HOUSE OF REPRESENTATIVES

Friday, July 14, 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 hon. Member for Caroni East requesting leave of absence from today's sitting of the House. I have also received communication from Mr. Lawrence Achong, the hon. Member of Parliament for Point Fortin, likewise asking leave of absence from today's sitting of the House. The leave which these Members seek is granted.

PAPER LAID

Annual audited financial statements of Point Lisas Industrial Port Development Corporation Limited for the year ended December 31, 2005. [T*he Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

To be referred to the Public Accounts (Enterprises) Committee.

ORAL ANSWER TO QUESTION

Mr. Speaker: Hon. Members, we do have one question on the Order Paper moved by the hon. Member for Barataria/San Juan. He has asked that this question be deferred.

The following question stood on the Order paper in the name of Dr. Fuad Khan (Barataria/San Juan):

British Law Enforcement Personnel

23. Could the hon. Minister of National Security indicate:

(a) whether the British law enforcement personnel presently in this country assisting the police are from Scotland Yard?

(b) if the answer to (a) is negative, could the Minister indicate from which international crime fighting organization were they recruited?

(c) what are the terms and conditions of their engagement?

Question, by leave, deferred.

DEFINITE URGENT MATTER
(LEAVE)
Occupational Safety and Health Act
(Failure of Government to Implement)

Mrs. Kamla Persad-Bissessar (*Siparia*): Thank you, Mr. Speaker. In accordance with Standing Order 12 of this honourable Chamber, I hereby seek your leave to move the adjournment of the House for the purpose of discussing the following matter of urgent public importance, namely, the incident in the Customs and Excise construction site at Richmond Street, Port of Spain, at which a scaffolding supporting workers collapsed, causing injury to 20 workers who plunged 100 feet to the ground.

The matter is definite because it concerns the safety of workers at that job site.

The matter is urgent because workers on contract were injured in circumstances where unsafe scaffolding collapsed, while they were engaged in construction work at the Customs and Excise building.

The matter is of public importance because of Government's failure to fully implement the provisions of the Occupational Safety and Health Act.

Mr. Speaker: Hon. Members, indeed this matter is worthy of discussion, but regrettably not under this Standing Order. May I commend Standing Order 11 or 24?

AUSTRALIAN DELEGATION
(WELCOME)

Mr. Speaker: Before we proceed I was remiss in not recognizing a distinguished delegation from the Parliament of Australia, led by the distinguished Senator Paul Calvert, the President of the Senate of Australia, together with his distinguished colleagues. They are paying us a visit; they would be off to Tobago tomorrow and leave us on Sunday morning.

On your behalf and on my own behalf, I wish to welcome them to the sitting of this House.

PILOTAGE (AMDT.) BILL

Bill to amend the Pilotage Act, Chap. 51:02 [*The Minister of Works and Transport*]; read the first time.

FINANCIAL INSTITUTIONS (AMDT.) BILL

Order for second reading read.

The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill): Thank you, Mr. Speaker. I beg to move,

That a Bill to amend the Financial Institutions Act, 1993, be now read a second time.

The Financial Institutions (Amdt.) Bill, 2005 now before the House represents the first phase in the overall review of the Financial Institutions Act, 1993, which was accepted by this Government as a necessary exercise following Cabinet's endorsement of the White Paper on the Reform of the financial system of Trinidad and Tobago of June 2004. In fact, this represents a promise most recently made by the hon. Prime Minister in his 2005/2006 budget presentation.

Mr. Speaker, while Government had intended to have these phase one amendments presented to Parliament at the end of 2005 for early introduction in 2006, we considered it prudent to solicit further industry feedback as part of the reform process. This having been completed we are now ready to proceed.

This Bill is being introduced to address urgent and critical matters necessary to strengthen the supervisory regime in Trinidad and Tobago and align our financial legislation with other Caribbean jurisdictions where our institutions operate, and with international best practice. It is necessary for Government to address these matters at this point because of the emergence of certain currents in the market which are tending towards consolidation and the aggressive posture of investors in Trinidad and Tobago and the region, warranting therefore more immediate regulatory protection.

Mr. Speaker, to say that the financial services industry in Trinidad and Tobago is transforming at a rapid pace, is a conservative observation. It is widely appreciated that globalization of commerce and the emergence of new and liberal structures are proving to be tremendous challenges, not only for financial institutions, but also for the supervisory authorities.

The White Paper on the Reform of the Financial System of Trinidad and Tobago of June 2004 highlighted some of the ways in which the sector is responding to the changing landscape with many players being drawn to the vehicle of conglomeration. Major banks and insurance companies are building full service financial groups, and financial institutions are engaging in increased merger and acquisition activity around the world.

The evolution of the regulatory framework must mirror the pace of these developments to enable governments and indeed supervisory authorities, not only to manage the exposure to systemic risks resulting from these new structures, but also to create an environment of financial soundness and stability to enhance global investor confidence and participation. Our vision, as enunciated in the White Paper is for Trinidad and Tobago to be the Pan-Caribbean Financial Centre. This Bill along with the other amendments to be addressed in the second phase of the review of the Financial Institutions Act will move us closer to realizing this aspiration.

The Financial Institutions Act has remained fundamentally unchanged since its enactment in 1993, although some consequential amendments were made as part of the Insurance (Amdt.) Act, 2004, which transferred responsibility from the supervision of insurance companies and private pensions to the Central Bank.

Given the dynamic nature of the financial system of Trinidad and Tobago and the constant changes occurring in the international arena, a review of the Financial Institutions Act, 1993 was appropriate and imperative if the Government wished to keep the legislative framework relevant and robust.

In light of the scale of the exercise, the approach that we have selected is to introduce early critical amendments to the Financial Institutions Act, while at the same time progressing with a comprehensive review of the substantive Act to bring it in line with international best practice.

This Bill before us represents only those early critical amendments. Other substantive amendments will be presented to the House in due course; since they warrant further discussion, consultation and research, these matters are currently being undertaken.

These amendments seem to seek, among other things, to do the following:

1. To clarify and extend the scope of the Central Bank's responsibilities with respect to the payment system, electronic money, money remitters and exempt institutions;

2. To more effectively protect licensees from group risk by requiring separation of the financial and non-financial services of a group through the use of financial holding companies;

3. To enable the Central Bank to conduct consolidated supervision, for example, by broadening its powers to inspect subsidiaries and offshore operations of licensees;

4. To promote better corporate governance by requiring audit committees and annual reporting by directors and senior management and prescribing additional responsibilities for directors and auditors;

5. Broadening the definition of exposure and providing for more effective control and reporting of large exposures; and

6. Enhancing the Central Bank's ability to deal with unauthorized activities.

In reviewing the Financial Institutions Act for purposes of this Bill, consideration was given not only to the provisions of the Act, but also to the effect of other legislation, such as the Central Bank Act, the Companies Act, the Securities Industry Act, the Insurance Act and the Proceeds of Crime Act. The legislation of other countries was examined, both in the interest of contributing to regional harmonization and in order to identify best practices.

The core principles for effective banking supervision were also an essential point of reference for evaluating the adequacy and appropriateness of both the existing framework and potential changes. The core principles constitute the minimum international standards for bank supervision which were developed in 1997 by the Basle Committee on Banking Supervision, comprising Central Bank Governors of the group of 10 countries.

This Bill was also informed by the recommendations of the White Paper—which we have said—the experience of the Central Bank in conducting supervision under the existing Act, the findings of the IMF and the World Bank which assessed the adequacy of the regulatory framework as part of their financial sector assessment programme in early 2005, and also the comments of the industry.

The Bill focuses on addressing three principal areas of weakness in the system relating to:

1. The sharing of information with other financial regulators, both locally and in other jurisdictions for regulatory purposes;

2. The regulation of mergers and acquisitions of material interest involving a licensee or the holding company of a licensee generally, and those which impact market share from a public interest perspective in particular; and

3. The monitoring and regulating of controlling shareholders.

The current legislation is deficient in facilitating formal coordination and cooperation among local and international regulatory bodies, with respect to the sharing of relevant information.

In 2004, a formal information sharing memorandum of understanding was entered into by regional regulatory authorities. Our Central Bank however, is precluded from fully implementing the MOU in the absence of explicit enabling provisions in the present legislation. The effect of this is best illustrated by an example. If for example, a Jamaican financial institution wishes to establish a subsidiary in Trinidad and Tobago, the Jamaican regulatory body is constrained to refuse to share crucial information pertaining to the financial institution, because the Central Bank of Trinidad and Tobago, under the current Financial Institutions Act, is not explicitly authorized to reciprocate the sharing of regulatory information.

In the local context, the current legislative framework inhibits meaningful and timely exchange of information between the Central Bank, the Securities Exchange Commission (SEC) and the Deposit Insurance Corporation. Significantly, the parent legislation of the SEC allows it to share information, but the commission is unable to extend this facility to the Central Bank since the Central Bank and the inspector have no authority to reciprocate or enter into information sharing agreements.

This deficiency in the law leads to duplication of effort and undermines the protection of the public and the financial system. It represents a significant constraint on the Central Bank's ability to carry out its mandate to promote the soundness and stability of the financial system in Trinidad and Tobago. Mr. Speaker, addressing this lacuna is urgent and critical owing to the rapid expansion activities of domestic institutions into international markets and of foreign institutions into the local markets.

To treat with this sector dynamism, the regulatory authority must be in power to access and share real-time information within the parameters of confidentiality and regulatory purpose. The Financial Institutions Act needs to be brought into compliance with international best practice as laid out in the Basle core principles so that Trinidad and Tobago can join regional and international jurisdictions in information sharing and effective cross border supervision. Hon. Members would recall that this featured among the recommendations contained in the White Paper on the Reform of the Financial System of Trinidad and Tobago. This Bill simply seeks to give life to this recommendation.

The Bill also seeks to address, from a regulatory perspective, the growing phenomena of mergers and acquisitions of material interest. In this case, acquisitions of 10 per cent or more of the voting power at a general meeting of a licensee or the

holding company of a licensee. It is no small deficiency that the current Financial Institutions Act is silent in this area. Although the Companies Act contains provisions pertaining to the effecting of amalgamations, it is procedure driven and does not take into account the nature of the respective institutions and the impact of mergers on the relevant industry from a competition and concentration policy perspective.

While we agree that mergers and acquisitions can bring many benefits in the form of the economies of scale and efficiency gains, they can pose a threat to the financial system if they result in a concentration of economic power in the resulting new entity. Such concentration can imperil fair competition in the market, create new prudential risks and have negative systemic effects. Supervisory authorities can also face formidable challenges treated on what is called the "too big to fail syndrome". The issue of concentration becomes particularly acute if a merger or acquisition results in the new entity controlling a market share of 40 per cent or more. Regulatory bodies must be equipped to ensure that corporate affiliations and structures do not expose depositors and investors to undue risks or hinder effective supervision.

Mr. Speaker, most jurisdictions have sought to avoid excessive concentration of market power through legislation or by specific regulation. Research has shown that in Jamaica and Barbados, ministerial approval is required for all mergers. In the Eastern Caribbean countries, the approval of the Minister upon the recommendation of the Central Bank is required. In Canada, on the other hand, the emphasis is on oversight of market share concentration, while the regulator challenges those applications for mergers, where the merger yields a market share in excess of 35 per cent.

Closer to home, in Barbados, oversight of market share concentration was addressed in the recent merger involving First Caribbean International Bank. In this case the Central Bank of Barbados included conditions that they reserve the right to have the merged entity divest its loan portfolio if its market share were to grow to a level where it exceeded 40 per cent.

The Bill purports to strengthen the current supervisory regime by empowering the Central Bank for the first time to approve all mergers and acquisitions of material interest up to a percentage threshold of combined market share of 40 per cent. The 40 per cent threshold was considered to be the most appropriate for the local environment, taking into account the recent Barbados experience, the contribution of the financial services to the local economy and the threshold contained in the proposed Fair Trading Bill.

Where the combined market share exceeds 40 per cent, the Central Bank will refer the merger or acquisition application with its recommendation to the Minister, since at this stage it is considered more an issue of national importance with wider public interest considerations. In addition to industry implications there are public policy issues, particularly in a small society such as ours, and in a service industry where accessing foreign competitive service providers is not a simple matter.

Mr. Speaker, the Fair Trading Bill introduced by the Government sought to address the broad issue of fair competition. However, it is necessary to point out that banks and non-bank financial institutions were excluded from its ambit, hence the significance of this Bill in accelerating the country's regulatory response to the most critical and urgent issue in the financial sector.

The other matter of importance is the much needed strengthening of the prudential supervision of controlling shareholders. The Financial Institutions Act deals with the criteria for the granting of a permit to a person, as a controlling shareholder of a licensee by the Central Bank. Under the Act a controlling shareholder is currently defined to mean, "a person who either alone or with an affiliate or relative or connected person is entitled to exercise or control 25 per cent or more of the voting power at any general meeting of the licensed institution or of another company of which the licensee is a subsidiary".

This Bill seeks to treat with the controlling shareholder in a number of ways. In the first place, the Bill seeks to lower the minimum voting power in the definition of a controlling shareholder from 25 per cent to 20 per cent. This is in keeping with international accounting treatment and best practice, which regards 20 per cent voting power as representing significant influence and therefore requiring a different accounting treatment.

The Bill also seeks to buttress the fit and proper criteria under the Financial Institutions Act with specific reference to a controlling shareholder in keeping with the Basle core principles. At present the fit and proper criteria apply across the board to directors, controllers, managers and the controlling shareholders. The Bill proposes to enable the Central Bank to assess for the first time more specific matters relating to a controlling shareholder, such as his financial resources, business development plans, business record and experience and such other matters in the best interest of the financial services industry of Trinidad and Tobago.

In keeping with the natural justice provisions afforded to directors, controllers and managers in the determination process for the fit and proper criteria, the Bill

extends to controlling shareholders an equivalent opportunity to be heard and a right of appeal.

Finally, the Bill seeks to give the Central Bank the authority and discretion to impose terms and conditions on a controlling shareholders' permit and requires the controlling shareholder to provide the Central Bank with such relevant information as is necessary. This provision will enable the Central Bank to initiate more proactive measures for the continuous monitoring of controlling shareholders without having to rely solely on voluntary undertakings, again, in the context of an increasingly dynamic landscape.

Mr. Speaker, although this Bill contains a number of new provisions and minor amendments, it is not complex in nature. Briefly scanning this Bill I wish to draw the attention of Members to the following main provisions. Provision for sharing of information is contained in clause 6 which effectively creates an exemption to the non-disclosure provisions under the Financial Institutions Act, the Central Bank Act and any other written law and allows for the sharing of information by the Central Bank with local and foreign regulators of financial entities for purposes strictly related to regulations and with the Deposit Insurance Corporation for purposes related to its operations.

Clause 8 introduces new provisions on the regulation of mergers and acquirers of a material interest, regarded as being 10 per cent or more of voting power, involving a licensee or the holding company of a licensee. Provisions to enhance the legislation of the controlling shareholder are set out in clauses 7 and 10 which effect the necessary amendments to the existing section 39 of the Financial Institutions Act with respect to fit and proper criteria and permit conditions.

Clause 7 also seeks to address a lacuna in the law which calls upon persons who are deemed to be no longer fit and proper to take such steps to dispose of their shareholding in excess of the threshold as this was premised on the view that one could only be a controlling shareholder by virtue of direct shareholding and did not take into account the issue of actual control of voting power.

Additionally, clause 7 of the Bill seeks to broaden the scope of section 39(6) of the Financial Institutions Act. The existing section 39(6) applies only to controlling shareholders who are deemed no longer to be fit and proper and persons who by inheritance are entitled to become controlling shareholders but are refused a permit. Persons who are otherwise required to obtain a permit, for example, on the purchase of shares, but either fail to apply or are refused the permit are not covered by the application of the existing section 39(6).

Under the scheme of the existing Act, this category of persons is not afforded the opportunity of putting their house in order prior to being penalized. The amendment at clause 7(g)(ii) therefore seeks to address this defect by bringing all persons who are required to have a permit but do not have one within the ambit of section 39(6).

Clause 5 of the Bill effects an amendment to section 22(2)(j) of the Financial Institutions Act. The existing section prohibits a financial institution from directly or indirectly acquiring or holding in aggregate, any part of the share capital of any commercial, agricultural or industrial undertaking in excess of 100 per cent of the financial institution's capital base, or in respect of any single acquisition in excess of 25 per cent of the financial institution's paid-up share capital and statutory reserve fund.

