unions would have been involved. They are saying that the bankruptcy proceedings entrusted to the supervisor should not have the power to dissolve any collective agreements, those should be given due respect and priority against secured creditors.

The third area the Canadians have put into place to protect workers was:

"Notification to workers—an employer should be required to notify unions representing employees that it is in financial trouble, considering filing for bankruptcy or insolvency, or that a court proceeding is scheduled."

So the workers are put on notice. In the Bill, there is a section 13 notification, but it has nothing to do with workers being notified.

Mr. Valley: Look at clause 127.

Mrs. K. Persad-Bissessar: These are the three areas in which the Canadians have been very progressive in protecting the rights of workers. I am asking that those considerations certainly be given, if we are looking for a piece of law that would protect our workers. Clause 127 deals with the scheme of distribution and it gives the preferred creditors, and the workers are nowhere in the priority of this distribution.

Mr. Valley: Look at clause 127(1)(d) where it deals with employees' claims for wages, salaries, commission or compensation. Mr. Speaker, if the Member would give way.

Mrs. K. Persad-Bissessar: It says "excluding".

Mr. Valley: "Oh goosh!"

Mrs. K. Persad-Bissessar: Is that a parliamentary word? How does the Hansard writer spell it?

Mr. Speaker: Order!

Mr. Valley: It says "excluding severance", because severance is provided for under the Retrenchment and Severance Act, but it says "claims for wages", and it is listed.

Mrs. K. Persad-Bissessar: I am sorry.

Mr. Valley: You are sorry!

Mrs. K. Persad-Bissessar: I am not sorry; I am giving way. I am on my point.

Mr. Valley: Under (a) it states:

"(a) In the case of a deceased bankrupt, the reasonable funeral and testamentary expenses incurred by the legal personal representative of the deceased bankrupt;"

That is the first priority. Secondly:

"(b) The cost of administration, in the following order—

(i) the expenses and fees of any person acting under a direction made under section 189(1)(a);

(ii) the expenses and fees of the trustee; and

(iii) legal costs;"

The third priority:

"(c) the levy payable under section 137;

(d) excluding severance, claims for wages, salaries, commissions or compensation or any employee for services rendered…"

So the first third party priority is to employees. I do not know why the Member is misrepresenting the facts.

Mrs. K. Persad-Bissessar: There is no misrepresenting of the facts.

Mr. Valley: You have been doing that for the whole week.

Mr. Speaker: Order, order!

Mrs. K. Persad-Bissessar: Mr. Speaker, I gave him a chance to speak; if he would allow me I would explain. He is shouting at me and "gooshing" as well.

Mr. Valley: Nobody is shouting at you.

Mrs. K. Persad-Bissessar: The Member is correct; clause 127 deals with the scheme of distribution, but that only comes after the right of secured creditors and that is the point I am making. The priority is given to the secured creditors. [*Interruption*] Well you see, you are agreeing with what I am saying.

Mr. Valley: Of course.

Mrs. K. Persad-Bissessar: The priority is for secured creditors. The Canadians have now placed the workers together with the secured creditors, not below them. [*Desk thumping*] They are given priority. If you read clause 24 deals with priorities of distribution in a receivership:

"Except where the debtor is bankrupt or the Court has ratified a proposal made to creditors under this Act, the priorities in receivership, of distribution of the property of a debtor shall be as established by Division 3 of Part IV of the Companies Act."

That deals with secured creditors, Mr. Speaker, and you are a very good company lawyer, very good in corporate law. It deals with secure creditors.

Clause 127, with due respect, does not give the priority to workers, as is guaranteed in the Canadian provisions and if they have said that they took the Canadian model, they should go and look at them. Even if we have not taken the Canadian model, I am of the view that in this country, at this time, where oil dollars and gas money are flowing, where money is no problem for the Government, that workers should be given priority in distribution of the assets of a debtor.

We talked about the backlog in the courts when we looked at the efficiency of the judicial system. Because enforcement is so court-based, numerous provisions, it is important that we look at what is happening in other jurisdictions and in those that have special training for court officers, including the judges, for special bankruptcy matters. There are even bankruptcy courts to enable the legislation to work. In some instances, they have used bankruptcy handbooks; these are administrative ideas that certainly will come, but these 200-plus clauses would take a great deal of implementation. If it succeeds, then you go back to the efficiency of the judicial system in this country.

