HOUSE OF REPRESENTATIVES

Friday, February 06, 2009

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

SESSIONAL SELECT COMMITTEES

(APPOINTMENT OF)

Mr. Speaker: Hon. Members, in accordance with Standing Order 71(2), I hereby appoint the following sessional select committees of the House of Representatives for the 2009 Session:

Standing Orders Committee

Mr. Barendra Sinanan	Chairman
Ms. Christine Kangaloo	Member
Mr. Colm Imbert	Member
Miss Donna Cox	Member
Mr. Harry Partap	Member
Miss Mickela Panday	Member
Mr. Subhas Panday	Member

House Committee

Mr. Colm Imbert	Chairman
Ms. Pennelope Beckles	Member
Mr. Roger Joseph	Member
Mr. Junia Regrello	Member
Mrs. Kamla Persad-Bissessar	Member
Mr. Chandresh Sharma	Member

Committee of Privileges

Mr. Barendra Sinanan	Chairman
Ms. Pennelope Beckles	Member
Ms. Christine Kangaloo	Member
Mr. Stanford Callender	Member
Dr. Roodal Moonilal	Member

Dr. Tim Gopeesingh	Member
Mr. Colm Imbert	Member
Mrs. Kamla Persad-Bissessar	Member

Regulations Committee

Mr. Barendra Sinanan	Chairman
Mr. Mustapha Abdul-Hamid	Member
Mr. Rennie Dumas	Member
Mrs. Indra Sinanan Ojah-Maharaj	Member
Mr. Chandresh Sharma	Member
Mrs. Kamla Persad-Bissessar	Member

ORAL ANSWERS TO QUESTIONS

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, I apologize, profusely, perhaps it is all of the sittings we have been having one after the other—[*Interruption*]

Mr. B. Panday: [*Inaudible*]

Hon. C. Imbert: Could be—but I would beg and crave the indulgence of the House for a deferral for two weeks of the three questions that are on the Order Paper.

Mr. Speaker: Yes, I do recognize that extraordinary circumstances occurred this week, but certainly I would imagine that on the next occasion these questions would be answered.

The following questions stood on the Order Paper in the name of Dr. Hamza Rafeeq (Caroni Central):

Burns Centre
(Construction of)

9. Could the hon. Minister of Health state:

a) how will the patients suffering from burns who cannot be treated at the government institutions in Trinidad and Tobago be managed; and

b) when will the Burns Centre be constructed?

Chaguanas Borough Corporation
(Approval for Edinburgh 500 Construction)

10. Could the hon. Minister of Planning, Housing and the Environment state:

a) whether the Housing Development Corporation or whichever government agency is constructing the high rise residential complex in the Edinburgh 500 area in Chaguanas received the necessary approvals from the Chaguanas Borough Corporation;

b) if the answer to (a) is in the affirmative could the Minister state the dates of such approvals?

Tucker Valley Farm
(Details of)

11. Could the hon. Minister of Agriculture, Land and Marine Resources state:

a) the total amount of money spent so far on the Tucker Valley Farm and provide an itemized listing;

b) the total projected annual costs of preparing, cultivating and reaping the crops at the Tucker Valley Farm; providing an itemized listing; and

c) the projected annual income from the sale of produce from the Tucker Valley Farm?

Questions, by leave, deferred.

COMMITTEE OF PRIVILEGES
(MRS. KAMLA PERSAD-BISSESSAR)

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, in accordance with Standing Order 27(2), I have sought and I presume obtained, your leave to raise the following Motion of Privilege at today's sitting of the House of Representatives.

On Monday, February 02, 2009, the Member of Parliament for Siparia, made a number of serious accusations against the hon. Minister of Finance. The *Hansard* record will show that the Member for Siparia said, among other things, and I quote:

> "Both the Minister of Finance and the Governor of the Central Bank withdrew money from the CIB, from the Clico group, prior to Friday, after knowledge and information came to them."

Prior to making this statement, the Member of Parliament for Siparia had also said, and I quote:

> "…under the Prevention of Corruption Act, if a person gets information, and they use that information for gain for themselves or any of their family or any other person otherwise that they know, then they are guilty of an offence."

The clear implication, Mr. Speaker, was that the Member of Parliament for Siparia was accusing the Minister of Finance of having committed the criminal offence of using insider information on the financial situation at Clico for personal gain.

In my view, the aforementioned accusation made by the Member of Parliament for Siparia is a clear breach of privilege, since she produced no evidence to back up her allegations despite the serious nature of same.