Financial institutions were specifically excluded from the categories of undertakings to which the section applied, so that in effect there was no prohibition against a financial institution investing in excess of 100 per cent of its capital base to acquire another financial institution. The proposed amendments seek to address the anomaly by deleting the exclusion of financial institutions from the operations of the sections. This, incidentally, is in keeping with the Central Bank's current prudential guidelines on investments. Mr. Speaker, the remainder of the Bill treats with necessary consequential amendments and amendments that are more cosmetic in nature.

2.00 p.m.

Mr. Speaker, in concluding, I wish to re-emphasize the Government's commitment to the review of the Financial Institutions Act of which this Bill is a first and important step. The review of the Financial Institutions Act represents the implementation of fundamental recommendations of the White Paper on the Reform of the Financial System of Trinidad and Tobago and signifies the continuation which began with the Insurance (Amdt.) Act, No. 15 of 2004.

This Government stands resolute in its vision of Trinidad and Tobago as the Pan-Caribbean Financial Centre and would return to this House with further amendments to the Financial Institutions Act, the Insurance Act and other related legislation to move us further towards the realization of this goal.

Key to this national ambition is the development of a well-regulated, well-supervised and responsive sector. By treating with the critical and urgent issues relating to information-sharing, mergers and controlling shareholders we can proceed to the next phase with a view to achieving a high degree of comfort and confidence among depositors and investors both locally and on the international front.

Mr. Speaker, with these words I beg to move.

Question proposed.

Mr. Winston Dookeran (*St. Augustine*): Mr. Speaker, in presenting this Bill before us the Minister in the Ministry of Finance was careful to point out that this was, but the first step; the first step in what would be a comprehensive set of proposals to modernize the regulatory system in the financial sector in the country. But it was quite an expression of his priorities that the first step he chose to look at, was steps dealing with aspects of control. The fundamental purpose of regulation is to deal with the wider issue of risk management in today's globalized economy.

The fact that the hon. Minister selected the control elements of risk management is but a revelation of the tendency on the part of the Government to focus more on control than on performance. For today, the key issue is how do we effect risk management in the economy and how would the regulatory system be able to handle that issue. It is in this context I believe the choice of his priorities is but a reflection of the Government's general position on economic policy management which is to focus on the control aspects rather than the performance aspects. And we see that so often in many other articulations of their economic programme by returning to the State as the major driver of economic change.

So, my first comment is that the priorities that the Minister has identified in these amendments is but a reflection of a general economic philosophy that, today, is not as relevant as it would have been sometime ago. Having adjudged that this is the area in which these amendments are likely to be most effective, he then outlined three basic areas in which there would be amendments; one is on the issue of sharing of information. This is indeed a very vexing problem in regulation, but sharing information, Mr. Speaker, is not only restricted to the issue of sharing of information between the local institutions, like the Central Bank, the Securities and Exchange Commission, and as he mentioned, the Deposit Insurance Corporation.

The most critical issue in sharing of information in today's globalized economy is sharing of information between the local jurisdiction and the external jurisdictions. That is, between Trinidad and Tobago and the rest of Caricom, and indeed, the region at large, and beyond that, the sharing of information with the international financial system. He was very conspicuous in not really going into those areas in sharing of information. In today's globalized world, the risk lies there; the risk lies, really, in the trans-border activities that do take place, both within the region and internationally. And especially in light of the claims that the Government is

pursuing a policy of building the financial sector in Trinidad, it seems to me rather difficult to understand why the Bill does not deal with the most important aspect of sharing of information which is the cross-border information. He did mention it once but did not elaborate clearly on what provisions in the Bill would allow that sharing of information.

One of the most ticklish issues in sharing of information is sharing of information between Trinidad and Tobago and the international financial sector and here you need to have developed protocols for such information sharing in order to allow us to mitigate against the risk of the external sector. So, once again, I see in the Bill a reflection of an economic philosophy of inward looking development and not really putting into place the measures that would allow us to reap the rewards of the new globalized economy. So in that sense, I would hope that the Minister would, in fact, go deeper into this issue of sharing of information and must be more concerned about the ability of this Bill to actually perform.

The second issue that he raised was the issue of regulation of mergers and acquisitions and said that this would be controlled in the context of the public interest, and the measures for such control are only defined in terms of the powers of the institution and in this case the Central Bank which also would have to recourse to go to the Minister of Finance. But the mechanisms by which those mergers and acquisitions should be assessed are in terms of whether or not they do foster the public interest and are left to a high level of discretion.

In the Bill, itself, Mr. Speaker, we would see large room for discretion on the issue of the application of these controls and once again, it reflects the economic philosophy of the Government which is to take control really, of a situation rather than to manage the risk so that the economy can go on and live a life of more activity. So, even in that area, Mr. Speaker, while it is required to have regulation of mergers and acquisitions in the public interest, the definition of the public interest is rather narrow and only defined from what the Minister said, in terms of the share in the market. But there are many other issues associated with the public interest which have not been outlined either in the Minister's submission or indeed, in the provisions of the Bill.

The third area which the Minister spoke about is the monitory regulation of the controlling shareholders. It seems to me that there is an acknowledgement that the key issue is control again. In fact, when you listen to the Minister's submission and I am sure if we check it we would hear the word “control” throughout his submission, and very little, only once did I recollect him discussing the issue of risk management. There is a fundamental difference in terms of how you approach

this as a risk management problem or as a control problem. So when he looks at the regulation for controlling shareholders and talks now about a new regime for fit and proper criteria in the sector, we again see an emphasis on control and therefore, I believe, it is in fact, almost, a reflection of an economic management approach to control the economy and that is why he gave it the first priority in the amendments and that is why in his particular submissions he outlined those control measures. But control is to be done in the interest of risk management, it is not in terms of trying necessarily to take control of the market forces and have the institution.

Therefore, an adjunct to the Bill that is clearly missing is the risk management that the Bill is supposed to deal with. After all, regulation, Mr. Speaker, is about managing risk, especially, in terms of our small economy that is now exposed to the global environment. The exposure of the financial sector is really the key issue and how do you mitigate against the risk associated with the exposure of the financial sector. This is an area which today we feel a sense of comfort on, but there are certain developments that perhaps are of major concern to us as we try to identify what is the exposure of the financial sector.

Before I say a few words on that particular aspect of the problem that is before us, let me just point out that these amendments to the Financial Institutions Act are but a very feeble response to a major challenge on financial regulation in the country. It does not deal with the issue of supervision of the credit union sector and that has been pointed out as a major area in which there are high risks. It does not deal by bringing the insurance sector and the provisions that have been identified in the insurance sector into the fray. It is only within recent times that there has been some draft amendments to include the financial sector under the overall ambit of the Central Bank, but still I ask the question, what about the draft Securities Industry Act which would include a supervision element in the mutual fund sector? And a mutual fund sector includes institutions some of which now operate outside any kind of supervisory control. It has been identified, for instance, that the supervisory control from a legal perspective on the Unit Trust does not really exist and yet there is to be effective regulation on the management of mutual funds or indeed the credit sector.

So the urge and the necessity for a comprehensive set of regulatory rules has been long in waiting. In fact, one of the real problems we have is that we have been taking far too long to deal with these issues and in the meantime we find the financial world and market is changing. Someone commented to me that by the time the Bill gets to this Parliament it is already obsolete because things have

changed. This matter has been under consideration for well over 10 years now and therefore, could a society really pay the price of this slowness in trying to respond to dynamic changes which the Minister, himself, spoke about? Today we are seeing a very feeble response to a major challenge in an area in which there is likely to be higher risk in the future.

Let me go back to the issue of risk, Mr. Speaker. What is the exposure of the financial sector and how would the Financial Institutions (Amdt.) Bill deal with that issue of exposure. The most recent report by the IMF had this to say and I wish to put it on the record:

> "TTO's financial system is relatively large and structurally complex, demonstrating both sophistication and oligopolistic concentration. Although it does not appear to be vulnerable to immediate-term macroeconomic shocks, its risk profile has evolved. Over the last decade, the contractual savings sector has replaced banking as the single largest segment of a few regionally active, mixed activities conglomerates have become dominant."

And then it goes on to say, Mr. Speaker:

> "Stress tests and the assessment of compliance with the Basle Core Principles…"

which the Minister spoke about

> "indicate that the banking system is well capitalized and profitable but is vulnerable to the potential macroeconomic impact of a sharp fall in energy prices. Sharp reversals in equity prices may adversely affect the insurance and pension sectors. Rising levels of connected exposures in some conglomerates have increased the risk of contagion. The system also appears to have acquired some reputational and financial risk through the concentration of investments in the CARICOM area."

So here, Mr. Speaker, are clear signals that we must go deeper into this issue and that while there is a complex system and perhaps, immediately sound system in the banking sector, the risk identified by the IMF assessment of the financial sector in Trinidad and Tobago should, in fact, become paramount. And it is more reason why I believe the Bill is but a feeble response to a major problem. The major problem is, how do we really reduce the exposure and the risk of the financial sector to a globalized environment and transactions that are taking place now in various rapidity between ourselves and the external world? And it reflects itself on some of the economic indicators. But what also is very relevant on this question of exposure, we have been accustomed viewing our economy as an oil-based economy.

I believe the Minister at one time argued that it was this Government that had transformed the oil-based economy into an energy-based economy predicated on gas. He is wrong about that, but I would let him be wrong if that makes him happy. The truth is that this has been an evolving situation for many years. I remember many years ago one did a great set of policy changes to accommodate the changing structure from oil to gas. But today, the energy sector continues to remain dominant in terms of our economy, but what is significant is there is a sift of that dependence from the oil sector to the gas sector as identified and 85 per cent or so of our revenue in the energy sector is now derived from the gas sector. But what has been happening in the gas sector within recent times? Since December of last year to today, there has been a movement down in the prices of the gas sector—the commodity price.

My information, Mr. Speaker, is that the price has dropped by about one-third over the last six months and therefore it is posing a new risk; a new risk that would emerge. At first it was thought that this might be a short-term phenomenon that would not reflect itself in a long-term trend, and I did raise this on one earlier debate and the response I got from the Minister of Finance was that was a blow up in the market and did not reflect a trend. But today, the analysts are saying that this may indeed reflect a trend and now for six months in the year we have seen these blow ups continue in the same direction, so we must be concerned. That is why I say when the Minister focuses on control and not risk management, he is misdirecting the focus of the legislative agenda to deal with this important problem. That, therefore, is a new risk that is likely to become important. Recently, there has also been the trend, both internationally and locally for rising interest rates and that raises another risk with respect to the economy.

But third and most important, is a view that is now being expressed in commercial and banking circles that credit risk is rising. There has been a lot of spending in the economy some of it is being fuelled by the banking sector by their own policy of expansion in giving credit, but the risk, in fact, is rising and this is what is also bothersome, that if you are facing these rising risks in the financial sector—a risk with respect to gas prices and a risk with respect to rising interest rates—then we have the emergence of a new set of risks. In that sense, Mr. Speaker, it is imperative that the financial regulatory system get into the business of controlling the risks affecting the economy rather than controlling the people who manage the economy and in that sense there is a philosophical change in the point of view.

Those of us on this side of the House have always argued that we would be interested more in performance than in control but the Government seems to think that control itself, is performance and that is a fundamental difference of view and is reflected in the legislation.

Mr. Speaker, the issue that I have raised is not an issue that I have come to a view, only because I have information intelligence to this respect. I looked very carefully at the last Report of Standards and Poor's which was done on Trinidad and Tobago; a reputable credit rating agency that comments on the economic situation, and while by and large this report reflects a very positive situation with respect to our macroeconomic situation, it raises a very interesting point which I think may have escaped the Minister of Finance and may have escaped those who are in fact monitoring the financial sector. It is talking about the exposure of the banks and I want to just quote what it says:

> "The banking system is broadly sound, in 2004 non-performing loans accounted for about 3 per cent of total loans compared with 10 per cent in the mid 1990s, while the average capital ratio in 2004 was 31.1 per cent which is well above the statutory minimum of 8 per cent. Cross border lending, regional mergers and acquisitions and foreign sovereign placement in the domestic Trinidad and Tobago markets are increasingly moping up excess liquidity. Foreign currency deposits constitute to about 25 per cent of the system deposits."

Evidence, Mr. Speaker, of what I have been arguing, that the real risk lies in cross-border activities and international activities, not in domestic control of the local banking sector. That is important and must become part of it, but the Minister chose to focus on that in his first step rather than to focus on where the problem really is.

But the interesting piece of information that I wish to bring to the attention of the hon. Minister and the Government is the estimate of Standards and Poor's risk on credit rating and this is what it says on page 11 of the report:

> "Standards and Poor's estimate that Trinidad and Tobago banking system would have grossed non performing loans of 25 to 40 per cent in a deep recession scenario."

Mr. Speaker, that is a signal that should wake up any Minister of Finance. The problem is we do not really know who is the Minister of Finance. The Prime Minister says he is the Minister of Finance; he has two other Ministers who are dealing with aspects of the Ministry of Finance, but there does not seem to be anyone who is taking effective control of the portfolio of Minister of Finance. I

say to the Prime Minister, today, if he does not have the time to deal with the Ministry of Finance in a concentrated way he should identify one Minister who shall be Minister of Finance in the country, so they can take note of these things. Because it may well be that the hon. Minister would say that this is not within his ambit and the other Minister may say that it is not within his or her ambit, but there is no one who feels the sense of responsibility to handle this issue.

So when I read something like this, it confirms what I am saying, that perhaps we are focusing wrongly in our financial regulations in our first step, because this regulation is about mitigating against financial risk. This is the story today. But it is not only through legislation, it is also through setting up the supervisory and monitoring system between the regulatory institutions and, in this case being the Central Bank and the Securities and Exchange Commission. So we must be concerned. And it would have been more appropriate from the point of view of public policy concern that the Minister would have changed his direction and focused on the risk management issues mitigating against the globalized risk management challenges that we are likely to face up to than to deal with what he calls control. Control of the measures: control of the measures are necessary conditions but they are certainly inadequate and a feeble response to the present situation.

So, Mr. Speaker, I believe that the focus of the first step has been on the wrong foot. The focus should be on how do you mitigate against the risk management and that means how do we develop the sharing of information regime and protocols with the international financial sector and with the regional sector. How do we, in fact, bring into play measures to have proper risk management on credit because credit that is now rising is increasing risk and if it were to go on, it would probably pose a different problem. Nothing from the Minister on these very critical issues that we are facing today, rather his focus is on control and it reflects an economic philosophy of the Government at all times: The State is paramount, control of the private sector is our role; we are the best protector of the public interest. Everyone knows today that the people who protect the public's interest worst in this country is the Government itself, because they have never been able to find the solutions to protect the public interest, and once again, I am seeing that evidence here.

So I am not saying that you do not require the amendments; I myself, participated many years ago in part of this deliberation and discussion and some of these amendments are appropriate. But it raises the question, as to whether or not we are identifying the problem of today, or whether or not we are simply going on a menu of yesterday.

Mr. Speaker, this is also reflected in another aspect of the governance of the financial sector, an aspect that really involves the people. We all know that the public suffers at the hands of the commercial banking sector and insurance sector; we know of the plight of our people as they try to access what is their right in terms of the insurance sector. We know that the insurance sector has been operating in a way that they use the legal system as a means not to get justice but to prevent claims being paid.

We know, Mr. Speaker, that all sort of delaying tactics are used by the insurance sector and that is why some years ago we decided, as a country, to bring the insurance sector under a more effective supervision, but we know the problem continues. The commercial banking sector, also, is without control with respect to consumer satisfaction issues, so the people of the country; the ordinary people who use these facilities have little recourse but to accept the rules that are in fact determined by these institutions. It has been a problem for some time and for a long time and there has been very often the view that interest rates and the spread between domestic borrowing and domestic lending has been exorbitant in our system and people are paying the price. So there is a cost to all this; there is a cost to the lives of people because it increases the cost of the financial transaction and these things therefore are not unrelated to our cost of living and our people continue to suffer under those kinds of excesses in terms of the operations of the commercial banking and insurance sector.

2.30 p.m.

Mr. Speaker, in order to respond to that situation, we began to look at the development of some kind of mechanism to provide protection to consumers' interest in the banking sector and at that time we came up with the proposal that there should be a financial services ombudsman. It was the right step and it is the step that had to be taken.