We come to this Parliament and we pass law, upon law, upon law and the enforcement is just not there, because of the inefficiencies in the judicial system. We have failed to provide the courts with the physical infrastructure. We have failed to provide the courts with the funding and we have the Judiciary under attack. How then do we want to use a court-based bankruptcy and insolvency regime, which depends on the judicial system, when that system cannot function efficiently? This brings us back to the issue of implementation. Where is the implementation machinery?

While it is true that we do not put administrative measures into substantive law and, therefore, not in the Bill, it would be very useful when it goes to a joint select committee, and Government should give due regard to actually giving draft regulations at the same time as you bring the Bill to a joint select committee. To make that work, this is only the skeleton; you need to put the clothing on; you need the framework; the flesh on the bones; that is the regulations. Then you would be able to see whether this would or would not work. This Government has not been very strong on implementation.

We have seen, for example, after millions of dollars and a huge high style public relations campaign with respect to the crime Bills, when we made the changes, we came in and passed the legislation, where crime is the number one issue in this country, up to today that legislation has not been proclaimed and not been implemented. Why are we passing laws? We were bombarded with all kinds of calls of being obstructionists, with respect to the crime Bills passage, and yet when this House passed them, up to today, murders at a rate that is increasing per day.

In fact, my colleague has reminded me that when we had passed that crime package, we had asked for a management team to be set up, because there were so many things that needed to be done. Similarly, with this Bill, that would be necessary; the whole business of implementation. We passed OSHA; you gave rights to the workers for health and safety; you gave rights and obligations to employers, but you did not set up the commission; you did not set up the supervisory machinery; so the Act, even though passed, even though proclaimed—because it took a long time between passing and proclamation; after pressure from the credit unions it was quietly proclaimed—the Act is still not effective, because you have not put the machinery in place, therefore, serious issues arise.

So when you are finished with this Bill, you come to the joint select committee, a next two years and you have not made the regulations yet. The Criminal Injuries Compensation Act, I keep speaking of that, because it is so

important to victims of crime and their families; it has not been implemented for almost five years. Why? Because the regulations were never made, because the commission was never put in place, so bring the regulations. When you send this to a joint select committee, I suggest that you have the regulations together, if you want to get this to work.

Finally, these are just some of the areas. In committee, I am sure more details would be gone into. I have just a few closing specific points that I would like to share. We talked about the specific issues. There is one of them I would like the Minister to give consideration to is that while the Bill makes provision to assist debtors, to a large extent, to recuperate, rehabilitate and get back on their feet, how are we going to deal with debtors, the persons owing, persons who have taken moneys, those persons who have fraudulently or criminally borrowed or taken moneys and then end up as a debtor?

Mr. Valley: We dealt with that.

Mrs. K. Persad-Bissessar: The legislation does not consider a range of cases where creditors are swindled and fleeced by dishonest con operators. Recently there was a pastor who allegedly swindled millions from unsuspecting persons by waving a bogus bill. Do you recall that, Mr. Speaker? The contemplated legislation would protect the swindler if he declares bankruptcy. I am bankrupt, yes, and there are all these rehabilitating things, but the moneys were obtained in a dishonest manner, in a fraudulent manner. In my reading of it, I have seen no provision to deal with debtors who obtain moneys fraudulently. There is also no protection in the Bill with respect to highhanded receivers and trustees. These persons are given tremendous powers. We are not given criteria or qualifications that a trustee must have. We are told that a licensed trustee would come in, take over the company and do a host of things, but no criteria for qualifications for that trustee. I think that is a major area of concern.

There is a very highhanded manner that receivers tend to operate here. We need to put checks and balances on them. Many persons and companies are destroyed beyond revival when receivers are appointed by secured creditors, particularly when they are banks. I did not see anywhere in the Bill the outline for qualifications of receivers or trustees. Their functions are critical to justice administration. The Bill was very glib on a detailed code of conduct and the penalties for non-compliance by receivers and trustees; that is an area we need to look at again.

The Minister said, and I need further explanation on this, that the Bill exclude banks, insurance companies and financial institutions. The Minister said this was because there is other law that governs them. I would be very grateful if he could convince me that the other law is sufficient in the manner that this comprehensive bankruptcy legislation is intended to operate. Banks are the main culprits in bankrupting individuals in this country, either as individuals or corporations. They are oppressive and high-priced. Mr. Speaker, do you know that when you go to get a mortgage or whatever, they give it to you and whether you like it or not, there is all that fine print, and you just have to get that money to buy your house and piece of land, so you sign. All the banks have very similar fine print, but you need the money; you have to get a home; you have to buy a house; you have to buy a car, so you sign it. In this country, you cannot go from bank to bank to negotiate the terms within those mortgages, and that is the truth. [*Interruption*]

Hon. K. Valley: Let me just clarify, Mr. Speaker. The legislation excludes a financial institution that has gone bankrupt. It does not exclude a financial institution as a creditor to a bankrupt.