You should note, Mr. Speaker, that later on in the proceedings, the Member of Parliament for Siparia, attempted to excuse her transgressions by seeking to clothe her accusations in the framework of a question. But the damage had already been done and I submit that taken in its totality, a fair-minded observer, the man in the street as it were, would reasonably conclude that the Member of Parliament for Siparia had accused the Minister of Finance of having committed a criminal offence.

Further, during the rest of her contribution to the debate in the House of Representatives on Monday, February 02, 2009, the Member of Parliament for Siparia again without a shred of evidence, made other accusations of a criminal nature against the Minister of Finance with respect to the Clico matter. A full reading of the *Hansard* record will reveal the extent of what I consider to be the Member's breach of parliamentary privilege.

Mr. Speaker, there is no gainsaying the fact that the freedom of speech and debate in either House of our legislature is so essential to the rights of the people, that it cannot be the basis of any accusation or prosecution, action or complaint, in any court or other place whatsoever.

However, with such freedom, Mr. Speaker, comes tremendous responsibility, and it cannot be right for a Member to make accusations of a criminal nature against another Member, without a shred of evidence and then pretend that they were only asking a question.

Accordingly, I am of the view that the Member of Parliament for Siparia has committed a serious breach of privilege and in accordance with Standing Order 27(3), I ask that this matter be referred to the Committee of Privileges for consideration and report.

Mr. Speaker: Hon. Members, I have before me the Motion as moved by the hon. Member of Parliament for Diego Martin North/East. I will consider it and report to the House later.

Mr. B. Panday: And I will move a motion so that there will be an enquiry into everybody who draw money out.

Mr. Speaker: Order!

INSURANCE (AMDT.) BILL

Senate Amendments

The Minister of Finance (Hon. Karen Nunez-Tesheira): Mr. Speaker, I beg to move the following Motion standing in my name:

Be it resolved that the Senate amendments to the Insurance (Amdt.) Bill, 2009, listed in the Appendix of the Order Paper, be considered.

Question proposed.

Question put and agreed to.

Clause 3.

Senate amendment read as follows:

In the definition of the term "registrant" in sub-clause (b), delete the word "person" and insert the word "company".

Mrs. K. Nunez-Tesheira: Mr. Speaker, I beg to move that this House agree with the Senate in the amendment to clause 3 of the Insurance (Amdt.) Bill, 2009.

I beg to move.

Question proposed.

Mr. Speaker: Anybody would like to contribute on this amendment? The hon. Member for Fyzabad.

Mr. Sharma: Mr. Speaker, would you permit us to deal with clauses 3 to 10, or only on clause 3? Because I would much prefer to deal with all of them or would you allow it at a later point?

Mr. Speaker: We will deal with these amendments separately and Members, bear in mind that you must confine your contribution to the amendments. We are not debating the Bill again. It is only the amendment that you need to address your minds to. Please proceed. Clause 3.

Mr. Sharma: Mr. Speaker, then I would like to deal with clauses 7, 8, 9 and 10 when it comes to that point.

Question put and agreed to.

Clause 5.

Senate amendment read as follows:

In the proposed new subsection (7), delete the words "shall place assets in the statutory fund" and insert the words "shall place in trust in Trinidad and Tobago assets in the statutory fund".

Mrs. K. Nunez-Tesheira: Mr. Speaker, I beg to move that this House agree with the Senate in the amendment to clause 5 of the Insurance (Amdt.) Bill, 2009.

I beg to move.

Question proposed.

Mr. Speaker: The hon. Member for Princes Town North.

Mr. S. Panday: Thank you very much, Mr. Speaker. When one looks at the substantive Bill, one will see:

"In addition to requirements set out in subsection (6), every company registered to carry on long term insurance business or motor vehicle insurance business or both, shall place assets in the statutory fund—"

During the debate of this matter, we knew exactly that the companies had to place assets in the statutory fund. I would have thought that the Minister would have indicated to this House today, what is the meaning of "shall place in trust in Trinidad and Tobago assets in the statutory fund". Is that a new paradigm shift or is it placing the assets in the statutory fund, because who would be in control of the statutory fund? Is this a new development and who would be holding the trust, the Central Bank? Because in any case, the law says the assets have to go into a statutory fund, and the Central Bank will be in control of the statutory fund, so what is this new concept now of putting it in trust. Who will be the trustee, and what is the implication of that?

Mr. Speaker: The hon. Member for Siparia.