Mr. Speaker, I want to say a few words on that, because when I looked at the Financial Services Ombudsman Report, some of the concerns that I expressed earlier on in one of the budget debates has reflected itself once more. The key issue deals really with what is the ambit of the Financial Services Ombudsman. We may have set up the institution, but we may have closed the area of investigation that excludes the complaints of most of the people. So we have in name the institution, but we do not have functioning, an institution that responds to the complaints of the people. And the report of 2004, which is public information—

Incidentally, this institution has no obligation to lay its reports in Parliament which is already a problem because it does not introduce a highest level of scrutiny in the operation of an important institution. They have no such obligation; they simply have this report on the website, et cetera. The main objectives of the office of the Financial Services Ombudsman are to receive complaints, according to this report, arising from the provision of financial services to individuals and small businesses and to facilitate the settlement of these complaints. It goes on to say, the office provides a legitimate and independent channel through which customers can seek redress if necessary, in their dealings with the financial institutions. Under the system, customers must first seek resolution at the financial institution where the problem arose. If the matter is not resolved satisfactorily at that level, the customer can then lodge a complaint with the ombudsman. And it goes on to identify how the ombudsman works.

What is most telling, is that there is no legislative authority in the office of the ombudsman to perform these very functions. That was a big issue when the Government a few years ago rushed to support the proposal by the commercial banks, to finance the establishment of the office of the Financial Services Ombudsman and did this, as an arrangement between the Central Bank and the commercial banks, funded by the commercial banks. An institution that protects the public interest must have the legislative authority of the Parliament of the country.

At that time, it was said that it was done as a stopgap measure because they wanted to move in haste to provide that institution. Now, it is five years later and the stopgap measure has become a permanent fixture. There is no legislative control or rules to govern it, and therefore, the office really has no power whatsoever other than the power to try to bring parties together and resolve the issue. No wonder in the performance report, the number of complaints that have come to them remain unattended. They talked about this in the report and the figures are, in fact, revealing of the fact that people have identified the Financial Services Ombudsman as not really having the capability. Whether it is legislative capability or whether it is a management capability, it is not for me to make a comment on, but when we look at the complaints we see what is really happening.

Mr. Speaker, let us look at the figures: during the year ending December 31, 2004, 156 complaints were received. Of those received in 2004, 20 met all the conditions under the terms of reference, while 136 fell outside the remit of the conditions attached to the operations of the office. So we start already. We start

already, Mr. Speaker, that the number of complaints are infinitely small that can be dealt with and that is the beginning because the remit of the terms of reference in this administrative regime does not allow it.

So what we are doing, we are creating the semblance that we have the institutional structures in place, but we do not really have the operational capability, either by legislation or by management to deal with the problem. No wonder when we say that we have established the Financial Services Ombudsman office, and we say that this is to protect the little man, and this is to protect the customers who have been so often not properly treated by the financial institutions, the institutions themselves do not have the ability.

Mr. Speaker, I make a call once more, that the Financial Services Ombudsman should be established by statue; by an Act of Parliament with appropriate powers, not only of investigations, but appropriate powers for the determination of awards that can in fact, be enforced by law. As it stands now, it is really a matter of being an intermediary; it is a matter simply of making your complaints, most of which fall outside the remit of some defined terms of reference. I have not seen what the terms of reference are, it is not in the report, but by the mere fact of the figures I have pointed out, it is very clear that most of them fall outside.

So why tell the people that we have an institution that protects their interest, when in truth the institution by its terms of reference is restricted; by its method of financing, it is not independent; and by the absence of the legislative powers cannot act? But, we would be able to say we have it. And the Minister of Finance should get serious on this matter and decide that this particular institution should be given the necessary legal authority in order to be able to do its job. It affects the little man because it affects our customers; it affects those who make claims; who really have no recourse and they are now at the mercy of the so called legal system, in the sense that people say go to the courts. But the very establishment of this institution is to protect the consumers in the financial sector.

So once again, the Government is coming up with trying not to deal with the problems of protecting the clients, but to give the semblance that there is an institution. I make the call once more that this institution should be looked at very quickly and that we should in fact, bring to this Parliament, a proper Bill dealing with the establishment of the banking services ombudsman where the exact frame in which it should operate should be identified; in which there should be the proper authority to handle this matter and the necessary legislative teeth. Other than that, we would merely be saying that we have the institution.

Mr. Speaker, who suffers? The people who are borrowing and who have claims. They do not go to the ombudsman because they realize it cannot deal with the issues and the figures that we have seen here—imagine, for a whole year, you would tell me only 20 complaints are eligible for consideration in a banking system that is expanding by thousands of depositors, increasing and we talk so much about that. We hear all the time in our constituencies of people coming to us with banking and problems associated with the insurance companies, whose claims are not being properly satisfied and you would tell me only 20 of those in one year and we tell the country that we have a protective institution to deal with the problems of the people.

No wonder the people below are saying to us that this Parliament is not working. Because even when we are working, we are not identifying the true purpose for our action, in terms of what is the public interest; what is the interest of the clients of the banks; what is the interest of those who make claims and this is evidence of it. And for four years this has been in operation. Very recently, the insurance sector has been brought into the ambit and I am looking very closely to see what would be the result of the claims from the insurance sector. That is an area which many people have complaints about and that is an area in which perhaps the terms of reference might prohibit even the consideration of the claim. So there are serious issues and this, of course, is no reflection of the personnel that are involved. This is a reflection of a government's policy and government's inappropriate understanding of how to protect the public interest in the financial sector. This is one example of that.

Mr. Speaker, finally, on that particular issue, there has always been a concern about bank supervision and the issue of confidentiality in bank supervision, because while you want to improve the competitive environment in the banking sector, it was always necessary to protect the issue of confidentiality of bank operations. Even in the operations of the Central Bank there has been a firewall between the Bank Inspectors Division and the rest of the bank. For the very reason that the Bank Inspectors Division has confidential information about all the institutions and that, if it is not controlled properly could lead to a sense of lack of confidence, if wrong information gets out. You know information is the key issue with respect to confidence in the financial world. If there is a lack of confidence, for whatever reason, you might end up with all sorts of runs on the bank and therefore, it is an important ingredient.

Mr. Speaker, you know very well the problems in Argentina when the banking sector became totally exposed and when information that was fed to the public,

perhaps erroneously, led to major changes in the behaviour of people with respect to the exchange rate and everyone began to go to the bank to get their money out; get their foreign exchange out and it led to a major political crisis in that country. So I am using that as an example that it is important to protect that sense of integrity between the bank inspectors department and the banking sector as such.

But recently, I was told that the head of the banking sector, inspector of financial services has accepted a job in one of the institutions. Nowhere in the world would that be allowed without a time lapse. Conventional implication is one who holds such a position would not be able to work in that particular industry, especially in one of the client institutions within a stipulated time of say two years or one year or whatever it may be done.

I was advised that although this matter was a matter of concern, it was not resolved and the person has really moved and within three months shall be taking up a position as the head of a major bank. This is an issue of the ethical behaviour in the performance of the function of the head of the financial services division of the bank and these are the little things that tend to erode the confidence and in due course, create problems for public management. So I raise that issue, I have not raised the issue of the individuals, that is a separate matter; it is a fundamental rule that must be established. So that the firewall that exists between the bank inspectors division and the bank itself must also exist between the bank inspectors division and the commercial banking sector, so that we try and protect what is unfair in the eyes of many.

On that score, there would be a lot of issues of equity that have been floating around. I want to raise another issue, not relevant to this, but dealing with the issue of equity and that is the issue of the treatment of our former presidents. We have had three former presidents in the country, but in terms of support from the State, it differs and I asked myself why does it differ. If we are running a society in which there shall be equity, we must start on top and we must be sure that there is equity of treatment in terms of support to all our former presidents.

This is where the problem starts. This is where the whole issue of statecraft starts and if we cannot introduce those rules there, it has a way eventually to reflect in the society. Today, I got a report of what the people are thinking; what the people are thinking below about the affairs of Parliament and what they are thinking about really, is that the whole society now is in a free-for-all. That is the report. In a free-for-all, people are worried about things and believe that the institutions of State could no longer be depended upon to protect their interest, and in that sense, these issues are very much relevant to them.

So, I take the opportunity—I would close in just one minute—to ask the Government to take some time and reflect and to look at the focus of this Bill before us and to come very quickly, very quickly with institutions that would protect the public interest and so restore trust in Government in this country.

Thank you very much. [*Desk thumping*]

The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill): Mr. Speaker, I thank the hon. Member for St. Augustine—

Mr. Ramnath: When is Parliament going to be adjourned?

Mr. Valley: Talk to your Chief Whip.

Sen. The Hon. C. Enill:—for his comments. Since they are intended to continue the work that he began sometime ago, in fact, we have used some of the work that he has started which has brought us here today. Insofar as the timetable is concerned, the issue of consultation is one in which sometimes the timetable or the time frame is a bit more than you had anticipated, because he is correct, as the issues change, the circumstances in fact change. Let me just respond to a couple of things very quickly before we get to the Bill.

Mr. Speaker, all the issues that the Member spoke as they relate to the risk management and the risk profile and so on, need to be understood in this context. The Central Bank license or provide licence to organizations and they are called licensees. Those institutions go through a pretty detailed monthly analysis of their entire portfolio, including their risk; including their investment; including the governance structure. And on the basis of that, the Central Bank provides them with a grade that determines whether they are acceptable; whether they are dealing with the issues as they had said it was; or whether there is need for work to be done. And in circumstances where there is need for work to be done, the Central Bank so determines. So that in the real sense the issues that he is talking about as they relate to the operations of the licensee, as they relate to all the portfolio risk and so on, are in fact well in hand within the established procedure.

What this Bill is seeking to do, is to simply deal—

Mr. Dookeran: Is the Minister saying that the issue of trans–border information sharing and international information sharing is now within the ambit of the law and that we have protocols in that regard?

Sen. The Hon. C. Enill: Yes, I am. Because what brought us here today was the fact that, as we look at what was happening internationally and regionally; as we move toward the Caricom Single Market and the regulatory work being done

by regulations of Central Bank, Trinidad and Tobago was being left out because the law did not allow them to do anything. What we did today or what we are seeking to do today, is to deal with that information phase and it would deal with both the local institutions—You know, if you take the mutual fund industry, for example, if you look at the control, it is controlled by about ten people, $10 billion and therefore, one has to be clear that when you are looking at conglomerates which have some investments here, some here and some here; and this institution regulates this one and this institution regulates that one, that they should be actually talking to one another. Because one of the things we have seen in the analysis and the Member would know this from the Lori Savage Report, is that sometimes you have one underlying asset being used here, there and everywhere to deal with the risk profile and therefore, those are some of the things that we are trying to deal with in the context of the regulation framework going forward.

Now, it is not true to say that the Government is about control because that is not the intention. What is at the base of all of this, is to provide a system where the Central Bank will have the power to ask questions in a specific way and will intervene when it determines that its licensees are going to be in trouble. Because at the end of it all, if any of these things happen, the financial system can be at risk and the Government will have to come in and deal with cleaning up.

Now, what is happening today is that every single step that we are making is consistent with the recommendations that we have made in the White Paper and these are recommendations for capital market, insurance sector and credit unions too. Let us just say, to report, that the credit union legislation is well on the way right now there is a discussion going on between the credit union sector and the Central Bank and that is in fact well on the way.

The issue the Member talked about with respect to the financial institutions ombudsman, we have gone past the stage of the banking sector. We have now had agreement by all the participants that they would, in fact, submit themselves to a code of conduct and they would be governed by the decisions of the financial institutions ombudsman. I do not know how much more democratic you can get where an industry has sat down with the regulator and has worked out some rules and they hold that to be so. I really do not know. It never was our intention to put legislation in place, it is not on the plan and therefore, we would have to be convinced that, that needs to happen.

The legislation today is very simple. I have had the benefit of a discussion with the IMF, the World Bank, the stakeholders and they have all accepted that

this is the requirement at this time. The Government is therefore determined that in order to achieve the efficiencies that we must have; and in order to move the process forward, this is what we must do and this is what we have in fact brought before the House today. The comments that have been made by the Member is relevant, and therefore, we propose that we would look at them to see how they can in fact be implemented and included in the context of future submissions because this is a ongoing process and I thank him most kindly for his comments.

Mr. Speaker, to a very large degree, he has agreed with most of the recommendations; he has a different philosophy, he has a different view with respect, but as it relates to the Bill before us today, I believe that the Bill clearly articulates what the Government's position is. It says that it is the first part of what we are seeking to do, and therefore, it meets the requirement of the first part of urgent and critical and I therefore beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 10 ordered to stand part of the Bill.

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

House resumed.

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

ARRANGEMENT OF BUSINESS

Mr. Speaker: Hon. Members, under an earlier order today, I had omitted to recognize a Motion submitted to me by the hon. Member for Caroni Central and with your indulgence, I would now ask him to move his Motion.

Mr. Sharma: Pressure coming.

ADJOURNMENT MOTION (LEAVE)

Dr. Hamza Rafeeq *(Caroni Central)*: Thank you, Mr. Speaker—I think it is an oversight by the Speaker—for recognizing me. In accordance with the provisions of Standing Order 12, I hereby seek your leave to adjourn the sitting of the House today, for the purpose of discussing a definite matter of urgent public importance, namely, the lack of security at the Eric Williams Medical Sciences Complex resulting in the murder of an employee at the complex yesterday.

Mr. Speaker, the matter is definite since it refers to a specific incident in which an employee at the Eric Williams Medical Sciences Complex was brutally murdered.

The matter is urgent since other incidents of violence have taken place in other health institutions within the recent past and the lives and safety of employees are at risk.

The matter is of public importance since there are over 10,000 employees in the health sector and more than half of the population seek medical care at the nation's public health institutions and their safety is not guaranteed.

Thank you, Mr. Speaker.

Mr. Speaker: Again, hon. Members, this matter does not qualify under the Standing Order.

CARIBBEAN EXAMINATIONS COUNCIL (PRIVILEGES AND IMMUNITIES) BILL

Order for second reading read.

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Thank you, Mr. Speaker. I beg to move,

> That a Bill to give effect to the protocol and privileges and immunities of the Caribbean Examinations Council, be now read a second time.

Mr. Speaker, the Bill before this honourable House is entitled the Caribbean Examinations Council, Privileges and Immunities Act, 2006. This Bill is intended to give domestic legal effect to the Protocol and privileges and immunities of the Caribbean Examinations Council which we will call the Protocol. The Caribbean Examinations Council, (the Council) was established in 1972, by an agreement signed by the Heads of Government of the Commonwealth Caribbean countries and Article VIII of this agreement provides for the following:

> "the legal capacity, privileges and immunities to be recognized and granted by participating Governments in connection with the Council, shall be laid down in a protocol to this agreement."

Following the adoption of the Protocol, by the participating Governments, Trinidad and Tobago signed the Protocol on June 17, 1997.

Mr. Speaker, all the privileges and immunities to be granted to the council are available under Part I of Schedule 5 of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act. However, under Part II of Schedule 5

of the Privileges and Immunities (Diplomatic Consular and International Organizations) Act, members, officials and experts on mission, on behalf of the council are only afforded immunity from legal process in respect of words spoken or written, and all acts done by them in the course of the performance of their official duties.

3.00 p.m.

Other immunities and exemptions, such as inviolability of all papers, documents and materials related to the work of the Council and immunity from inspection and seizure of persons and official baggage, except in cases of *flagrante delicto,* are not included in the Fifth Schedule to the Bill. Since Part V of the Act is not wide enough to grant all the privileges and immunities contained in the Protocol to the members, officials and experts on missions on behalf of the Council, it has become necessary to enact primary legislation to fulfil the obligations assumed by Trinidad and Tobago in respect of the privileges and immunities to be enjoyed by these persons.

Article XII (1) of the Protocol recognizes that the privileges and immunities granted therein are in the interest of the Council and not for the personal benefit of persons entitled thereto. Articles IX and X provide for the privileges and immunities of the members and officials of the Council, whilst Article XI provides the same in respect of experts on mission on behalf of the Council.

It is important to understand that in granting privileges and immunities to the Caribbean Examinations Council and its officers, members and experts on mission, the Government of Trinidad and Tobago is not compromising the sovereignty of the Republic of Trinidad and Tobago. In this regard, Article XII(3) of the Protocol specifically provides that:

> "Without prejudice to the privileges and immunities accorded by this Protocol, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of participating Government parties to this Protocol and not to interfere in the internal affairs of the territories concerned."