Mrs. K. Persad-Bissessar: It excludes them as a debtor, but not as a creditor?

Mr. Valley: Yes, as a debtor, not as a creditor.

Mrs. K. Persad-Bissessar: So they do not get the protection as a debtor?

Mr. Valley: That is right, as a creditor.

Mrs. K. Persad-Bissessar: Do they get the protection as the debtor?

Mr. Valley: Yes.

Mrs. K. Persad-Bissessar: Let us say I am a bank and I am owing you?

Mr. Valley: If you are a bank and you go into bankruptcy, you would not fall under this legislation.

Mrs. Kamla Persad-Bissessar: Where would they fall?

Hon. K. Valley: Under the Financial Institutions Act or what have you. If, however, they put someone into bankruptcy or if I owe a bank as a creditor, it falls under this legislation.

Mrs. K. Persad-Bissessar: I would look at it again, but I would also like to see how you would deal with issues where these banks really bankrupt people and I am talking about home mortgages, land mortgages, cars, and household furniture. What checks and balances can we get? In the nation, there is no forum shopping,

because with the banks it is like a club or lodge or it might be a cabal. [*Laughter*] They all have the same words; the same fine print. If we say that we are giving protection to debtors, how are we going to protect these persons as debtors—when they have been bankrupted by the banks—against the oppressive high-priced loans and terms and conditions? How would the Bill protect consumers from the very oppressive banking practices? How would the supervisor and the Ministry of Finance be equipped to assist individuals and corporations from unfair practices? Those are some of the things that I think need further addressing.

Another area that concerns me is this. Yes, we have bankruptcy laws, the 1916 legislation, which is what is termed an existing law. In the Constitution of the Republic of Trinidad and Tobago, all laws enforced prior to the coming into force of the Constitution are saved. So even though a law infringes the rights of individuals, that law is saved and protected from constitutional inconsistencies. But any law that comes after the Constitution, must obey, must comply and must be consistent with constitutional provisions. With this Bankruptcy and Insolvency Bill, serious consideration must now be given as to whether a special majority is needed, because it does interfere with property rights. We have to look to see whether the due process is ensured within the provisions.

It was only on Wednesday that I was told—you may have known—that we would be doing this Bill today. I was advised by my Chief Whip designate.

Mr. Valley: "Who tell you to walk out on Friday?"

Mrs. K. Persad-Bissessar: Well, you know, we learn. This Bill has 205 pages; it took us some time to read it. Therefore, I am not convinced, from my reading of it thus far, that we are giving due regard to whether this needs a special majority or not. It might have been an oversight, because you had bankruptcy laws and they did not have a special majority, so you said, "Hey, we do not need that." But we are now a constitutional democracy, with the 1962 Constitution and thereafter the 1976, so there are issues of infringement of copyrights and whether we do, in fact, need a special majority.

Finally on specific issues, this legislation, in principle, is good for the nation at this time. It would place us in the global financial network as a country that is interested and concerned with the protection of creditors' rights as well as debtors' rights. That is very important, because when we are dealing with investment and growth in the economy, investors need to know that when they put their money down, they are going to be protected in the event there are those who cannot pay their liabilities. The creditors need to know that there is a regime, that

there is a regulatory framework which would protect them for them to be able, in some way, to recover some of their assets that they might have loaned out or otherwise bargained with to a debtor. So in that sense, in principle, we support the legislation, but we agree that there needs to be a lot more work to be done on it. I would also like to see similar legislation. [*Interruption*]

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. [*Hon. K. Valley*]

Question put and agreed to.

Mrs. K. Persad-Bissessar: I thank the Member for Diego Martin Central and Members of the House for extended time and I would not detain you much further.

I am very happy to see legislation like this. We have brought this one to protect creditors and debtors. I would be very happy to see legislation coming for the protection of children in this society. I would be very happy to see legislation coming for the protection of women in the society and on the vulnerable. I would be very happy to see legislation coming in this country to deal with the old, the aged and the infirm. The disability and old age pension grants are way too low; people cannot live on those. [*Desk thumping*] So I would like to see legislation with respect to that, because this House passed legislation to give three-time increases to Members on the other side.

Mr. Valley: What about yours?

Mrs. K. Persad-Bissessar: You did not give us very much, really.

Mr. Valley: Did you take yours?