Mrs. Persad-Bissessar: Hon. Speaker, I do believe that this House needs to know why we are making this change, which is what the Member for Princes Town North is saying. Why are we changing what was passed in the House here "shall place assets in the statutory fund", and now you are saying, "place in trust in Trinidad and Tobago"? What is the difference is what the Member for Princes Town is saying?

Mrs. Persad-Bissessar: I am interested in the Minister telling us what kinds of assets we are speaking about that should be placed in the statutory fund. What kinds of assets would comprise acceptable assets for deposit in that statutory fund?

1.45 p.m.

Mrs. Nunez-Tesheira: Mr. Speaker, this is an additional subsection to section 37, which is the new subsection 37(7). If you look at subsection 37(6) and 37(5), in fact, the words, "shall place in trust in Trinidad and Tobago assets...in the statutory fund", all that is being consistent with the provisions that already exist, that are stated in subsections (5) and (6) of section 37. It is merely clarification, that these assets are placed in trust and they are in relation to assets and liabilities in the statutory fund in Trinidad and Tobago. It is set out in the previous subsections; it is just a matter of being consistent and clear.

Mrs. Persad-Bissessar: What kind of assets?

Mrs. Nunez-Tesheira: I do not know that the provision deals with that in the amendment; because it is consistent with the word "assets" as used in the preceding provisions. In fact, section 37 deals with statutory funds and the establishment of statutory funds. All this merely seeks to do, with the new subsection (7), is to be consistent with the previous provisions and to re-emphasize that the assets are going to be placed in trust and that it applies to the statutory funds in Trinidad and Tobago. It does not add anything; it is just clarification.

I beg to move.

Question put and agreed to.

Clause 7.

Senate amendment read as follows:

In the proposed new section 61A insert the words “to the Central Bank” after the words “submit” in line one.

Mrs. Nunez-Tesheira: Mr. Speaker, I beg to move that the House of Representatives doth agree with the Senate in the said amendment.

Question proposed.

Mr. B. Panday: Mr. Speaker, I want to suggest that all these amendments be deferred until the Government makes provisions or gives an undertaking that the Hindu Credit Union, the depositors therein, will be treated in the same way as the depositors of Clico; that we defer these until such time.

I want to indicate to the House, I will never give the Government any support whatever on these Bills unless they treat the citizens of this country equally. I want that undertaking before I give you my support.

Mr. Speaker: Anybody else?

Mrs. Nunez-Tesheira: I do not know if the hon. Member recognizes that we are merely dealing with amendments made by the Senate on Thursday. All it seeks to do is, again, add some further clarification. It merely says, "after the words 'submit'". Although it is clear that section 61A must refer to the Central Bank, for the purposes of absolute clarity, we are using after the word "submit", adding the words "to the Central Bank". It does not add or take away; all it seeks to do is add clarity to the section.

Mr. Manning: All he is doing is “gallerying”!

Question put and agreed to.

Clause 8.

Senate amendment read as follows:

A In the proposed section 65(1)(f)(ii), insert after the word “Inspector” the words “after consultation with the Governor,”.

B In the proposed section 65(6), delete the words 'if in the opinion of the Inspector' and substitute the words “if after consultation with the Governor the Inspector is of the opinion that”.

C In the proposed section 65(7), delete the *chapeau* and substitute the following:

“A direction made under subsection (6), shall not be final until the period of twenty working days expires and—“.

D In the proposed section 65(7), delete the words “If a person to whom a final direction is issued fails to comply with the said direction” and substitute the words “If a person fails to comply with a direction issued or made under subsection (5), (6), or (7) respectively,”.

E In the proposed section 65(9), in the *chapeau*—

(a) Insert after the words 'comply with' the words “a direction issued under subsection (5), (6) or”; and

(b) Delete the words “a final direction under subsection”.

Mrs. Nunez-Tesheira: Mr. Speaker, I crave your indulgence on a point of clarity.

This section, clause 8, deals with a number of amendments to section 65. I was about to merely say that "I beg to move", but I understand that I should, before doing that, give some explanation prior to allowing the other side.

Mr. Speaker: Perfectly noted.

Mrs. Nunez-Tesheira: I think the Member for Diego Martin North/East feels vindicated once again. [*Laughter*] Before I actually beg to move on it, I shall just give an explanation. I am just being guided; I will go through the provisions.

Mr. Maharaj SC: It is the other Member for Diego Martin who feels vindicated. [*Laughter*]

Mrs. Nunez-Tesheira: With regard to clause 8, the first amendment made by the Senate was in section 65(1)(f)(ii), where after the word "Inspector" there are the words "after consultation with the Governor".