The Protocol, according to Article XVI, shall enter into force on the deposit of the instruments of ratification by three-quarters of the participating governments. By August 2005, although 12 Member States had signed the Protocol, only five States: Grenada, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines and Trinidad and Tobago, had deposited instruments of ratification with the Caricom Secretariat. Trinidad and Tobago's instrument of ratification was deposited with the Caricom Secretariat on August 08, 2005. The Protocol has, therefore, not yet entered into force.

I now turn to the main provisions of the Bill. Clause 2 defines the terms "Caribbean Examinations Council Agreement" and "Council" used in the Bill. Clause 3 provides for the grant of privileges and immunities for the Caribbean Examinations Council of Trinidad and Tobago. This clause of the Bill stipulates that the Council shall be accorded:

"(a) the inviolability of its premises…

(b) the inviolability of the archives…

(d) exemption from taxes, customs duties and import or export duties…"

And the right to dispatch or receive papers and correspondence by courier in sealed bags.

Mr. Speaker, clause 3 also states:

"(2) The Caribbean Examinations Council shall enjoy the following immunities:

(a) immunity of legal process; and

(b) from search, acquisition, confiscations, expropriation and any form of interference whether legislative, administrative or judicial in respect of property, funds and assets."

These privileges and immunities are consistent with the provisions of Part I of the Fifth Schedule of the Act.

Clause 4 provides for the privileges and immunities to be enjoyed by members of the Council. This clause provides that members of the Council shall enjoy, inter alia, immunity from legal process and personal arrest or detention and inviolability of papers, documents and materials related to the work of the Council. These immunities are in conformity with clause 1 of Part II of the Fifth Schedule of the Act. The immunity from inspection and seizure of personal and official baggage shall not, of course, extend to cases of *flagrante delicto*.

Clauses 5 and 6 provide for the privileges and immunities to be enjoyed by the officials of the Council and experts on mission officials on behalf of the Council. The immunity from legal process in respect of words spoken or written or acts done in the course of the performance of official duties provided to the officials and experts on mission, is functional in character and consistent with clause 1 of Part II and III of the Fifth Schedule of the Act. The immunity from personal arrest or detention in relation to acts performed in the official capacity and the inviolability of the official papers are also addressed in these clauses.

Clause 7 confers legal capacity on the Council. This clause provides that the Council shall possess such legal capacity necessary to carry out its functions and fulfil its purposes and, in particular, the capacity to:

"(a) contract;

(b) acquire and dispose of movable property and immovable property; and

(c) institute legal proceedings."

Clause 8 provides for the settlement of disputes. This clause requires the Council to make appropriate provisions for the proper settlement of:

"(a) disputes arising out of contracts and other disputes of a private law character to which the Council is a party; and

(b) disputes involving any member or official of the Council or an expert employed in missions on behalf of the Council who, by reason of his official position, enjoys immunity, if such immunity has not been waived by the Council or the Registrar, as the case may be."

This provision is intended to ensure that nationals of Trinidad and Tobago doing business or otherwise associated with the Council, its members, officials or experts, are in no way disadvantaged by the immunities enjoyed by that body and those persons.

Mr. Speaker, a list of amendments has been circulated to hon. Members. The amendments involve the deletion of clause 5(1)(c) and clause 6(1)(b) and the consequential renumbering of those provisions. In addition, the words "facilitation in respect of its communications" in clause 3(1)(e) are to be deleted and replaced by the following words:

"the right to despatch or receive papers and correspondence by courier in sealed bags."

This amendment is being proposed because once the organization, in this case the Caribbean Examinations Council, is given the right to communicate by courier in sealed bags, it is not necessary to confer on individual members, officials or experts a similar privilege, because any time such persons exercise the privilege to dispatch or receive papers and correspondence by courier in sealed bags, they would be acting either through or on behalf of the organization itself. [*Crosstalk*]

Mr. Speaker: Order!

Sen. The Hon. K. Gift: Mr. Speaker, the Bill seeks to give domestic legal effect to the Protocol. It serves not only to clothe the Council with legal personality,

but also to assist it to function efficiently and to fulfil the purposes envisaged for it in the 1972 agreement. As is the case with other international organizations operating in Trinidad and Tobago, the privileges and immunities contained in this Bill provide the Council with a certain minimum freedom of operation as well as legal security for its assets, offices and minimum security for its members and officials. [*Crosstalk*]

It is to be noted that an Order made pursuant to Part V of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act of Trinidad and Tobago, Chap. 17:01, would not be sufficient to confer the privileges and immunities contained in the Protocol on the Caribbean Examinations Council, members and officials of the Council and experts on mission on behalf of the Council. [*Crosstalk*]

This Bill is part of the process to give the domestic legal effect to the Protocol on the privileges and immunities of the Caribbean Examinations Council. The Government of Trinidad and Tobago is demonstrating its commitment to do its part to facilitate the work of the Council by putting in place the legal infrastructure required for the Council to achieve the goal set out for it. I, therefore, unhesitatingly recommend that hon. Members of this House support this Bill.

Mr. Speaker, I beg to move.

Question proposed.

Mr. Ramnath: Examination papers that disappear all the time; is that the same group?

Dr. Adesh Nanan (*Tabaquite*): Mr. Speaker, I rise to make a contribution on this Bill.

Mr. Imbert: I beg to move. [*Laughter*] [*Crosstalk*]

Mr. Sharma: You denied the Maha Sabha their licence.

Dr. A. Nanan: When the Minister piloted the Bill this afternoon, he made reference to Chap. 17:01, which is the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act and to the Fifth Schedule. Mr. Speaker, it is important to give some history. I thought the Minister would have given us some kind of history, but he just briefly spoke about the formation of the Caribbean Examinations Council in 1972, but we need to go back to the Vienna Convention. I would give a brief introduction, because it is important.

Mr. S. Panday: "Take dat!"

Hon. Member: "Dat is more than 75 minutes."

Mrs. Robinson-Regis: "Is not me alone; allyuh have to take it too."

[*Cellphone rings*]

Mr. Speaker: There is a Member whose cellphone is on. Please, I wish to remind Members that when you come to the Chamber, your cellphones should be switched off.

Dr. A. Nanan: Mr. Speaker, the Vienna Convention was signed on April 18, 1961.

Mrs. Job-Davis: How long? [*Crosstalk*]

Dr. A. Nanan: I would get directly to the point, Mr. Speaker.

Hon. Members: Right!

Mr. Imbert: I beg to move. [*Crosstalk*] [*Laughter*]

Dr. A. Nanan: It is important to understand the Convention, so I would give an outline of it.

Mr. Valley: You have 10 minutes. [*Crosstalk*]

Mr. S. Panday: That is only for the historical part. [*Laughter*]

Mr. Imbert: You are not even listening. [*Laughter*]

Dr. A. Nanan: When I am finished the hon. Members on the opposite side would understand the history of this particular Bill and its relation to Trinidad and Tobago and secondary school students and the benefits.

Mrs. Robinson-Regis: We know the history.

Mr. Valley: Member, we are going on vacation today; let us go. [*Crosstalk*]

Mr. Speaker: Order; order!

Dr. A. Nanan: Mr. Speaker, I quote:

"Recalling that peoples of all nations from ancient times have recognized the status of diplomatic agents," [*Laughter*]

Mr. S. Panday: Hear, hear! [*Laughter*] [*Crosstalk*]

Dr. A. Nanan: The problem in this debate is that everything is relevant.

Mr. S. Panday: Indeed, indeed!

Dr. A. Nanan: So it is nothing of irrelevance. I would deal with cocaine in diplomatic bags, because it is also relevant. I would deal with ambassadors who were alleged to have been driving under the influence of alcohol; that is also relevant.

Mr. S. Panday: "Bring de breathalyzer for dem."

Dr. A. Nanan: I would deal with the London Mission, because that is important here. I would also deal with Harvey Borris in Miami, because that is important here.

Mr. S. Panday: "Dat is important!"

Mrs. Robinson-Regis: What has that to do with CXC?

Dr. A. Nanan: Of course; I would show you this afternoon how it is relevant. [*Crosstalk*] I will do all that in my short time here, Mr. Speaker. Diplomatic agents; that is what the Vienna Convention is about. The Minister made reference to Chap. 17:01 dealing with diplomatic missions and agents and whether they like it or not, I am going to continue. [*Desk thumping*]

> "Having in mind the purposes and principles of the Charter of the United Nations concerning the sovereign equality of States, the maintenance of international peace and security, and the promotion of friendly relations among nations,
>
> Believing that an international convention on diplomatic intercourse, privileges and immunities would contribute to the development of friendly relations among nations, irrespective of their differing constitutional and social systems,
>
> Realizing that the purpose of such privileges and immunities is not to benefit individuals but to ensure the efficient performance of the functions of diplomatic missions as representing States,
>
> Affirming that the rules of customary international law should continue to govern questions not expressly regulated by the provisions of the present Convention…"

Mr. Sharma: Minister Gift, you have nobody to prepare a reply for you; you are in trouble.

Dr. A. Nanan: Article I makes reference to the following:

"(a) The 'head of the mission' is the person charged by the sending State with the duty of acting in that capacity.

(b) The 'members of the mission' are the head of mission and the members of the staff of the mission; [*Laughter*] [*Crosstalk*]

(c) The 'members of staff of the mission' are the members of the diplomatic staff, of the administrative and technical staff and of the service staff of the mission;

(d) The 'members of the diplomatic staff' are the members of the staff of the mission having diplomatic rank;

(e) A 'diplomatic agent' is the head of the mission or a member of the diplomatic staff of the mission;"

Mr. Speaker, I will now go to Article XXIX, because it is important in this context.

The Minister made reference to this article in the Vienna Convention. In this particular Act, the Schedule makes reference to these articles. I am sure the Minister is aware of that.

Mr. Valley: Relevance, relevance.

Dr. A. Nanan: That is the relevance; it is right here in the Bill.

Mr. Ramnath: Do not be distracted.

Mr. S. Panday: "Ken, yuh buy dat one; let him have it."

Dr. A. Nanan: Clause 5(1)(e) of the Bill.

Mr. S. Panday: Leave him alone; he would finish in time!

Dr. A. Nanan: This clause states:

"the same repatriation facilities in times of international crisis as are accorded to members of diplomatic missions of comparable rank."

Mr. S. Panday: Of course. "Yuh see de relevance now?" [*Desk thumping*]

Mr. Imbert: You are right; you are right!

Mr. Valley: I hear you.

[*Minister Valley places his finger on his lips*]

Dr. A. Nanan: Article XXIX of the Vienna Convention states:

"The person of a diplomatic agent shall be inviolable. He shall not be liable to any form of arrest or detention. The receiving State shall treat him with due respect and shall take all appropriate steps to prevent any attack on his person, freedom or dignity."

Mr. Sharma: "Look how allyuh treat the Maha Sabha!"

Dr. A. Nanan: Article XXXI states:

> "A diplomatic agent shall enjoy immunity from the criminal jurisdiction of the receiving State. He shall also enjoy immunity from its civil and administrative jurisdiction,…"

Mr. Speaker, I made reference earlier to our present High Commissioner to Canada. I know that the Minister is aware of this and has the report on his desk. He was driving under the influence of alcohol and there was some arrangement, I am sure, when he was pulled over. The Minister must also know that if you have over 35 micrograms of alcohol per hundred milliliters of blood, you are driving under the influence. We are dealing with the breathalyzer. The Minister of Works and Transport intends to bring the breathalyzer to Trinidad and Tobago and there was the alleged charge of the High Commissioner driving under the influence.

Normally, any citizen would be arrested or detained and his licence revoked, but, again, under Article XXIX of the Vienna Convention, there is diplomatic immunity. So you have that diplomatic immunity and we have an international shame where our High Commissioner to Canada is pulled over for driving under the influence. Of course, there was a report coming out of the news stating that our High Commissioner was charged for drinking and driving.

Mr. **Ramnath:** He has two flags on his car.

Dr. A. Nanan: There was also another situation with another so-called diplomatic agent, with immunity. There are other areas that I would continue in my short contribution to point out. The Minister of Foreign Affairs must be, to coin the word in the particular Bill before the House, "inviolable", because we had an incident of cocaine in a diplomatic pouch; I am sure everyone was aware of it.

The reference here is to Article XXVII dealing with the diplomatic pouch. It says quite clearly:

> "1. The receiving State shall permit and protect free communication on the part of the mission for all official purposes. In communicating with the Government and the other missions and consulates of the sending States, wherever situated, the mission may employ all appropriate means, including diplomatic couriers and messages in code or cipher. However, the mission may install and use a wireless transmitter only with the consent of the receiving State.

2. The official correspondence of the mission shall be inviolable. Official correspondence means all correspondence relating to the mission and its functions."

We saw an amendment with respect to this particular issue.

"3. The diplomatic bag shall not be opened or detained.

4. The packages constituting the diplomatic bag must bear visible external marks of their character and may contain only diplomatic documents or articles intended for official use.

5. The diplomatic courier, who shall be provided with an official document indicating his status and the number of packages constituting the diplomatic bag, shall be protected by the receiving State in the performance of his functions. He shall enjoy personal inviolability and shall not be liable to any form of arrest or detention."

This is under the Vienna Convention.

Mr. Imbert: "If he kill a man, what happen?"

Dr. A. Nanan: It continues:

"6. The sending State or mission may designate diplomatic couriers ad hoc…

7. A diplomatic bag may be entrusted to the captain of a commercial aircraft scheduled to land at an authorized port of entry. He shall be provided with an official document indicating the number of packages constituting the bag but he shall not be considered to be a diplomatic courier. The mission may send one of its members to take possession of the diplomatic bag directly and freely from the captain of the aircraft." [*Interruption*]

Mr. Speaker, the Member for Diego Martin East is trying to distract me.

Mr. S. Panday: "He cyar do it!"

Dr. A. Nanan: I am reading from a document, so he cannot distract me.

Mr. Speaker: You are a very seasoned debater and you would not allow the hon. Member to easily distract you. You address me.

Dr. A. Nanan: I just wanted that to go into the *Hansard* record.

Mr. Speaker, Article XXVII points out quite clearly how these bags are to be distributed. These bags were bound for London, New York and other places

where the PNM had interests, so these are the questions I could ask the Minister in terms of the arrangement for the diplomatic bag, having had that incident before.

I do not know if the Minister is aware, but I hope he has enough advisors here to advise him because, besides the Caribbean Examinations Council that has been set up by the Agreement signed in 1972—[*Interruption*]

Mr. Ramnath: I would like to get a diplomatic passport.

Dr. A. Nanan:—there is also in every participating country what is called a "National Committee" for the Caribbean Examinations Council. The membership of this particular committee includes all these people: the Chief Education Officer of the Ministry of Education; the Director of Educational Services; the Director of Educational Research and Evaluation; the Director of Technical and Vocational Education and Training; the Director of School Supervision; the Director of Curriculum Development; the Director of Operations; all curriculum officers; School Supervisor I, business studies; School Supervisor I, electricity, electronics and electrical technology; School Supervisor I, electrical installation; School Supervisor I, technical drawing; School Supervisor I, metal works and mechanical technology; a representative of the Trinidad and Tobago Unified Teachers' Association; a representative of the University of the West Indies; a representative of the Faculty of Education, University of the West Indies; a representative of the Association of Principals of Assisted Secondary Schools; a representative of the Association of Principals of Government Secondary Schools; a representative of the College of Science, Technology and Applied Arts of Trinidad and Tobago; Supervisor of Examinations; two members of the public representative of the Association of Private Secondary Schools and a representative of the National Parent Teachers' Association. These are the members that make up the National Committee for Trinidad and Tobago for the Caribbean Examinations Council.

Mr. Speaker, clause 6(1) speaks to experts employed on mission on behalf of the Council. Who are these experts?

Mr. Sharma: Political appointees.

Mr. Ramnath: Do not worry to reply.

Dr. A. Nanan: I could go back into the Vienna Convention, because there is a reference to privileges and immunities for experts on mission on behalf of the Council. Are they going to be considered as diplomatic agents? Are they going to be transporting mainly? I do not know what they would be transporting.

Hon. Member: Passports.

Dr. A. Nanan: We have had a situation where so many passports were missing in the Ministry of Foreign Affairs. The point I am making is that you are going to delete clause 6(1)(c):

> "exemption from immigration restrictions, alien registration requirements and national service obligations;"

Are these experts going to be part of the National Committee for the Caribbean Examinations Council (CXC)? Are we now going to broaden this particular requirement for diplomatic agents? Are we going to have more individuals having this inviolability, as the Bill says? We have to ask these questions, because we are also aware of the movement and migration of people within Caricom, which is a whole new debate.