Mrs. K. Persad-Bissessar: Yes, but I would like to see legislation coming to deal with public assistance and disability grants and pensions, so we give protection to the vulnerable elements in the society. I would also like to see legislation coming to deal with the green areas, the wetlands in this country. We have seen the whole issue of the smelter coming up. My colleague, Dr. Nanan, has filed a Private Members' motion on the issue of that smelter. We need legislation to protect the environment. I have always said that we inherited Trinidad and Tobago from our forefathers, but we do not own it. This land, at the present time in our hands, we hold it in trust for the future generations and so we must not squander it; we must not poison it. So I ask for protection as well for the environment.

Finally on the issue of the Joint Select Committee, we are of the firm view that this is the proper route to go for consultations, for the matter to be referred to a JSC. In that regard, we propose Dr. Roodal Moonilal and Mr. Gerald Yetming—if he is willing—to serve on the Joint Select Committee.

I thank you.

Mr. Gerald Yetming (*St. Joseph*): Mr. Speaker, three months ago, the Attorney General came to this House to outline his legislative agenda for the year. When he came previously, he spoke about the need for the Government to disclose to the nation and its people the plans and policy to deal with immediate, medium and long-term matters, which it proposed to treat with the enactment of legislation. When he came the year before, the legislation to deal with insolvency and bankruptcy never appeared. But three months ago, he came and spoke about the critical need for financial sector reform and that the Government proposed to come with insolvency legislation and he said that it was long overdue.

Two weeks ago, this Bill was laid in Parliament and, surprisingly, we were told last week that this Bill was going to be debated today. This Bill is highly complex, 209 pages long and there appears to have been a rush to bring it to Parliament. As far as I am concerned, there are many more important pieces of legislation that should be rushed in this Parliament, far way ahead of this Bill.

We heard about the anticrime legislation and the talks between the Government and the Opposition to deal with the problem of crime in the country. Yet we cannot seem to see any follow up legislation, apart from those that came recently with respect to the Police Service Commission. We have been talking now for years about the Revenue Stabilization Fund legislation. There is growing concern that the legislation not being on the books exposes the moneys that are being set aside in that fund to anything happening with it. But furthermore there is a school of thought that the formula that had been planned for putting moneys into the fund should be changed in the context of the very high levels of prices today. More and more people are suggesting that more of the surplus revenue should be going into the fund and that until that legislation comes to Parliament for debate, the Government cannot continue to do what it wishes, with respect to how much it puts into the fund.

Credit union legislation—we have been discussing that for years, that there is absolute need for credit unions to come under the jurisdiction of the Central Bank so that the entire financial sector could come under one supervisory regime. Some credit unions are in dire need of supervision and they know it, if I judge from some of the crosstalk a little while ago.

The Minister in piloting this Bill spoke about the White Paper for procurement. The legislation for that is urgent, more urgent than this Bankruptcy and Insolvency Bill. While you have the Central Tenders Board, the Government has established 15 companies through which billions of dollars are being spent and nobody knows what procurement rules they are applying and that legislation is more important. So for this Bill, notwithstanding the fact that it is a necessary piece of legislation for the reform of the financial sector, there is no argument about the need for it, but the rush to deal with it is unclear.

It is ironic that in this country with a booming economy, there should be a rush to promote and pass bankruptcy and insolvency legislation. I guess it is equally ironic that with a booming economy there is an increase in poverty. It is ironic that in this period of plenty, in a booming economy, you have a collapsing infrastructure. [*Crosstalk*] It is ironic that in this country of plenty, moneys flowing, that you have deteriorating utilities. It is ironic that, in fact, every week we continue to see protest action by villagers in small villages protesting for service in a country of plenty.

Up to last week, we had the burning of tyres somewhere down in South. It is ironic that in a country where we claim there is pretty close to full employment, employers are complaining about their inability to acquire labour to employ workers; that you have Unemployment Relief Programme (URP) action to protect gangs.

Mr. Imbert: You said that you would not talk until Basdeo Panday "gone"; you are a man of your word. [*Laughter*]

Mr. Speaker: Order!

Mr. G. Yetming: It is ironic that with high oil and gas prices and substantial foreign exchange revenues flowing into the country, that we have a depreciating TT dollar. The irony of a Bill like this coming in a rush, should not surprise us. It is interesting that when the Minister was piloting the Bill, he said that it was a part of the plan to build long-term sustainability in the non-energy sector; legislative reform, as part of a plan to build sustainability in the non-energy sector. Your priority is all wrong.