In relation to 65(1), it is really the amalgam of two amendments; one that had been made in the Lower House, prior to that, which had inserted the concept of reasonableness; the Inspector reasonably believing, rather than merely “in the opinion of the Inspector”.

This amendment made by the Senate, and to which we now address our minds, is after the words "the Inspector after consultation with the Governor". I understand that it was a similar amendment which had been made, that had been proposed in the Senate with regard to the Financial Institutions Act; that is, there is a sense of a check and balance, so to speak; that there would be some other person; the Governor, being the regulator, having a look and having his view in consultation, with regard to the powers that the Inspector can exercise under this section.

Powers to cease and refrain; giving a direction to cease and refrain to an insurer, or also giving a direction to perform certain acts, are significant powers given to the Inspector under this section 65, and it merely seeks to make provision for the Inspector, in exercising those powers, to have a sense of reasonable belief, as well as to consult with the Governor.

The next provision is section 65(6), again consistent with that recommendation. Note that the words "if in the opinion of the Inspector", we have deleted them and added "if after consultation with the Governor the Inspector is of the opinion that". That is consistent with the other provision dealing with the consultative process, a sort of check and balance.

Mr. Speaker, I move now to the third amendment made by the Senate, that is 65(7), where the amendment is to delete the *chapeau*, which is really a governing section—literally speaking, a hat, in French—and substitute the words "a direction made under subsection (6) shall not be final until the period of twenty working days expires and". It goes more than being stylistic; it is removing the double negative. I understand that there was a concern that using the double negative may give lack of clarity, so to speak, so it is really a stylistic, but more than that, I imagine, seeking clarity.

Moving on, I think that 65(8) is more substantive, although it may not appear so at first blush. The original provision says:

> "If a person to whom a final direction is issued fails to comply with the said direction...allows the Inspector..."—under those circumstances—"of a final direction to apply to the Court for an order requiring the person to apply..."

The amendment made by the Senate now extends the authority or the power of the Inspector, in addition to the powers he already enjoys, to seek an order of the court requiring the person to comply; not only in cases of a final direction, as currently obtains in the Lower House, but the amendment made by the Senate in which it would apply to circumstances set out in subsection (5) and subsection (7) of section 65.

Subsection (5) really sets out the circumstances in which the Inspector, or carrying out his power of cease and refrain, or to perform, under this section, the procedure he may adopt. One of the procedures which is set out in this subsection speaks to a notice. If you note that subsection (3) sets out serving the other side with a notice to carry out the directions of the Inspector. That notice would set out the fact of the matter, directions intended to be issued, the place and time.

If the person to whom those directions are issued does not attend the hearing or, as set out in subsection (5), the Inspector, even if the person attends, is of the view that the matter set out in the notice has been established, he can serve them with the notice. He may proceed to issue directions to the persons served with the notice. It is upon that process being carried out, that the directions can then be issued. So there is one process pursuant to a notice being issued to the offending party, the insurer, or subsection (6), which is the other circumstance, interim directions.

The subsection clearly sets out the circumstances in which the inspector would be allowed to issue an interim direction. The interim direction, if in circumstances where the length and time required would be prejudicial, so there is a circumstance of urgency, that letting that time period expire may allow the other side, the insurance company, as it may be, to do things, perhaps, like electronic

trading. You know that we are living in a time of real time events. So during that period of time, in order to treat with an emergency situation, the Inspector can issue what you call "interim directions".

Whether the directions the Inspector issues are pursuant to a notice having been served under subsection (5) or whether the directions are pursuant to the interim directions under subsection (6), in either circumstance, the period can be no more than 20 working days; that is equivalent to a month. So there is a time frame within which the directions, whether issued under notice or the interim directions under subsection (6), there is an expiry date.

What this amendment to subsection (8) seeks to do is this: It allows the Inspector, not only in circumstances when the final direction is issued, but also when the directions are issued pursuant to a notice or in circumstances under subsection (6), when interim directions are issued in cases of emergency, it allows the Inspector to go to the court and obtain an order.

2.00 p.m.

One of the reasons for this is simply this—for example, if the inspector were to issue interim directions under subsection (6)—and those are cases of emergency—and leave the provisions as they now stand, it would mean that he would have to wait until the 20 working days—which is equivalent to a month—would have elapsed before that interim direction would be converted into a final direction.

Similarly, if the inspector had gone by way of notice, he would have had to wait until the notice period had elapsed, and then wait for the period of 21 days to elapse before giving the direction. In either case, it would become a final direction and as the legislation now stands, it is only when it becomes a final direction that he can go to the court.