I want the Minister to clarify who these experts are, because the particular clause states:

> "Experts employed on missions on behalf of the Council…"

When you are dealing with CXC you are dealing with hundreds of teachers across the region. The Caribbean Examinations Council, on the whole, is a small grouping. I am sure that the Minister is aware that CXC is made up of the vice-chancellors of the relevant universities. [*Crosstalk*] [*Interruption*] What is that? "What dat means?"

Mr. **Ramnath:** "You talk man; we listening to you."

Dr. A. Nanan: Is it relevant here with respect to the Caribbean Examinations Council? Are you going to give inviolability to this particular Council with only these few members or are you going to expand it now to the various committees under the Council?

Mr. **Ramnath:** Good point.

Hon. Member: Like the aldermen, they do not want to extend it.

Dr. A. Nanan: Exactly; how far are you going?

Mr. Imbert: "Toute bagai."

Dr. A. Nanan: Are you going to give every member, like Harvey Borris in Miami, Arnold Piggott, Jerry Narace, the ambassador-at-large? Are you going to have a number of people from various walks of life becoming experts? [*Crosstalk*] Who are you going to call experts? Are these people who are going to be migrating within Caricom experts?

Mr. Imbert: How can you migrate within Caricom? "Yuh tink it is a bird?"

Dr. A. Nanan: Of course, within the countries; you could migrate too. We are not discussing that aspect.

Mr. S. Panday: "Doh take him on."

Dr. A. Nanan: They know my point is relevant and they are trying to distract me. [*Desk thumping*]

Mr. Imbert: You do not talk migrate within one place. [*Crosstalk*]

Dr. A. Nanan: When you really hit a nerve, you get a reaction.

Hon. Members: Ooh! [*Laughter*]

Dr. A. Nanan: A dentist must know that you must get a reaction.

Mr. S. Panday: A dentist must speak.

Mr. Ramnath: A good dentist too! [*Crosstalk*]

Dr. A. Nanan: That is why he is trying to distract me.

That is an important point dealing with the Bill, the labelling of the experts and how many are going to be covered by this particular Bill. Is there going to be a limit with respect to the number of persons considered on mission on behalf of the Council or is it just going to be the officials and a few experts? [*Interruption*]

Mr. Valley: If you would give way; just quickly.

Mr. S. Panday: "He provoking you."

Mr. Valley: No, I am not provoking him; I am trying to help him shorten the time. [*Laughter*] The Bill talks about privileges and immunities. It is speaking about persons from outside coming to Trinidad and Tobago who would get these privileges and immunities. It is not talking about Trinidadians getting it. [*Crosstalk*] It is the various persons who may be involved in the examination and so forth, coming here for a particular purpose. [*Crosstalk*] No, they cannot be Trinidadians. Trinidadians out there; in other words, Trinidadians who would get it in Jamaica, but the way he is speaking about Jerry Narace and these persons, this is not going to cover Jerry Narace in Trinidad. If he is involved in the Examination Council in some way and he goes to Jamaica, he would be entitled to the privileges and immunities.

Mr. Ramnath: We know that; sit down!

Mr. S. Panday: Deal with him!

Dr. A. Nanan: Who are the experts? Do you know?

Mr. Valley: A geography examiner, for example.

Dr. A. Nanan: I am shocked that you as a Minister of Trade would make a statement like that in this House. [*Laughter*] [*Desk thumping*] Your portfolio should be revoked immediately. [*Laughter*] [*Desk thumping*] You never read the Bill; you do not know anything about the Bill.

Mr. S. Panday: Do not interfere with the Tabaquite Tiger!

Dr. A. Nanan: What is the amendment about, do you know? [*Laughter*] I have to get injury time for that, Mr. Speaker.

I could have come to this House and spoken of all the ills of CXC, because they are relevant. The whole of CXC is relevant; the whole fiasco in the Caribbean Advanced Proficiency Examination (CAPE). I was dealing with this Bill in a particular way, because the Minister would not have a clue as to how to respond.

Mr. S. Panday: Deal with him; deal with him! They are provoking you; go in that area.

Dr. A. Nanan: Mr. Speaker, CAPE is a new exam being tested, Unit I and Unit II. The Minister probably does not even know how many units are in the course, whether year one or year two. They are having tremendous problems. I am sure you read the article by Prof. Kenny on environmental science in CXC. The CXC meets once per year. There are many private students in this country who have paid money to get a review of their examination papers and have heard nothing. Do you want me to go in that direction? I could go in that direction too.

Mr. Partap: Give him full force! [*Crosstalk*] [*Laughter*]

Mr. Valley: I am sorry.

Mr. S. Panday: Let him have it; let him have it!

Dr. A. Nanan: "You are just precocious, dat is what happen." [*Desk thumping*]

Mr. Imbert: You are right boss.

Mr. Ramnath: Discipline him now!

Dr. A. Nanan: "He get me vex now, so I would go in that direction." [*Laughter*]

Mr. Imbert: Oh, no!

Dr. A. Nanan: The maths teachers are suffering in this country and somebody has to speak out. The chemistry teachers are also suffering, because they have introduced CAPE. That flip-flopping Minister of Education who said one day that the Secondary Entrance Examination (SEA) would be abolished and then changed her mind the next day, "No, no, no; we made a mistake." The mathematics teachers cannot even meet the facilitators in this country. They cannot even meet a mathematics facilitator from the Ministry to air their views. They go to the boards and air their views and nothing happens from that. So what is the Caribbean Examinations Council doing?

Private students and students in Government and denominational schools are going through their principal to the Ministry of Education, writing for review of their examination papers and there is no reply. They are spending money; up to $1,000 these poor students have to pay out and there is no reply from that examination body and no redress.

Mr. Ramnath: And she is flip-flopping.

Dr. A. Nanan: I could call all the committees that the Ministry has; I am sure there are more now. Every single member of that committee I could call in this House. You see the overlapping every day; these officials are in meetings and they have no time to do anything else. They cannot meet the mathematics facilitators in the Ministry. [*Crosstalk*] [*Laughter*] The students ask for reviews and when they do come out, it is in November or December, after the placement of students; so they cannot enter university, because of the Ministry of Education and the tardiness of the Caribbean Examinations Council.

Mr. Ramnath: People are losing papers.

Dr. A. Nanan: Mr. Speaker, school-based assessments (SBAs) are missing; students complain that they have to do their SBAs again. So what are you coming to do here? To give them inviolability; they must not be attacked; they must not be in any courts of law; everything is sacred.

Mr. Imbert: You want to attack them?

Dr. A. Nanan: You came here to give this body that kind of authority. When you compare them with Cambridge, you would see that it is like chalk and cheese. It is a money-making thing; this is not favour they are doing for Caricom. They have been mandated by Caricom governments, by Prime Ministers, to come up with this secondary examination. That is what they signed in 1972. [*Interruption*]

Of course he cannot reply, but that was what the Member for Diego Martin Central wanted, that is why he sent me in that direction, to embarrass the Foreign Affairs Minister, because he would not be able to reply. [*Desk thumping*] [*Laughter*] He knew that if I kept on my track with diplomatic issues, the Member would have been able to reply, but he sent me in the direction of the Ministry of Education, so the Minister could not reply. He is totally embarrassed in the House.

Mrs. Persad-Bissessar: The Prime Minister is not here to reply.

Dr. A. Nanan: Good strategy, Member for Diego Martin Central.

Mrs. Robinson-Regis: Well, you fell for it.

Dr. A. Nanan: I want to deal with the secondary students who are suffering, because of the Caribbean Examinations Council and the tardiness of the Ministry of Education to deal with their matters. Do you know that the chemistry teachers for the CAPE module have to teach right up to the last week before the examination? They are suffering.

What analysis are they doing to award scholarships? I want to make a plea this afternoon for the Minister to expand the number of scholarships, because CXC is busy. There are 25 subjects at A level; that is what CXC is pushing. I am not against the arts; of course, I have said in this House that I like music. There are a number of other areas coming in, especially in the arts, but they should give scholarships in those areas as well. They should not reduce the number of scholarships, because they have to give additional ones to other areas. Expand the number of scholarships in physical education, drumology, pan and so forth. I am sure you are not even aware that there are exams and scholarships in pan.

Mrs. Robinson-Regis: You are saying there should be a scholarship in drumology?

Dr. A. Nanan: Yes; give the scholarships; I have no problem with that. You do not like that?

Hon. Member: What about Hindi?

Dr. A. Nanan: So that is the chemistry situation in this country. The Caribbean Examinations Council, for some reason, removed the practical examination in chemistry. There is no practical exam anymore in chemistry. You would recall, Member for Couva South that was the determining factor; if you could not do the theory properly, you could get through with the practical, because you had that practical ability. Now that has been removed, so everything is theory and memory; that is what CXC has done. The labs were necessary.

It cannot be that the Government does not have the money to buy the lab equipment, because under the secondary modernization programme, all labs in secondary schools were supposed to have been upgraded.

Mr. Ramnath: No wonder we do not have pharmacists.

Dr. A. Nanan: So the whole country is suffering. This particular debate has generated interests in all areas: the High Commissioner in London; the poor students in secondary schools. You would have seen the results in some areas for CXC. You would have seen the fluctuations in grades.

I have a document from 1998, when they made the transition with respect to the new grading system for CXC to make it comparable with Cambridge. The Ministers of Education of the Caribbean must call CXC to account. All the participating governments are contributing money to CXC to make it viable and to remove the competing interest of the Cambridge exam, but Cambridge already has its history and has been tried and tested; but the Minister of Education found it fit to completely remove Cambridge from the halls of schools.

Mr. Ramnath: What exam did she write?

Dr. A. Nanan: Most likely it was the General Certificate Examination (GCE). We are now in a situation where we have to make do with what we have until the UNC returns to government and we review that policy. [*Desk thumping*] I am not speaking without any factual information; you could read it in Prof. Kenny's article on the Internet. It is true that in the first part of the article he spoke a lot about drama, but at the very end he mentioned the subject of environmental science in CAPE. He mentioned that resource materials could not be found.

There was a particular situation where students in Port of Spain were asked to do something on flooding in Port of Spain. They went to the Ministry of Works and Transport to get information on mechanisms to stop flooding and there was no information. They went to the library and they did not get anything. They went to the Institute of Marine Affairs, nothing. Mr. Speaker, this Bill deals with protocol. The various protocols set in the ministries and their divisions are preventing any information going out; they might have to go under the Freedom of Information Act to get information for this particular course in environmental science. A teacher wanted to get information on industrialization in the Point Fortin area; there was nothing coming from the Institute of Marine Affairs. So how could the students that you are now making competitive, get any information?

Initially, when they were doing an assessment, it was done with comparisons between students; then they moved to a new way, where you look at the student's ability rather than have a competition. [*Interruption*]

Mr. Speaker: You appear to be addressing the hon. Member for Couva South. If the hon. Member was here, he would not be as generous as I am to you, so, please, address me. [*Laughter*]

Dr. A. Nanan: Are you accusing me of being "coki-eye"? [*Laughter*] I am looking at you, but I am glancing and moving.

Mr. Ramnath: On the subject of environmental science.

Dr. A. Nanan: It is not that you do not understand, Mr. Speaker; I am sure you are following very clearly.

Mr. Valley: He has a problem with relevance. [*Crosstalk*]

Mr. Speaker: Please address me.

Dr. A. Nanan: Are you the Speaker? [*Laughter*] I am on the topic, Mr. Speaker.

If you look at the trend, the Caribbean Examinations Council in this Bill deals with examinations for secondary school students. They are required to do the analysis to set the grading system and to set up the whole administrative framework for these examinations. I am dealing with the problems of CXC and what students are encountering in this country. We have seen that they cannot source the material for environmental science, so they cannot do the course. You are making scholarships based on the CAPE results and the students cannot get the research material to do the work. The Council is not making any statements.

Do you know, Mr. Speaker, that if you go on the CXC website, you would see all the reports from various schools? There are several reports based on the same kind of information coming forward and there is nothing being put forward with respect to correcting these particular situations.

Every year you would see the leakage of papers at the CXC level; except under the UNC administration, for some strange reason. Now we are saying inviolability; I do not know if inviolability means that you cannot even inquire. You are putting CXC as a little tin God.

Mr. Ramnath: But they could inquire into the Chief Justice; put "some two by four policeman" to undermine the Chief Justice.

Mr. Sharma: Another Indian "bite de dust".

Dr. A. Nanan: The other area is in terms of the mathematics and English grades in this country; again, it is CXC that is setting the examination papers. What is that Ministry of Education doing about the pass rate in mathematics and English? The Caribbean Examinations Council is doing its part in terms of putting a syllabus forward, but is there a review of the syllabus? Somebody pointed out to me that bringing the CXC was really to lower the standard of education in this country. I said, "No, that cannot happen, because this is a Caribbean thing and it would be for the benefit of the Caribbean." But realistically, are we really reducing the grades or has a new grading system been introduced to facilitate the kind of lowering of standards?

Schools like Naparima Girls', St. Joseph's Convent and Holy Faith Convent have very high pass marks in terms of winning a number of scholarships. Let us say that you are hypothetically moving the SEA, what are you going to do? Are you going to zone now?

Mr. Ramnath: Put their supporters in Naparima Boys'; put the whole of Pleasantville in Naparima Boys' and Girls'. The Member for San Fernando West supports that.

Dr. A. Nanan: We have to be conscious of their impact when we are dealing with these Bills. Of course, the Minister said that it is not in force, although they have ratified the Protocol. This particular Bill encourages a lot of debate in the area of the failure of CXC.

Another problem with CXC, besides the leakage of papers, the syllabus and the time of examinations, is whether the Government is still paying for the basic proficiency examination. I do not know if the Minister is aware of the difference between the basic and general proficiency, with respect to CXC. The basic part of CXC was really for students who could not reach the level of the general and it was up to an employer to see that a person did the course work and could be granted some exemption as he accesses the world of work. That has not happened, because with the new grading system, you are now looking at grades I, II and III, and anything after that you would not be considered.

The CXC needs to look again at the whole structure. The Caribbean Advanced Proficiency Examination has many pitfalls and is what we call global access, because from time to time, under the General Certificate of Education, the A level examination, you would have seen our students becoming the first in the world in various subject areas. Now we do not have that opportunity to see our students

compete internationally; we only have the observations of them within Caricom. How are we going to judge our students' capabilities? We have been told that CAPE units I and II would be accepted, but we do not know, so we are still guessing with respect CXC and their examinations.

The other area for the Caribbean Examinations Council, besides the mathematics facilitators, is the whole national structure. In various countries they have a local body. [*Interruption*]

Mr. Imbert: Adesh, you really overdoing it.

Dr. A. Nanan: Okay, I would come to an end shortly.

It is important that the local body make the kind of representation to CXC; so you must have that linkage with the principals. It is already established on a local committee, but we are seeing on the ground, in terms of the relationship between the principals, CXC and the Ministry, is a great divide. We need to have some uniformity so our students would benefit. When our teachers are frustrated, how can they impart any knowledge to the students? Twenty-five courses are now being offered at CXC. [*Crosstalk*]

I want to go back, Mr. Speaker. I made reference to clause 5(1)(e) dealing with diplomatic missions of comparable rank. The Minister must explain to this House about the amendment. The amendment speaks to the deletion of subclause (c), because it is included now in clause 3 after the word "communications". [*Interruption*]

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for Tabaquite has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Dr. H. Rafeeq*]

Question put and agreed to.

Mr. Sharma: All the "ayes" have it.

Mr. Ramnath: Being a reasonable man, he would not take his full minutes.

Dr. A. Nanan: Thank you, Mr. Speaker. In my preparation for debate, I had averaged between 40 or 45 minutes.

Hon. Members: Ooh!

Mr. Ramnath: "But dey provoke you."

Dr. A. Nanan: They caused me to go on to another 30 minutes that I had, in case they really went that way. So 45 solid minutes and then 30 added in case they provoked me, but they did not provoke me enough, so I would not go the other 30 minutes. I got my points across this afternoon. Although the Bill deals with protocols, the Vienna Convention and various articles coming out of the Schedule, it is important to understand the linkage between CXC and the students in the country.

Although you are dealing with diplomatic immunity, the various areas having to do with the particular missions and relationships, the CXC still plays a very important role, because it deals with testing and assessment of our students, which is very important as they access higher education.

In that particular context, Mr. Speaker, I would conclude my contribution.