In building sustainability in the non-energy sector is not to say that legislation may not have some part to play in it. Building sustainability in the non-energy sector has more to do with what you do with agriculture, manufacturing and developing the productive sectors of the economy, than legislative reform dealing with insolvency. [*Desk thumping*] It has less to do with building big buildings

throughout the country and stadia and what have you; those things do not build long-term sustainability in the economy. What you have is wrong policy prescriptions to deal with significant issues affecting the long-term viability of this country. [*Desk thumping*]

Mr. G. Yetming: Two weeks ago, you tabled a Bill 209 pages long and today you bring it for debate, two weeks later. You complain about the fact that the Law Reform Commission wrote 11 organizations and they got two responses; that was a year ago. I would like to know what action was taken by the Government to ensure that inputs were solicited from these 11 organizations, rather than sit back and say one year later, "Well, two organizations responded, nine did not," and you bring the Bill to Parliament and now put the responsibility on a joint select committee to do your work. That is not how it should work.

3.30 p.m.

When we get a bill in the joint select committee, I would like to think that we have a substantially proper bill after all due consultations and not to bring an unfinished bill to the House of Representatives saying: "Joint select committee, you go and do the work now for us to begin a process of getting inputs from the stakeholders required."

A letter was written by one of the two organizations that responded to the invitation. The Bankers Association wrote a letter on May 11, 2005, 13 pages long with 69 recommendations and not one of the 69 recommendations made a year ago was incorporated in this Bill to come before us for debate, because it was only this morning we were told that it was going to a joint select committee. For all intents and purposes, this Bill was tabled for debate to go through the stages for passing.

In fact, it was with relief that we found out today that the Bill is going to a joint select committee because the recommendations contained in this one submission spanned simple things like the definition of terms, and it spoke about harmonizing the terms with those of the Companies Act so at least there is some consistency when we speak.

It made a number of recommendations including additional terms used throughout the Bill that qualified for inclusion in the definitions; it made recommendations for amending the definitions of some of the terms for accuracy and clarity; it made reference to the fact that a number of terms in the Bill are not indigenous to this jurisdiction because I expect that this is a variation of the Canadian Bill and the recommendations in this letter suggested amending the terms but the Bill comes back with a minute.

There were a number of recommendations made for changes in language and grammar. In fact, I can give you one or two examples on page 77 where it used the word "purchase" the word should have been "purchaser". I can give you a number of other examples of that, so even simple grammatical things were not changed before this Bill was tabled in Parliament. Why the rush to come to Parliament with a piece of legislation like this and to say you are going to put it to a joint select committee to do clean up work? That is not what parliamentarians are for; we are here to make law.

I can quote at least six examples arising out of this letter of grammatical errors that should have been changed. They made recommendations for corrections in the drafting, and substantial recommendations affecting the practical Bill itself, not just surface things of definitions and grammar, but recommendations of a practical nature to clarify the substance of the Bill. So why come and speak about writing to 13 organizations that responded and at least one of the responses that I know of was never taken into consideration. So you take a draft bill that was done since 2005, rush to table it, and now come to talk about a joint select committee to do clean-up work.

Because of the fact that the Bill is now going to a joint select committee, I will make a few comments on certain aspects of it for the purposes of this debate. It calls for a Supervisor of Insolvency who will license trustees. Those are two critical sets of people, so to speak, in this Bill and it is an attempt to introduce a new balance in the relationship between an insolvent debtor and its creditors and the focus is really on rehabilitating the insolvent debtor.

It is an attempt to make it easier for the debtor to reorganize its financial affairs without the worry that a secure creditor could come and enforce its security. It is also an attempt to buy time and this is in very simple language what this Bill is all about, and the process involves the insolvent debtor filing notice of intention with the Supervisor of Insolvency which, in fact, gives him a 30-day stay against all creditors including secured creditors and it is an attempt for him to negotiate and hopefully develop a work out plan that will be acceptable to the creditors. Very simply put, a trustee will be appointed by the debtor to oversee and monitor the affairs of the insolvent debtor until completion of the proposal.

Some of the comments would include the fact that this Supervisor of Insolvency can create a level of bureaucracy which can delay a speedy resolution to any organization, and the Bill in clause 13(7) mandates a 5 per cent levy on all payments made by the trustee as in fact one of the priority payments.

I just want to suggest—and I know it will be dealt with at the joint select committee stage—that a 5 per cent levy on a company already insolvent can be deemed to be harsh. I do not think that the intention is that the Supervisor of Insolvency should be a money-making effort, and I am sure that when the joint select committee meets it will discuss that 5 per cent levy.