Mr. Speaker, in order to avoid circumstances where the insurance company may thumb its nose at the inspector and say it is not complying with your direction whether done under interim or by way of notice, I am not complying. As it stands, his hands so to speak, would be tied before he could go to the court to seek an order for compliance.

It does not only protect the inspector and allow him to exercise those powers necessary to protect the interest of policyholders, but it also gives the other side an opportunity—that is the insurance company—to be heard because certainly when it goes to the court, it operates on the basis of all the concepts of natural justice, due process and a concept of justice so that both sides would get an opportunity to ventilate the arguments and get an order from the court one way or the other.

Mr. Speaker, as I indicated, this section has expanded the circumstances in which the inspector may apply to the court, not only in circumstances of a final direction, but in circumstances of an interim direction where directions have been issued pursuant to a notice and allowing him to go to the court to seek an order of the court, and where both parties would have the opportunity to be heard before the court. So that I believe is the intent of section 65(8).

Mr. Speaker, finally I move now to subsection (9). Similarly, this seeks to achieve the same intent of subsection (8) in the sense that as it stands now prior to the amendment made by the Senate, the circumstances in which a person—but that would be a company really—fails to comply with a direction of the inspector according to the provisions of this amendment are those where they have failed to comply with a final direction.

This amendment seeks to include not only the final direction, but also seeks to include a direction issued pursuant to subsection (5) which is one made pursuant on notice, or also subsection (6), pursuant to interim direction. And all it says is that a person who fails to comply with an interim direction, a direction pursuant on notice, or a final direction, all of those circumstances they would have committed an offence and be liable to the offences set out.

Mr. Speaker, that, in essence, is the effect and purport of the amendments made to section 65 by the Senate.

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

Question proposed.

Mr. Maharaj SC: Mr. Speaker, without prejudice to the point made by the hon. Leader of the Opposition that these amendments should be suspended until the Hindu Credit Union is treated equally; I want to say that it is significant for the Government to have accepted the amendments in the Senate which were proposed by the Senators. We made the same point when this was done in this House and we said there should be the element of fairness injected by amending this section.

As a matter of fact, it is heartening to hear the Minister of Finance say today that by section 65(8), it will give both at the interim and at the final stage, the opportunity of both sides to be heard by a court. It is heartening to know that it has brought some humanity into the legislation, not that we have agreed with the legislation, but it has brought some humanity.

I think this is very important because we have to understand that these are really coercive orders being made against an insurance company which can affect

a person's right to property and I think it was the right thing to do. Therefore, at least in this section there is some improvement.

I want to remind the Minister—and I am sure she knows about it—that you cannot really exclude the jurisdiction of the court in any of these matters because even if it is excluded, the court can take it. So in respect of the other parts of clause 8, I think also that after consultation with the Governor, although it was implied, it is important to have it expressed.

Mr. Speaker, having said that, we still maintain that this was a hostile takeover and it was done in an environment of amicable atmosphere, but time would tell whether we were right or the Government was right in this matter.

Thank you very much, Mr. Speaker.

Mr. Imbert: Mr. Speaker, just to deal with this particular amendment and to correct the record.

We had indicated that at committee stage the Opposition had made certain proposals specifically dealing with the concept of natural justice, the right to be heard, access to the court, et cetera—

Mr. Speaker: *Audi alteram partem.*

Mr. Imbert: *Audi alteram partem,* thank you. I bow to my learned friends. We did indicate at the time that we were going to give your recommendations serious consideration, the Members opposite expressed skepticism that the Government would do such a thing, and herein lies the evidence that we have listened to the Opposition and incorporated some of their views and we have put in these natural justice principles in the amendment.

Thank you, Mr. Speaker.

Dr. Gopeesingh: Mr. Speaker, without prejudice to what the Leader of the Opposition mentioned, I want to make one point on clause 8 which relates to sections (A) and (B). I wonder if the Minister would be kind enough to listen to this because it is a very substantial and important point. Instead of just using the words "after consultation with the Governor" I would like to suggest after the word "with". the words "and approval from the Governor".

The point is that the Inspector of Banks has wide-ranging powers. Why can that power not be harnessed a bit by the Governor? In other words, the Leader of the Opposition and the Prime Minister will tell you that when the President appoints certain institutions in the country, some of these under the Constitution would say, "on the advice of", or some would say "after consultation with".