Mr. Ramnath: Valley, you do not know how to be diplomatic.

4.00 p.m.

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Thank you, Mr. Speaker. I have always found the Member for Tabaquite very entertaining and I must say he did not disappoint me today, particularly when he thought that relief would come when the UNC gets into office. I found that very entertaining.

I also attempted to take some notes to enable me to respond to some of the queries he raised and I would deal with the one he dwelt on at length which is: who are the experts and what constitutes an expert, et cetera. If he had read the documentation before him, he would have seen the membership of the council being drawn from the membership of the Caribbean Community (Caricom). An expert can come from any of the membership that is signatory to this Agreement and I believe he is fully aware of that. So I think we need not go into the hair-splitting definition of who is an expert and where those persons can come from.

There were queries as well on the Council itself which I will explain. So I do not think it is necessary to further elaborate on that and with that, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

Clause 3.

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

Mr. Gift: Mr. Chairman, I beg to move that clause 3 be amended as circulated:

Delete the full stop occurring after the word "communications" and substitute the words "and the right to despatch or receive papers and correspondence by courier in sealed bags."

Question put and agreed to.

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

Clause 4 ordered to stand part of the Bill.

Clause 5.

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

Mr. Gift: Mr. Chairman, I beg to move that clause 5 be amended as circulated:

Delete paragraph (c) and renumber paragraphs (d) and (e) as (c) and (d), respectively.

Question put and agreed to.

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

Clause 6.

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

Mr. Gift: Mr. Chairman, I beg to move that clause 6 be amended as circulated:

Delete paragraph (b) and renumber paragraphs (c) and (d) as (b) and (c), respectively.

Question put and agreed to.

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

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

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

House resumed.

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

CARIBBEAN COURT OF JUSTICE TRUST FUND BILL

Order for second reading read.

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Mr. Speaker, I beg to move,

> That an Act to provide for the implementation of the revised agreement establishing the Caribbean Court of Justice Trust Fund and for related matters, be now read a second time.

Mr. Speaker, the Bill before this honourable House is a Bill to provide for the implementation of the revised agreement establishing the Caribbean Court of Justice Trust Fund and for related matters.

The intent of the Bill is to give the force of law to the revised agreement established in the Caribbean Court of Justice Trust Fund which we shall be referring to as the Revised Agreement or Fund Agreement.

I will now touch on the main provisions of the Bill. Clause 2 defines the terms "Board", "Fund", "Fund Agreement", "Minister", "Officers" and "Trustees" used in the Bill.

Clause 3 gives the Fund Agreement the force of law in Trinidad and Tobago.

Clause 4 empowers the Minister responsible for Caricom affairs to extend privileges and immunities to the extent permitted by the Fund Agreement.

Clause 5 establishes that the Minister's certificate as to the privileges and immunities to which a person is entitled would be conclusive evidence of that fact.

Clause 6 makes contributions by Trinidad and Tobago under the Fund Agreement a charge on the Consolidated Fund.

Clause 7 makes unofficial use of the seal of the Trust Fund unlawful.

Clause 8 provides for the amendment of the Schedule of the Act following acceptance by the Government of Trinidad and Tobago of any amendment to the Fund Agreement.

Mr. Speaker, in July 2002, at the Twenty-third Conference in Georgetown, Guyana the Heads of Government of the Caribbean Community decided to establish a Trust Fund, (the Fund) to be capitalized in an amount of US $100 million; the proceeds of the Fund are to ensure the efficient operation of the Caribbean Court of Justice (CCJ) on a financially sustainable basis.

The CCJ, as this honourable House is aware, has a critical role to play in the structured development of the Caricom Single Market and Economy (CSME) in the exercise of its original jurisdiction to interpret and apply the Revised Treaty of Chaguaramas. This role is of course distinct from its function as the court of last resort in civil and criminal matters for those Member States of the Caribbean Community that accept its appellate jurisdiction.

Mr. Speaker, the Revised Agreement was signed by the Prime Minister of Trinidad and Tobago, the hon. Patrick Manning on January 21, 2004 at Nassau in the Bahamas. There are 14 members of the Fund; they are the 14 Caricom Member States which have indicated an intention to participate in the Caribbean Single Market and Economy.

Entry into force and distribution of shares in the Trust Fund: In accordance with Article XV, the Revised Agreement entered into force on January 27, 2004 upon signature by 10 of the Caricom Member States listed in the annex to the Agreement. Article III of the Revised Agreement stipulates that:

> "The purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the Court and the Commission in perpetuity."

According to Article IV of the Agreement:

1. The resources of the Fund shall consist of:

   (a) the contributions of Members;

   (b) income derived from operations of the Fund or otherwise accruing to the Fund; and

   (c) contributions of third parties being contributions which are not likely to prejudice the independence or integrity of the Court.

Mrs. Persad-Bissessar: Would the Minister please give way for a question? Can the Minister kindly tell us at some point—I do not know if you have it there, but you mentioned the resources for the Caribbean Court of Justice—how much money has been expended thus far from Trinidad and Tobago towards the Caribbean Court of Justice prior to the coming into force of this Fund?

Sen. The Hon. K. Gift: If the Member would be patient I will get to that.

Mr. Sharma: Are you in support of the CCJ in view of the recent rulings against the Government?

Sen. The Hon. K. Gift: Mr. Speaker, the Annex to the Agreement sets out the respective member share of the Fund. Trinidad and Tobago contributes the largest share of the fund at 29.73 per cent.

Hon. Member: Big Brother.

Sen. The Hon. K. Gift: The other contributions are: Jamaica, 27.09; Barbados, 12.77; Guyana, 8.33; Suriname, 3.92; Belize, 3.44 per cent. Six of the Member States of the Organization of Eastern Caribbean States (OECS) contribute 2.11 per cent each while Haiti and Montserrat contribute 1.68 per cent and 0.42 per cent respectively.

I will give an account of the operation of the Fund. Article III of the Revised Agreement provides that:

> "The purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the Court and the Commission in perpetuity."

Article IV of the Agreement stipulates that:

"1. The resources of the Fund shall consist of:

(a) the contributions of Members;

(b) income derived from operations of the Fund or otherwise accruing to the Fund; and

(c) contributions of third parties being contributions which are not likely to prejudice the independence or integrity of the Court."

The consent of all Members of the Fund is required before the Fund can solicit or accept any gift or material benefit from any source.

Very importantly, the financing of the Fund is to be governed by considerations of the economy, efficiency and cost effectiveness and the need to safeguard the independence and sustainability of the Court and the Commission. The Fund is managed by a board of trustees.

Articles VI and VII set out the composition and functions of the Board of Trustees respectively.

The Board is comprised as follows:

"(a) The Secretary-General; (of the Caribbean Community)

(b) The Vice-Chancellor of the University of the West Indies;

(c) The President of the Insurance Association of the Caribbean;

(d) The Chairman of the Association of Indigenous Banks of the Caribbean;

(e) The President of the Caribbean Institute of Chartered Accountants;

(f) The President of the Organization of Commonwealth Caribbean Bar Associations;

(g) The Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community;

(h) The President of the Caribbean Association of Industry and Commerce; and

(i) The President of the Caribbean Congress of Labour."

Under Article VI, the Board shall elect a Chairman and Vice-Chairman from among its members who shall serve for a period of three years.

The functions of the Board of Trustees are as follows:

"(a) evaluate the performance of the Fund;

(b) establish with the approval of the Members guidelines for prudential investment of the resources of the Fund;

(c) establish with the approval of the Members the financial regulations of the Fund;"

The Board of Trustees is required to review the adequacy of the Fund from time to time, not later than two years after the entry into force of the Agreement and, thereafter, at least once within every succeeding biennium.

"Where a trustee—

(a) resigns or dies;

(b) becomes bankrupt or otherwise insolvent;

(c) becomes unwilling or refuses to serve as a trustee;

(d) is convicted of an offence involving dishonesty; or

(e) in the unanimous opinion of the other members of the Board, becomes unfit or incapable to act as such, the competent institution shall nominate a person of comparable status or experience to act in place of that trustee."

Article XI provides that:

"1. The Fund shall possess full juridical personality and in particular capacity to:

(a) contract;

(b) acquire and dispose of immovable and moveable property; and

(c) institute legal proceedings."

This Article also provides that:

"2. The principal office of the Fund shall be located in Trinidad and Tobago.

3. The Fund shall conclude an agreement with the Government of Trinidad and Tobago on the status, privileges and immunities of the Fund."

Article XII stipulates that, in order to fulfil the functions with which it is entrusted, the Board of Trustees and Officers of the Fund shall be accorded the status, privileges and immunities normally granted to inter-governmental organizations and their officials including immunity from legal process inviolability of the archives of the Fund, appropriate treatment of official communication and exemption from taxation and customs duties.

Mr. Speaker, this Bill seeks to give the force of law to an Agreement by virtue of which Trinidad and Tobago has committed some US $29.73 million of taxpayers' resources to the Fund.

It seeks to give a proper legal basis for the functioning and operation of the international organization, the Caribbean Court of Justice Trust Fund that has been established as part of the entity for the management of the resources of the Trust Fund.

It provides for the conferment of privileges and immunities necessary for the organization and its officials to carry out their work. It affords protection to the Seal of the Fund.

It is to be noted that amendments to the Agreement requires a special majority of members of the Fund to be effective; it requires a majority of three-quarters of members. The period for withdrawal from the Agreement is tied to withdrawal from the Agreement established in the Caribbean Court of Justice.

Article XII provides in respect for the Fund:

(a) immunity from legal processes of the fund;

(b) inviolability of the archives of the Fund;

(c) exemption from taxation of the Fund, its assets and property, its income and its operations and transactions;

(d) exemption from income tax on salaries and emoluments paid by the Members of the Board or Officers;

(e) treatment of the official communication of the Fund similar to that accorded to official communication from other members.

In respect of officers of the Fund for:

(a) exemption from payment of income taxes except for nationals or permanent residents;

(b) exemption from immigration restrictions, alien registration requirements and national service obligations, and similar facilities regarding exchange control restrictions, as are granted to employees of comparable rank of Members;

(c) repatriation facilities in time of international crisis no less favourable than those granted to the representatives, officials and employees of comparable rank of any other Member.

In respect of the Trustees of the Fund:

(a) immunity from legal process in respect of lawful discharge of their responsibilities under the Agreement;

(b) exemptions from immigration restrictions, and the grant of such facilities as would ensure the proper discharge of their functions.

In conclusion, Mr. Speaker, the Fund has been operating in Trinidad and Tobago since its Vesting Deed was signed on July 04, 2003. The Fund and its officers enjoy privileges and immunities in Trinidad and Tobago pursuant to the Privileges and Immunities Caribbean Court of Justice (CCJ), Regional Judicial and Legal Services Commission (RJLSC), and the Caribbean Court of Justice Trust Fund Order, 2004 made by the President under section 92 of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act and deemed to have come into effect on August 22, 2003.

In accordance with the stipulation contained in Article XI, paragraph 3 of the Revised Agreement, the Government of Trinidad and Tobago and the Trust Fund are in the process of concluding an Agreement established in the Caribbean Court of Justice Trust Fund in Trinidad and Tobago.

As host to the CCJ Trust Fund, the Government of Trinidad and Tobago is under an obligation arising from the treaty commitments to do its part to facilitate its success by helping to put in place the physical, institutional and legal infrastructure required for the association to achieve the goals set for it.

Mr. Speaker, this Bill represents a continuation of the institution building process on which we have embarked in the Caribbean Community by establishing a Caribbean Court of Justice that has the power to adjudicate on disputes touching on the interpretation and application of the Revised Treaty of Chaguaramas as well as act as a final court for civil and criminal appeals from those jurisdictions that accept its appellate jurisdiction.

I therefore unhesitatingly recommend that hon. Members of this House support this Bill to provide for the implementation by the Government of Trinidad and Tobago of certain of the provisions of the Revised Agreement establishing the Caribbean Court of Justice Trust Fund and for related matters.

Mr. Speaker, I beg to move.

Question proposed.

Mrs. Kamla Persad-Bissessar (*Siparia***)**: Mr. Speaker, I asked the hon. Minister to indicate what moneys have been expended thus far with respect to the Caribbean Court of Justice by Trinidad and Tobago and the Minister asked me to be patient, I remained very patient, and he has reached the end of his contribution and has not disclosed how much money Trinidad and Tobago has spent on the Caribbean Court of Justice.

Mr. Speaker, this Agreement was signed in 2004, and the Caribbean Court of Justice was inaugurated in Trinidad and Tobago I think some time last year. Looking at the actual expenditure given in the draft estimates as at the end of the financial year 2004, disclosed that the Government's actual expenditure on the Caribbean Court of Justice was $206.7 million. [*Interruption*]

Mr. Speaker: Order!

Mrs. K. Persad-Bissessar: That is only as in 2004. We do not know what the expenditure was for 2005 and for this part of 2006. Not a single case has been dealt with that has come out of the jurisdiction of Trinidad and Tobago.

When that Agreement was negotiated, the Government was in full force that it would come to this Parliament and get the required majority to replace the Privy Council with the Caribbean Court of Justice, which was the Bill that was brought here. I want to say thanks to the UNC Members on this side who did not give that

support and retained the Privy Council. [*Desk thumping*] We have seen the rulings out of the Privy Council; we have seen the judgments that are coming out and we have seen the issue with the Maha Sabha radio licence. Thanks to the Privy Council. The local court did not mandate the Government to give licence, it asked for Cabinet to reconsider.

Mr. S. Panday: Weak! Tongue in cheek.

Mrs. K. Persad-Bissessar: Of course, the Cabinet had already reconsidered and it had refused it and this knowledge was withheld from the Court of Appeal on two occasions.

Hon. Member: What a shame!

Mrs. K. Persad-Bissessar: Mr. Speaker, we are talking about justice, the Caribbean Court of Justice and funds for this Caribbean Court of Justice. What was the role of the Attorney General as a respondent in that court case, as the Attorney General of the nation, and as a Member of the Cabinet sitting in the Cabinet where the decision was taken to withhold the licence from the Maha Sabha and that knowledge was not shared with the Court of Appeal? It was only when it went to the Privy Council this information came forward. What was the role of the Attorney General? He must explain what his role was in withholding that vital information from the Court of Appeal on two occasions.

Mr. Speaker, I am coming back to the money. Not a single case has been heard from the jurisdiction of Trinidad and Tobago and secondly, we retained the Privy Council as our final Court of Appeal and when this Agreement was negotiated, it was negotiated that Trinidad and Tobago will pay the largest share and put the largest contribution into the Trust Fund but at that time Trinidad had expected that the court would operate in its appellate jurisdiction as the final Court of Appeal for Trinidad and Tobago.

That has not happened and it is totally irresponsible for the Government, and with due respect, the Minister of Foreign Affairs to ask us to approve an Agreement that was predicated upon facts that have not materialized. So if Trinidad and Tobago were being asked then to pay 29 per cent, the highest percentage of any of the nations towards this Caribbean Court of Justice, surely today when Trinidad and Tobago is not part of the appellate jurisdiction of that court but only with respect to the original jurisdiction, then we should have renegotiated this Agreement.

We should have said we are not using this as our final court. As an appellate court all it would be is for the trade matters in the original jurisdiction, therefore, there is no need for Trinidad and Tobago to pay 29 whatever per cent of the Trust Fund. So we cannot support it on that ground.

Secondly, I cannot support this Agreement because whilst it speaks about recognizing the critical role of the court in the administration of justice determined to promote and safeguard independence, integrity and credibility of the court, this court is in my view unconstitutional, and I would not speak much more on it because I have had that matter on behalf of Sen. Dr. Kernahan and another party that the Caribbean Court of Justice, even in its original jurisdiction is unconstitutional. It is in contravention of our Constitution and the provisions in it.

Here we are saying that we are going to contribute 29 per cent of money in a Trust Fund of US $100 million to a court that does not comply with the constitutional requirements of Trinidad and Tobago, a court which does not give independence to its Judiciary, a court where there are persons who do not have security of tenure or any of the safeguards that are expected for persons sitting on a Judiciary. That is the way this Government works. The way it safeguards its Judiciary, the way it safeguards its machinery and administration of justice in the country is to give security of tenure and provisions that will call for non-interference of judicial officers, but this Government has no regard for this operation of powers and that is why today it has taken an ordinary policeman to charge the Chief Justice when the Constitution clearly provides a measure and a mechanism by which a Chief Justice is to be removed.

Mr. S. Panday: Although they preach it, they do not mean it.