It is interesting that state claims will now rank with other unsecured creditors. As you know, under existing legislation, state claims are preferred and usually that can be an obstacle to reorganization, but now the intention in the Bill, which is a good one, is that the playing field will be levelled and state claims will now rank with other unsecured creditors and certainly this will facilitate reorganization and will definitely benefit the unsecured creditors.

I think the Minister in piloting the Bill made reference to the suppliers' protection, whereby suppliers of goods have always feared where debtors may take a lot of goods immediately before being put into receivership— because they know when these things are likely to happen—and have nothing to show for it other than unsecured claims. So it is interesting that the Bill now provides that unpaid suppliers of goods can now redeem them, and I think he made reference also to the preferential treatment given to farmers and fishermen.

Mr. Valley: And employees.

Mr. G. Yetming: In the priority of payments, though, after the rights of secured creditors, we have the claims of wages which the Minister verified in his intervention. Though it is just up to a maximum of $4,000 but severance is excluded, and I am sure that if consultation is wide and the trade union movement is included it is going to question whether severance should be excluded. But it is a fact in the priority of payments, wages up to $4,000, and commissions or what have you are included.

I think creditors would be happy with the provision that matters would be decided by a majority of votes. Creditors would have a vote for each dollar of claim, under existing legislation; they had to have a three-fourths majority so they will benefit from the legislation in that it provides for matters to be decided by a majority of votes.

The Minister also made reference to the Bill preventing utility companies from pulling the plug so to speak, so utility companies hearing about an insolvency, having unpaid balances can turn off the tap and prevent the company from continuing to operate in the course of its reorganization and the Bill now prevents them from doing that. So that is a good provision, and while it can be argued that the best

people to turn around a company are the people themselves as provided for in the US Bill, Chapter 11, it is expected that this Act with a proposal by the debtor which is available to all its creditors, the selected trustee working with the debtor and availing himself of the expertise of the debtor which is critical, the overall arrangement could be seen to be transparent and certainly could lead to a workable reorganization.

So this Bill to me does not deserve the urgency with which it came to Parliament and is being debated. I repeat, it is a relief to know that it will be sent to a joint select committee. I really do not think that a joint select committee should be made to do the work of the people who should have prepared a proper Bill to review because there is still a wide range of consultation to take place, and cleaning up of the Bill before this can be dealt with.

Mr. Speaker, in spite of the apparent urgency, this Bill will take a long time before it comes back and I urge the Government to consider the other more important pieces of legislation to come before us.

Thank you very much.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I want to thank my colleagues on this side for their contributions. I think that listening to Members on the other side they both agree this Bill is necessary. One argued that it was given too much priority by the Government, but I humbly suggest that the Member is in no position to determine the priorities of the Government. It has determined that this is a priority, so be it. [*Interruption*]

Mr. Speaker, let me deal with my friend, the Member for St. Joseph. One thing we can say is that he is true to his promise. He stated that he was going in the Back Bench and was not speaking until Mr. Panday, the Member for Couva North, left the Parliament and as soon as he left, the Member decided to speak. That is the only purpose I can see for him getting up this afternoon.

Mr. Speaker, the irrelevancies that this is ironic and that is ironic and so forth, there is no irony. The Government determines its legislative agenda and he was clear to say that when the Attorney General came to the House of Representatives some three months ago to outline the agenda, he stated that this would be coming.

He talked about my stating that this legislation would aid sustainability. I thought I made the point that our reform agenda, the total package was to aid the long-term sustainability of the economy, that our quest for long-term sustainability

informed our reformed agenda which consisted of a number of elements including a modern-day bankruptcy and insolvency law. I do not know what problem he has with that. He talked about changing the formula for putting moneys into the Revenue Stabilization Fund.

What is the rule, Mr. Speaker? We have committed 100 per cent of the excess—

Mr. Yetming: It is the legislation, the formula.

Hon. K. Valley: No, you said two things; you were making the claim that a number of persons are saying that we should change the formula. The legislation is coming, we have stated the guidelines and are operating over and beyond the guidelines already. The guideline is to put 60 per cent of the funds into the Revenue Stabilization Fund and we are putting 100 per cent of the excess, so I do not know what the issue is, but he got up to speak only because he wanted to keep his promise and I am saying I honour that—

[*The Member for Tabaquite stands*]

Hon. K. Valley: —the Member for St. Joseph.

Dr. Nanan: Mr. Speaker, on a point of order, 36(7).

Hon. K. Valley: What does Standing Order 36(7) say?

Mr. Speaker: Standing Order 36(7) says:

"Members shall be referred to by the names of the electoral areas for which they have been elected."