Mrs. K. Persad-Bissessar: You do not remove a Chief Justice by sending a policeman to search his office, or to go with a summons to arrest him. There are constitutional provisions for the removal of a Chief Justice if there is impropriety in his conduct. Where there is impropriety in his conduct, there is the constitutional provision to set up the tribunal to enquire into that and take it right up to the Privy Council so you do not have the local interference. This Government has shown clearly that it controls elements within the police service and, therefore, will use those elements to intimidate, and it is a form of thuggery with which we cannot agree.

If the Chief Justice is guilty of impropriety, it is not for the criminal court to determine that, but for the tribunal constitutionally set up to determine. Therefore,

it is our view that the Government will continue to manipulate the judicial process and the police service in order to get its own ends.

I have seen again where workers were being brought out the day Ian Atherly resigned calling for Marlene Coudray to go. They brought out these workers to say: "Coudray must go." What they failed to get through the court—again using thuggery—lined up all these people outside the Town Hall to say: "Coudray must go."

Hon. Member: Who did that?

Mrs. K. Persad-Bissessar: Why is it when all the time Coudray is there the court has said she is there, the day Atherly goes, Coudray must go too?

Mr. Speaker, I am saying the measures being pursued by Government leaves us in great fear with respect to the democracy in this country and the independence of institutions.

Mr. Speaker, I come back to the money in the minute left before the break. How much money has Government spent to date? What salaries are we paying to these judges for not doing a single case for all these years? When you came to us with the Caribbean Court of Justice Act, we did not support it but it was passed because it went with a simple majority and within it is contained in Appendix II that the President of the court EC dollars, blank; any other judge of the court, EC dollars, blank; judges shall be paid benefits in respect of service.

Every judge of the court shall be paid a monthly allowance for housing to be determined by the heads; every judge shall be paid a monthly allowance for a chauffeur; every judge shall be paid a travelling allowance; every judge shall be provided with telephone services free of charge; every judge shall be paid a subsistence allowance.

Mr. Speaker, how much money have we been spending on these judges who have done absolutely nothing and will do very little when it comes to the original jurisdiction of the court? Why then should Trinidad and Tobago have to contribute 29 point whatever per cent to the upkeep of this illegal and unconstitutional court?

So here we are, TT $207 million as at 2004, 2005, how much are we paying? We are now being told that these moneys are for the Consolidated Fund, but if I heard the Minister correctly, he said that the Fund has been operating since I do not know when, since you signed the Agreement. So are we now rubber-stamping retroactively moneys that you have spent from Trinidad and Tobago that were not charged against the Consolidated Fund?

Mr. Speaker: Hon. Members, the sitting of the House is suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mrs. K. Persad-Bissessar: Mr. Speaker, there are other issues with the Agreement. In fact, if I may remind the hon. Speaker, this Bill seeks to establish the Caribbean Court of Justice Trust Fund and what it is doing is really making law the Revised Trust Fund Agreement. So what we are putting into the law of Trinidad and Tobago would be the provisions of the Agreement, therefore we need to scrutinize these. I have already indicated when I spoke earlier that we would ask the Minister to have the Agreement renegotiated to reflect the very little time that Trinidad and Tobago would get from that court, on the basis of the fact that its appellate jurisdiction does not apply in our jurisdiction here. I ask again that the Agreement be reconsidered when we come to look at the composition of the board of trustees, because here it is we are being told of the persons who would sit as a board of trustees. Firstly, it gives no time frame. Does it mean that these persons would sit for the rest of their lives? Is that how it would be?

Hon. Member: It says three years.

Mrs. K. Persad-Bissessar: No, it does not say three. It says at Article VI: "The Chairman and Vice-Chairman shall hold office for a period of three years," but there is no time frame for the trustees. And as far as I know once there is an appointment there is a period of time.

Secondly, you have a situation where you are naming the President of an association but the President of the association will not continue in office where there are usually elected positions. Take, for example, the Chairman of the Conference of Heads of the Judiciary of Member States, that changes because it rotates in some manner. You have the President of the Caribbean Association of Industry and Commerce, that also rotates. You have the President of the Caribbean Congress of Labour, that also goes up from time to time; it falls to a different person.

So where these persons are appointed, what happens when they no longer hold that office? You would say it is simple: The next incoming president or chairman, as the case may be, would take over. But there is no provision here to make that express. So I am saying, when you take the two together, the fact that there is no

time frame for the appointment and, secondly, the fact that these persons are going to change, then you need to have a provision to allow for the successor chairman or president to come on, because you only have at Article VI:

"Where a trustee—

(a) resigns or dies;

(b) becomes bankrupt or otherwise insolvent;

(c) becomes unwilling or refuses to serve as a trustee;

(d) is convicted of an offence involving dishonesty; or

(e) in the unanimous opinion of the other members of the Board, becomes unfit or incapable to act as such..."

So you must have a provision that would include where the officeholder changes that the incumbent officeholder would be the person to sit on the board of trustees. That is with respect to Article VI of the Agreement which deals with the composition and removal of trustees. Then the same Article VI, paragraph 4 says:

"Where an institution fails to nominate a trustee in accordance with paragraph 3 or an institution mentioned in paragraph 1 ceases to exist, the Secretary-General may designate a person or persons, as the case may require…"

Again, there should be some kind of time frame, where an institution fails to nominate a trustee. Does he do it after one week, one month, one year, where there is a failure to nominate the trustee? There should be some time frame given that the institution is to nominate and failure so to do within three months, or one month as the case may be, of notification, then the power of the Secretary-General would kick in. But it cannot be left, as it were, for an indefinite period of time. The wording of it here does not take that into account.

When we look at other areas in the Agreement that we are trying to make law, I find it most strange that you set up a board of trustees to administer this fund of US $100 million and in Article XII, paragraph 12, it states:

"The Trustees:

(a) shall be immune from all legal process in respect of the lawful discharge of their responsibilities under this Agreement;"

Who will determine lawful? Certainly it is going to be a court of law. So I do not understand the immunity being given from all legal process. If the trustees have acted illegally, it would be a court that would determine the legality or illegality

and, therefore, you cannot grant them this blanket immunity. So that also needs to be reconsidered.

Article XIII deals with an amendment to the Agreement. It says:

> "Any Member may submit to the Board a proposal to amend a provision of this Agreement. The Board shall promptly submit the proposal to all other Members. The amendment shall take effect on the thirtieth day following the date on which the Secretary-General…has received the approval of three-quarters of the Members."

This is what the Agreement says would happen in the event there is an amendment. That means that any of these things that we are now placing into law can be amended in the manner Article XIII says. But then when we go to the Bill, it talks about having a negative resolution of Parliament for amending that schedule. There is a conflict. It is contradictory, because in clause 3 of the Bill you say, first of all:

> "The Fund Agreement shall have the force of law in Trinidad and Tobago."

And the Fund Agreement is that schedule contained in that Article XIII that I have spoken of. Then you would come to the amendment of the Fund Agreement which is clause 8(1) that states:

> "(1) Where any amendment of the Fund Agreement is accepted by the Government, the Minister may, by Order, amend the Schedule to this Act for the purpose of including therein, the amendment so accepted.
>
> (2) Any Order made under this section may contain such consequential, supplemental…"

And such Orders must come for negative resolution of Parliament.

So there is a conflict. We would have to say that the Fund Agreement shall have the force of law in Trinidad and Tobago, save and except for those provisions as contained in this Bill. In that way, where there is any conflict within the Bill and the schedule agreement, you would be able to except them and allow the provisions of the Bill to prevail.

So you cannot have, in the Bill, that you can amend it only by coming for negative resolution of Parliament and yet declare that the agreement has the force of law in Trinidad and Tobago—that is your first clause of this Bill—and have in the agreement a different provision for amendment to the Trust Fund Agreement. There must be some way in which you can except anything that is contained in

the Agreement that is different from what you want to do within the law of Trinidad and Tobago. So whilst you have signed the Agreement—Mr. Manning signed it; I see his name listed as one of the signatories on behalf of Trinidad and Tobago—it is not part of our domestic law until we come here to make it part of the domestic law. And we have done this with treaties on many occasions; we except certain provisions because we want to have a different situation here in Trinidad and Tobago. That is clearly contradictory and, therefore, what would prevail? Would it be the Agreement provision or would it be the Act provision? The Minister can kindly explain through his technical people, if there is an explanation. But in my respectful view, this should be amended to take into account that conflict that would arise. The Fund Agreement shall have force of law in Trinidad and Tobago save and except for whichever agreement provisions are contrary to what you are now providing for in the Bill.

So those are some general statements on the actual treaty provisions that really need to be reconsidered. When we come to looking at what this money would be doing, then we raise another ball game, a whole host of other objections as to why we should not be going into this. I have already raised the issue of the unconstitutionality of the court and my colleague would bring the grounds for that. As I said, because I am advocating the matter, I would leave that to someone else to raise, but the issues have to do with, really, the administration of justice in Trinidad and Tobago.

Here we are, spending millions of dollars in a court that may hear one case for the year and what is happening in our Judiciary, in our Magistracy, in the infrastructure of the courts of Trinidad and Tobago? I have repeatedly come to this Parliament and talked about the 432,000 cases pending in our Magistrates' Courts—by now there would be even more—and the fact that we have only 40 magistrates. So per magistrate, we are talking in excess of 10,000 matters. No wonder why you go to the Magistrates' Courts and the matters are perpetually being adjourned for years. By the time you actually get a magistrate to be heard, the witnesses are either dead, disappeared or cannot remember anything, conveniently or otherwise.

So when we talk about the rate of conviction in this country, that rate of conviction where crime is detected, that percentage is very small also. But when you actually get to go to court to get a conviction, you have serious difficulties because I am saying that is one of the reasons; the backlogging of the courts that is going on here. Why do we not spend some money in our own local system? The $600 million—US $100 million—we are saying we are going to put in this

Trust Fund. I have already said $206 million has been spent, so is it a further 29 per cent now? Or is that $206 million the 29 per cent? The Minister has not given us any indication about moneys expended for this court thus far, and to be expended. So we have a lot of money and we are pelting it into this court but our system of justice in the country is in a state of collapse.

I spoke, very briefly, of the other ways in which the democracy is being eroded, but I am talking about the physical infrastructure of the Magistrates' Courts in this country. I am talking about the actual buildings, the equipment and the resources that are made available to the Magistracy. When you look at the fact that you are still taking notes by this longhand process, I wonder if the Hansard people now in this day and age could have been taking what we are saying verbatim, by hand. This is what a magistrate is required to do. Yes, Parliament and the *Hansard* is very important to get every word right, but certainly in a court of law it is essential.

Mr. S. Panday: The questions and answers.

Mrs. K. Persad-Bissessar: Yes, both the question and the answer have to be recorded, and that is taken elsewhere on an appeal and then on further appeals. So here we are still in this day and age—

Mr. Valley: How come we could do it here and they cannot do it there?

Mrs. K. Persad-Bissessar: How come we could do it here and they cannot in the courts is the question I am asking. The Minister is agreeing with me. Why can we not do it in the courts where justice is so important? This is so vital. Why we could do it here and cannot do it there is the issue of resources. It is true that they have given a budget—they say this is the budget for the Judiciary—but when you go back—and I do not have that with me here—and look at the report of the Judiciary you would see for the year that they ask for "x" number of dollars to be given to them, and then you would see a very miniscule amount as a fraction of the "x" dollars required for their development and infrastructure. Just a miniscule amount is given, so there is no way they can carry that forward.

I see my colleague on the other side is very anxious. I think he has a very important event this evening. I do not know what it may be. I understand it is to find a replacement for Mayor Atherly. You need to have your meeting going. We also have some things to do, so I would not burden this House much longer except to say that the Agreement needs to be seriously reconsidered. You would pass this because you have the majority, but I respectfully ask the Ministers to go back and renegotiate some of these clauses, which you are entitled to do, and you would get

an amendment and you come by the order for negative resolution on that issue, and my colleague would deal with the other issue of the unconstitutionality of the court.

I thank you, Mr. Speaker.

Mr. Subhas Panday (*Princes Town*): Mr. Speaker, this Bill came on the Order Paper only about a week or two ago. However, there has been a Bill on the Order Paper which is now No. 5 on the list, a Bill to amend the Supreme Court of Judicature Act, Chap. 4:01.

We ask the question: Why the speed to have this Caribbean Court of Justice Trust Fund Bill passed and you have a Bill which deals with our local Judiciary which has been on the Order Paper since January? It was No. 1 on the Order Paper at one time and today it has been relegated to No. 5. We ask them, why? What is this Bill to amend the Supreme Court of Judicature Act? That is a two-clause Bill, merely to increase the number of puisne judges from 23 to 28 and the Appeal Court from nine to 11.

Mr. Imbert: You are anticipating—

Mr. Speaker: I think the Member is hinting that you are breaching the Standing Order relating to anticipation. So could you come back to the Bill before us?

Mr. S. Panday: No, I am not anticipating the Bill, I am saying that they do not intend to bring the Bill and I would tell you why in a minute. They do not want to bring that Bill to the Parliament while the present Chief Justice is Chairman of the Judicial and Legal Service Commission. That is what it is. They intend to hound him out of office, and while he is there they do not want to bring the Bill. That is the politics that is involved and that is why, when one looks at the Caribbean Court of Justice Trust Fund Bill, you would see it is politics playing again and in those circumstances the Judiciary would find difficulty in being independent.

Why did they not bring that Bill? They brought one sometime ago, in 2003, to move it from 21 to 23 when the Family Court was set up, but, you see, they want to make sure when they hound the present Chief Justice out of office and they get one of their own as Chairman of the Judicial and Legal Service Commission, then they would pass that Bill. When politics is played with the Judiciary in such a way, we ask the question: Where is the rule of law and the separation of powers? Anything the PNM does, you have to watch them very closely.

Sometime ago in this Parliament they brought a Bill and we told them that when you look on the surface of the Bill, it appears to be innocuous. But in truth and in fact, they were trying to get rid of certain people and they passed a law; they used this Parliament, as the Member for Chaguanas was saying: Do not use the Parliament to do dirty work. [*Interruption*] They want to catch me by saying I raised something within six months of the sitting of the House, but they know what I am talking about. That is why Mayor Atherly said: "I am disgusted by what happened in the last few days, but I would leave with dignity."

Mr. Valley: What are you talking about?

Mr. S. Panday: You know what I am talking about. They took a whole Bill; they used this Parliament to get rid of Atherly.

Mr. Imbert: "All yuh doing all yuh thing tomorrow. All yuh bacchanal start tomorrow. All yuh have all yuh confusion starting tomorrow."

Mr. S. Panday: Mr. Speaker, that is the way the PNM operates. If it means that they have to use the Parliament to do dirty work—that is what they did. When you play with the court system like this, people lose faith in the system. That was manifested in the Maha Sabha case, where the Maha Sabha claimed that there was discrimination in the grant of the radio licence. But what do you find? Politics would have appeared to permeate the judicial system, as we know it would permeate in this case where, "he who has the purse would determine how it goes."

Mr. Imbert: Why not? Somebody else must determine my purse for me?

Mr. S. Panday: The judge in the puisne court said that he thinks the Maha Sabha's application was not properly considered. Tongue in cheek: Although Justice Best ruled that the Cabinet award of a radio licence—that is to Lee Sing—amounted to discrimination, he said there was no need for further declarations that the Maha Sabha has been denied the freedom of expression or that its right to freedom of religion has been constitutionally infringed. Tongue in cheek! The judge is sitting there and is seeing the discrimination but would not go that step further.

Then they went to the Court of Appeal and the judge in that case declined to direct Cabinet to grant a licence. It went to the Court of Appeal—

Mr. Valley: How you reach there?

Mr. S. Panday: By appeal from the lower court. You do not know how it reaches there?

Mr. Speaker: I do not think he meant that. He meant you are being a little irrelevant. I am just telling you. I think that is the question he asked. When he said: "How you reach there?" I think that is what he was asking you. I think that matter has been ventilated by speakers before so let us come back to the Bill before us.

Mr. S. Panday: Mr. Speaker, I want to congratulate you for being more intelligent than my learned friend, because you did not stand on a point of order, but he tried to interfere with me. The point I am making is political interference in the Judiciary and this Government has a history of doing so and I am saying the Caribbean Court of Justice would be no different from these courts. That is the point I am making. That is the way I am tying it to this.