This is the Member's favourite Standing Order.

Hon. K. Valley: That is why as soon as he got up I said the Member for St. Joseph. I wanted to correct it immediately.

Mr. Bereaux: Only one Standing Order he knows.

Hon. K. Valley: On the issue of procurement roles, the hon. Member wanted to know what is happening with the legislation. It has to be drafted, the White Paper on procurement came after the first draft of this Bill which was in April 2005 and we are treating it with urgency.

Mr. Yetming: That is the point; you just have to say so.

Hon. K. Valley: The whole reform agenda is being treated with a level of urgency and that is why this reform piece is before the House of Representatives

today, but let me just inform the Member that the Special Purpose Companies—and there are not 15 new companies, you know that— there are about six or seven new companies, the others are old companies that are being used for certain matters and all of them are following the guidelines outlined in the procurement White Paper with respect to general procedure.

Mr. Singh: Would the hon. Member give way?

Hon. K. Valley: You know I would always give way to you.

Mr. Singh: Thank you very much, hon. Member. Would you indicate whether or not the University of Trinidad and Tobago (UTT) is following the guidelines of the procurement White Paper?

Hon. K. Valley: Mr. Speaker, the University of Trinidad and Tobago is not a special purpose company and I cannot honestly, off the top of my head, without investigating say whether or not it is following the guidelines, but I would expect it is as all companies.

Mr. Yetming: You are defending some runaway horses out there.

Hon. K. Valley: I am not. I shall not. Any runaway horse, Mr. Speaker—first of all we have joint select committees to deal with them but you know our position. If you do the crime you spend the time.

I want to thank the Member for St. Joseph, he wanted to ensure that he lived by his decision and he said that quite clearly, and he is a man of his word.

Lastly, I want to tell him that according to our Standing Order, what the purpose of a joint select committee is because he is saying that a joint select committee is not supposed to do the work. I want to say a few things before. I think it is now a norm established in this House that Bills of this type will go to a joint select committee so I do not know what the magic is. I knew since last week Friday that this Bill was going to a joint select committee; there is no magic about this. So I do not know why that it is only this morning they knew that it was going to a joint select committee. The only reason they knew this morning is because we were looking for names. We took it for granted that they knew. We cannot deal with any Bill of this size in the committee of the House, we just cannot do it. So there is no magic.

When I spoke with the proposed Chief Whip on Wednesday, I mentioned to him that it was going to a joint select committee. The Standing Order says that a quorum of a joint select committee shall be such as the committee may decide.

Somewhere it talks about a joint select committee is to do what the House says it ought to do. Quite simply, that is the purpose of a joint select committee, Mr. Speaker.

The whole purpose of a joint select committee is to go through the Bill clause by clause, and, given the broad policy position of the Government, to ensure that it makes sense, and some joint select committees are permanent. For example, the committee that examines the different ministries is a joint select committee and that is the proper work of a Member of Parliament; that is why he/she is paid. There is nothing wrong with this.

There are some joint select committees that even look at the policy of the Bill, and you claimed that this Bill is being rushed. It is not being rushed; the urgency is that we believe that one effective way of getting the attention of the stakeholders is bringing the Bill to the Parliament. The mere fact that it is now in the Parliament is sending a clear signal that there is some seriousness with respect to the legislation and the same 69 points you have there, we will look at them in the joint select committee. [*Interruption*] You must understand what happens, whatever the technicians miss, we as politicians, who are the true representatives of the people, will consider.

Somebody made the point with respect to severance, that is a point we must consider in the committee. So there is no magic about that and that is why we send bills of this type to a joint select committee, not simply to a select committee, but a joint select committee because we want at the same time to get the wisdom of those in the other place and that is the consultative process. We are not hiding anything we are saying this is what we came up with. However, this is such fundamental legislation that we want everybody to look see, so that when it comes out there is consensus. What is wrong with that? Do not beat me. I do not like to take licks; if I ought not to take licks I am not taking licks.

Just one or two points with respect to the Leader of the Opposition: One of the points made is the current debt service ratio of 41 per cent. I simply want to remind the hon. Member that we are really coming down from a debt service ratio of 76 per cent and it is going down because of the same energy sector resources we were paying off, especially the external debt.

Mrs. Persad-Bissessar: [*Inaudible*]

Hon. K. Valley: "It is going down, oh God; ask your colleague, the Member for St. Joseph, nah." Are you telling me as a percentage it is not going down?

Mrs. Persad-Bissessar: We would deal with that at another time.

Hon. K. Valley: Okay great. I think that is the other point I want to respond to, I do not know what else of significance the Member said.

On the issue of treatment of employees, I pointed out to her that they are dealt with after secured creditors. If there is an advance in the Canadian system we will look at that in the committee. We would look at anything that is reasonable because we want to get this legislation right. We want to get the right balance between the claims of the creditors as against ensuring that we do not kill entrepreneurship in Trinidad and Tobago.

We are moving away from this matter that to reorganize your business is bad. If we have to encourage entrepreneurs, we have got to come to a system where one can close a business today and start another the following morning, and that is what will help build sustainability in the economy. But then you know small minds cannot see that. That is what will help build sustainability and we will do everything we have to do. As soon as they are ready, we will try to put it on the agenda.

The consultative process was another point raised as I said, that is why it is going to a joint select committee because we believe in the consultative process.

Mr. Speaker, as I have indicated we would want to have this Bill sent to a joint select committee so that we can spend sometime looking at it. I mentioned that we expect the first meeting of this committee would be in three weeks, and this Bill has about 11 parts, we do not expect the joint select committee to last longer than 11 weeks. On average, we expect to do one part per meeting. In some cases we would do more than one, for example, we may have to spend a little longer on Part V and so on, Parts I, X and XI we might be able to do very quickly.

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

Question put and agreed to.

Bill accordingly read a second time.

4.00 p.m.

Hon. K. Valley: Mr. Speaker, in accordance with Standing Order 51, I beg to move that this Bill be committed to a joint select committee for consideration and report.

I further move that the committee be mandated to publish these Bills for public comment and to consider such public comment and report back to the Parliament no later than three months from today's date—on or before August 30, 2006.

Question put and agreed to.

Hon. K. Valley: Mr. Speaker, I beg to move that the following five Members be appointed to serve with an equal number from the Senate on the joint select committee just established: Mrs. Camille Robinson-Regis, Mr. John Rahael, Dr. Roodal Moonilal, Mr. Gerard Yetming and your humble servant, Kenneth Cyril Jerome Valley.

Bill referred to a joint select committee of the House appointed by the Speaker as follows: Mrs. Camille Robinson-Regis, Mr. John Rahael, Dr. Roodal Moonilal, Mr. Gerard Yetming, Mr. Kenneth Valley.

COPYRIGHT (AMDT.) BILL

Order for second reading read.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move,

That the Bill to amend the Copyright Act, 1997, be now read a second time.

Question proposed.

Question put and agreed to.

Bill accordingly read a second time.

Hon. K. Valley: Mr. Speaker, I beg to move the Bill to amend the Copyright Act, 1997, be referred back to the committee.

You would recall that at the sitting of the House of Representatives on December 17, 2004 this House appointed Members to serve on a special select committee established to consider and report on the Copyright (Amdt.) Bill, 2004. Mr. Speaker, that committee consisted of Mrs. Camille Robinson-Regis as chairman, Mr. Hedwige Bereaux, Mr. Roger Boynes, Mrs. Kamla Persad-Bissessar and Miss Gillian Lucky. The committee was mandated to report to the House within six weeks of its appointment. The committee held six meetings and considered oral and written submissions.

In its report to this House on the last session of the Parliament and registered as Paper No. 14 sub. 18, the committee reported that it considered four written submissions from two special interest groups but that, in fact, it did not complete

its work and recommended that the Bill be reintroduced in the House of Representatives in the new session and be referred to a new committee which should be mandated to continue consideration of this matter. The committee further recommended that the House authorize the new committee to adopt as part of its records the work undertaken and the written comments received by your committee to date.

Therefore, I recommend that the Copyright (Amdt.) Bill, 2004 be referred back to the committee to be considered before the House gives further consideration to this Bill and that that committee consist of: Mrs. Camille Robinson-Regis, Mr. Hedwige Bereaux, Mr. Roger Boynes, Miss Gillian Lucky and Mr. Subhas Panday.

I beg to move.

Question put and agreed to.

Bill referred to a special select committee of the House appointed by the Speaker as follows: Mrs. Camille Robinson-Regis, Mr. Hedwige Bereaux. Mr. Roger Boynes, Miss Gillian Lucky, Mr. Subhas Panday.

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 do now adjourn to Friday, May 12, 2006 at 1.30 p.m.

Mr. S. Panday: What are we debating?

Hon. K. Valley: But it is my custom to inform the House what is on the Order Paper.

Mrs. Persad-Bissessar: You are taking too long to get there.

Hon. K. Valley: Mr. Speaker, the Government plans to debate the Elections and Boundaries Motion on the Order Paper.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 4.10 p.m.