When it went to the Court of Appeal, Justice Mendonca, as he was, said although there was evidence of differential treatment, such treatment did not amount to discrimination within the provisions of the Constitution. So you listened to how our local courts treated the matter, but when it went to the Privy Council, it was direct and said: "Yes, there was discrimination", and it went further and said: "Give the licence."

The point I am making is that the Caribbean Court of Justice could be reached by politicians, it would appear, but the Privy Council, the distance away—

Mr. Rahael: How does it appear that way, that the politicians would reach the Caribbean Court of Justice?

Mr. S. Panday: Who is paying the money to keep the court floating? What this Bill is about today is the Parliament authorizing the Government to allot money to the Caribbean Court of Justice. We do not trust the PNM! We do not trust the PNM as far as it pertains to the independence of the Judiciary!

Mr. Valley: You trust the UNC?

Mr. Speaker: Order, please.

Mr. S. Panday: Anything except the PNM. Nothing could be worse than the PNM.

Mr. Imbert: You have a long time in Opposition.

Mr. S. Panday: I want to ask this question: This Bill says that you are putting money in this Caribbean Court of Justice Trust Fund Bill—

[*Mr. Valley groans*]

You could groan how much you want, you would listen!

Mr. Imbert: You are a poor copy of your brother.

Mr. Speaker: Order, please.

Mr. S. Panday: You ask the question: Do you know how the courts operate? They come to a decision and then justify the answer by their reasons. So you ask yourself: How is it in such a case two of the local courts went in a certain direction, tongue in cheek, as though they are walking on egg shells? How is that?

[*Mr. Valley yawns*]

Mr. S. Panday: You could yawn as much as you want. The answer is public policy. Public policy comes in a situation of the closeness of the court with the Government.

Mr. Valley: Public policy? [*Crosstalk*]

Mr. S. Panday: Yes, public policy demands that: "We went so; we did not want the Government to look bad; we were afraid that there would be a floodgate of litigation." But the Privy Council being away, beyond the long arms of the Government, stood up and said: "Government, you are wrong." [*Crosstalk*] You cannot take it; you would wait.

We are saying that we are afraid that the Caribbean Court of Justice being so close in the Caribbean and knowing that it is being sponsored, and being paid for by the Caribbean government, would always have to look behind it. That is why we said on the last occasion that we did not support the Caribbean Court of Justice in the appellate jurisdiction. That is what we were afraid of; PNM interfering with the Caribbean Court of Justice.

Do you know how judges are appointed? Do you know the terms and conditions that they put in the Caribbean Court of Justice? You must be a judge for a certain number of years or be somebody lecturing somewhere for 15 years. If you watch the Caribbean Court of Justice, you see something on paper, and when you watch how the PNM moves, it is like a mapepire moving through the bushes. It is strange. Because Trinidad and Tobago is funding this Caribbean Court of Justice more than any other country, was that the reason they got the Chairmanship of the Caribbean Court of Justice? And the second judge to be appointed is another judge from the Trinidad and Tobago Court of Appeal. [*Crosstalk*] Of course, I am against it, because the Chairman of the Caribbean Court of Justice was in the same chambers with the former PNM treasurer, Anthony Jacelon, of the firm of—I would not call people's names—but was in the same firm of the treasurer of the PNM.

I ask the question: Is it because he was in the same firm with the treasurer of the PNM that the PNM catapulted him and brought him from outside, in front of all the judges in line for promotion and put him as Chief Justice? And when his term was finished, sat there pontificating about the establishment of the Caribbean Court of Justice, knocking people, saying why we must hold on to the coat-tails of colonialism and the shackles of colonialism. They were singing for their supper, preparing themselves for the top job.

When you look at how the President of the Caribbean Court of Justice was appointed, one would see that there appears to be a link between the PNM and the Caribbean Court of Justice. I am not sure it is so, but justice must not only be done, but justice must manifestly appear to be done. As a matter of fact, we are passing money and they "ain't" do a case yet. We are giving them large salaries and they have not done a case as yet.

Then after that you have a Caribbean Commission, which appoints the other judges. We on this side are saying that although—I will argue in a few minutes—the court, even with its original jurisdiction is unconstitutional, what could have happened was that the other part of the jurisdiction which was original, which had to deal with interpreting the terms of the Treaty of Chaguaramas and the Revised Treaty, would be dealing with matters which were not contentious and matters which do not affect the masses in the country, and after a number of years, after the persons who were politically appointed as Chairmen of this Caribbean Court of Justice, when a new breed of persons come, then the public could think about the appellate jurisdiction of these courts.

We are saying that the Caribbean Court of Justice as it stands today, having regard to the various aspects of its composition, we are spending money behind a court because we feel we could control it and we feel it would go where we want it to go. It is more relevant today than when it was first thought of, because this Government is such a discriminatory Government, such a vindictive one, that you are finding more and more cases being brought in the courts against the Government. Do you remember the case of the policemen; the prison officers? All those because of PNM discrimination against the people, and the PNM is so blatant with its discrimination; it is not discrimination of race anymore, but against everybody whom it thinks it wants to control and cannot control. That is what PNM is and what it stands for.

5.30 p.m.

They feel that by coming here and passing this Bill they are telling the judges in the Caribbean Court of Justice (CCJ) what they have been doing for them. They

have come and done certain things for them with the intent to control those courts. I feel that they may succeed. We ask: Why are you so hurry? Why do you not deal with the situation in Trinidad and Tobago, firstly? We have problems in Trinidad. Why is the PNM refusing to deal with the problem? Why have they refused to deal with the amendment to the Supreme Court of Judicature Act? Is it because they do not like the acting judges whose temporary term will come to an end in July? You do not like the judges there as Justice Lalla and Justice Kokaram?

Mr. Imbert: You like them?

Mr. S. Panday: They are good judges. Justice Brooks, A-class judge, very good judge.

We have introduced the new Supreme Court rules in this country and because of that there is frontloading. At this point in time when a case is filed it sticks to a judge. It is not as long ago when you go to court a judge will adjourn and the matter would be moved around the court. As a result of that every judge requires a trial court because after pre-trial reviews you have to go to court. When you have to go to court there is a problem in finding a court to do the case. Fifteen judges require courts to do their cases. Under the new rules you may have to wait until January next year before you can find a court. All the courts are occupied.

We passed the Supreme Court of Judicature Bill to speed up the administration of justice. Because the Government is negligent and recalcitrant it has not put the infrastructure in place and as such, we are having the negative result of those rules. Why do we not see about our problems first? Up to 12 noon today, in San Fernando, not a single prisoner was brought before the court. There are hundreds of them like that. When you transport prisoners from Golden Grove to the court in San Fernando and they arrive at 12 o'clock, the time the court takes to go through the list nothing could be done.

We are hurry to pass the Caribbean Court of Justice Trust Fund Bill. How many cases are going there? Very few! In our society, whereas the Member for Siparia and Leader of the Opposition indicated that about 432,000 cases are in our local courts and we are doing nothing about them, why do we not deal with our problems in Trinidad and Tobago before we go there? As the Member for Siparia indicated they have not dealt with any cases. I think one from Barbados and one from Guyana went but nothing happened to them. In any event, as far as Trinidad and Tobago is concerned, when one checks the cases that go to the Privy Council, it is not more than 15 cases per year. You are spending $207 million and not a

single case has been done. In our jurisdiction both in the lower and higher levels of the Judiciary the system is clogged. What about the courts in Rio Claro and Siparia where barefoot people are crying out for justice and they cannot get it? We are going to the Caribbean Court of Justice. Nationalism and patriotism! Why do we not deal with our issues?

As they mentioned in the major debate they want to shake off the shackles and have nationalism. That is not the purpose of a court. That is BWIA. You are making the court sound like BWIA, the national airline. Not performing! In the red all the time! When you bring a court for nationalism you will suffer the same fate because that is not the purpose of a court. The purpose of a court is to dispense justice.

We cannot support this amendment to the Caribbean Court of Justice Trust Fund Bill because we feel that it may be an exercise in futility. I know two persons who are about to file action to declare that the Caribbean Court of Justice is unconstitutional. Why is the Caribbean Court of Justice unconstitutional in its jurisdiction?

Mr. Valley: Do not argue the case now. Leave it for November.

Mr. S. Panday: We want to put it on the record. We warned you. Instead of wasting this amount of money, put your house in order first. They are seeking a declaration to the ouster clause contained in section 14 of the Caribbean Court of Justice Act, No. 8 of 2005, its unconstitutional abrogation of an aggrieved person's fundamental right of equality before the law and access to the Supreme Court for redress and is null and void. You have not thought about it or you just do not care and you will do what you want because you have the majority. They want a declaration that the Caribbean Court of Justice Act, No. 8 of 2005, insofar as it gives the force of the law to Article XXVI of the Caribbean Court of Justice agreement which confers power to the CCJ for the enforcement of Orders is unconstitutional, null and void. I will tell you why. The reason is—

Mr. Speaker: Hon. Member, I am not sure whether you are going on the right track. This matter has been filed and it is before the court. The litigants have an extremely experienced and good counsel. I think it is the hon. Member for Siparia. Be careful that you are not prosecuting the case here. Be careful how you are going.

Mr. S. Panday: To drive the point home, they speak about an original jurisdiction and included in that, is an appellate jurisdiction. That would be a court that has original jurisdiction from which you cannot appeal. In it there are

original and appellate. That court could make a final determination of disputes concerning your fundamental right. Remember that section 4 of the Constitution speaks about the rights and obligations of citizens of Trinidad and Tobago including property rights.

Mr. Speaker: You should leave that trend for the courts. Get back to the funding. I think this is what we are dealing with here.

Mr. S. Panday: If this legislation is successful, this funding that we are pumping into the CCJ might be an exercise in futility. If the court strikes down the CCJ as being unconstitutional—for other countries appellate and original—in our country, the original jurisdiction—all this money that we are pumping there would be a waste of money. As my colleague has indicated, we on this side do not intend to support this Bill.

Thank you very much.

The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift): Mr. Speaker, the Member for Siparia raised some points some of which are not without merit and can be dealt with now. Among the issues she raised, were the appointees to the board of trustees and the duration of the term. She said that it was not specified and she was enquiring about the duration of the term of office. She also touched on the question of the membership and how it was drawn. The board of trustees is comprised of, not individuals on a personal basis, but from an institutional basis. You will see as far as that definition is concerned they are being drawn from a number of institutions.

Mrs. Persad-Bissessar: Will the Minister give way? How then will the institution die? A trustee will lose the office if he dies. If the institution is the trustee, are we saying it is when that institution dies? I am sorry. I do not understand that.

Sen. The Hon. K. Gift: Mr. Speaker, the trustees are not nominated on an individual basis. They represent a cross-section of Caribbean institutions such as the Caricom Secretariat where we have the Secretary-General; the Vice Chancellor of the University of the West Indies; the president of Insurance Association and the list goes on. We are not talking about persons or individuals here. These institutions will not die. The nomination is not in their personal capacity. The rationale for this is very valid. As we intend to ensure that the longevity of our institution continues we link them together. The CCJ would become more intimately intertwined with the general regional institutional arrangements as listed here.

She also raised the question of immunity and whether we are conferring on the trustees, blanket immunity. Not in the least. Article XII 12(a) and (b) provides specifically. The immunity that we talk about within the document is immunity from legal process in respect of the lawful discharge of their responsibilities under the agreement. It is not blanket immunity.

The Member for Princes Town is wondering about the longevity of the CCJ. He posits that the CCJ may be short-lived. I believe that it is not difficult to comment that that is in the realm of speculation. The response cannot be premised on hard facts. We know that the CCJ is here to stay.

On the question of whether we can renegotiate the agreement, one of the attributes of this administration is that we take foreign affairs as a very serious exercise. The basic premise is that you must have credibility. If you do not have that no government would be willing to engage with you in terms of an agreement. This is a gentle reminder that the CCJ is a product of the last administration which we inherited. We applaud them for that initiative because we believe that it contributes to the regional integration process of which Trinidad and Tobago is an integral part. The question of whether we should renegotiate does not now arise. We signed on to the Revised Treaty of Chaguaramas.

There is another point here. I wonder if the Member for Siparia is not splitting hairs. I will tell you why. We are seeing one court with two jurisdictions, not two courts. When you sign on to the court you are signing on to the responsibility that is attached to a single Caricom court. You cannot talk about renegotiating your obligations. The Treaty does not admit that. It is worthwhile to point to a gentle reminder in that regard. All this was done by the administration that we followed. Again, we applaud them for that initiative. We think it makes a bold statement in the area of Caricom integration.

The Member for Siparia requested some figures insofar as our commitment and obligation to the institution are concerned. They are not now available but as we always indicate we are prepared to assist in that regard. If the agreement is that we can pick up on this Bill at another time we would try to give those numbers for the benefit and advantage of the House.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

Clause 3.

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

Mrs. Persad-Bissessar: Clause 3, "The Fund Agreement shall have the force of law in Trinidad and Tobago." I had raised the concern that this is in conflict with provisions that come after in the Bill with respect to how you would deal with an amendment.

Article XIII of the Schedule speaks of a process by which an amendment would arise and take effect. In the Bill we have an amendment would take place in a different regard, where it would come by order and then resolution of the House. Which one will have the force of law? You have both and they are conflicting. I am asking you to except Article XIII.

Mr. Valley: I am advised that nothing is wrong with the draft. Article XIII is part of an agreement between states.

Clause 8(1) says:

"Where any amendment of the Fund Agreement is accepted by the Government,..."

It presumes that firstly, there must be acceptance.

"the Minister may, by Order, amend the Schedule to this Act for the purpose of including therein, the amendment so accepted."

Mrs. Persad-Bissessar: It does not say that. We could do it; it is not that it is wrong. It is the way it is worded. Hear what you are saying and that is what should be reflected there to cover it.

Mr. Valley: I am advised that there is nothing wrong with it.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

Clauses 4 to 7 ordered to stand part of the Bill.

Clause 8.

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

Mrs. Persad-Bissessar: Here you have expressed provision for the procedure to be adopted for an amendment. In clause 3 which we have passed already, you

have said that this agreement takes effect. I am asking you to marry the two and let it be done.

Mr. Valley: I do not understand the point you are making. Clause 3 says:

"The Fund Agreement shall have the force of law in Trinidad and Tobago."

Clause 8 is saying whether it is the Fund Agreement or an amended fund agreement, it has the force of law. That does not mean that it cannot be amended. Clause 8 is saying that it can be amended in a particular way.

Mrs. Persad-Bissessar: I hold my argument but you said that you are being advised otherwise. You have the majority. I felt it my duty to make the point.

Mr. Valley: Beyond that, I have just read it in a common sense way and it seems to make sense to me.

Mrs. Persad-Bissessar: You have the majority, Sir.

Question put and agreed to.

Clause 8 ordered to stand part of the Bill.

Schedule ordered to stand part of the Bill.

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

House resumed.

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

PUBLIC ACCOUNTS (ENTERPRISES) COMMITTEE REPORT
(Adoption)

Dr. Hamza Rafeeq (*Caroni Central*): Mr. Speaker, I beg to move the following Motion standing in my name:

> *Be it Resolved* that the First Report of the Public Accounts (Enterprises) Committee, for the First, Second and Third Sessions of the Eighth Parliament on the Ministry of Energy and Energy Industries be adopted.

This report was laid in the House of Representatives about four or five weeks ago. I am sure that Members had the opportunity to read it. I will like it to be adopted so that the recommendations can be implemented.

I beg to move.

Question proposed.

Question put and agreed to.

Resolved:

That the First Report of the Public Accounts (Enterprises) Committee, for the First, Second and Third Sessions of the Eighth Parliament on the Ministry of Energy and Energy Industries be adopted.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, as I rise to move the Adjournment of the House I would like to thank all Members for the work that we have done since the beginning of the current session which started on September 26, 2005.

So far, we have introduced 19 Bills in this House and passed about 17, 15 of which have become Acts. We have answered all questions on the Order Paper other than one and the Member is not here. There are some which have not met the 21-day requirement. All in all, I think that it has been a very good session. All Members have earned a well deserved rest.

In that regard, I move that this House be adjourned to a date to be fixed with the clear understanding that we expect to be back in Parliament around August 18, 2006.

Mr. Speaker: Is that all you want to say?

Hon. K. Valley: I hope that when we return to the House there would still be the Member for St. Augustine as political leader of the UNC. We like him.

Dr. Rafeeq: Mr. Speaker, I think that the Leader of Government Business should also thank the Chief Whip for the good times we have had in Parliament so far.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 6.00 p.m.