The Prime Minister may just call the Leader of the Opposition and say: I have consulted the Prime Minister. Or the President may say: I have consulted the Leader of the Opposition, and go on to make his appointment as he sees fit. Consultation means just speak to, it does not mean accepting what the other person says.

I would like to suggest—whether the Government would consider—the part that says "after consultation with and approval from the Governor". It is not improper to do that because the Inspector of Banks can say—[*Interruption*] Yes having someone to account, and if the Governor of the Central Bank is the person who accounts to the nation, although we may have an honourable Inspector of Banks now, he or she may change and that person may decide to do things on his/her own without the approval of the Governor. What will happen then?

Mr. Speaker, I would like to suggest the following: "after consultation with and approval from the Governor". And in section (b), "if after consultation and approval with the Governor the Inspector is of the opinion that". I would like some serious consideration to that, Mr. Speaker.

Mr. S. Panday: Mr. Speaker, like my two colleagues before, without prejudice, when one looks at clause 8, section 65(1), it speaks about compliance directions and in those directions it says:

> "Notwithstanding any other action or remedy available under this Act, if in the opinion of the Inspector, a registrant, or any controller, officer, other employee or agent of a registrant including the principal representative of a foreign insurer—"

In this compliance clause, if one goes through the Bill one would see that under (e) it says that: "the Inspector may direct the insurer, and any such controller, officer, other employee or agent, or the principal to—" do certain things.

Mr. Speaker, I humbly submit that this piece of legislation is punitive and draconian and it is unfair to say that an inspector could impose these sanctions and give directives to persons like an officer or any other employee. This is serious legislation and these directions should be confined to either the controller or a principal representative, not an officer, or any other employee.

If one goes further in the legislation one would see that subject to subsection (6) and I read from subsection (3):

> "Subject to subsection (6), before a direction is issued, the person to whom the direction is to be issued shall be served with a notice…"

So they have shifted gear suddenly from these defined persons and gone to the—

Mr. Imbert: Mr. Speaker, on a point of order, I do not want to stop the Member in full flight. But Standing Order No. 36(1), the debate must be relevant to the amendment and the Member is not speaking about the amendment.

Mr. S. Panday: Mr. Speaker, they have gotten the Bill passed and hence the arrogance has resumed. He has not read the amendments, I was going to tie this now with (D) on the amendment which had been circulated.

Hon. Member: Tie it.

Mr. S. Panday: Mr. Speaker, this is the arrogance. It upsets one when one is building a case and he jumps to the Standing Order to shut us out.

Mr. Speaker: You are an experienced Member, address me instead.

Mr. S. Panday: It is not a matter of addressing you, Mr. Speaker, he used the Standing Order to try to shut me down, and to shut out expression, and he is unprepared like most of them on the other side.

When you tie subsection (3) to the amendment before the Parliament today it speaks of the amendment on the appendix:

> "In the proposed section 65(8), delete the words 'If a person to whom a final direction is issued fails to comply with the said direction' and substitute the words 'If a person fails to comply with direction issued or made under subsection (5), (6) or (7)…" That is why I am relating it back to the parent piece of legislation.

I am making the point that the legislation being punitive as it is, should be confined to persons who are principals and controllers or principal representatives of the company and it should not be as wide as it is "an officer or any employee".

2.15 p.m.

At the end of the day, as I said, section 65(1), and when we go down we speak about section 65(8), but then when we go further down, after using the word, "person, person, person" whether it is a clerk or not, we must read this in conjunction with section 65(9) which says:

> "A person who fails to comply with directions under this section commits an offence and is liable on summary conviction—
>
> (a) in the case of a registrant to a fine of five million dollars and,
>
> (b) in the case of a controller or officer, other employee or agent, or a principal representative of a registrant, to a fine of five million dollars and to imprisonment for five years."

The question is, this is important legislation speaking about the statutory fund; speaking about assets of a company being submitted to the Central Bank to go into the statutory fund and you end up now speaking about any employee or person. Where are we going?

I humbly submit that this piece of legislation is very deficient in this regard and hence should be amended to delete the words, "officer" and "employee". Because when one reads this document and one goes back now to the Companies Act, you will see that in the Companies Act the directors now have greater responsibility than in the old Companies Act and, maybe the secretary of the party or some senior person should be the person to whom this notice should be directed and not to any employee, or any officer, or an agent.

On those grounds, I humbly submit that the legislation is deficient since it is draconian legislation, with punitive results.

Thank you, Mr. Speaker.

Mr. Sharma: Mr. Speaker, the Parliament remains the supreme lawmaking body in Trinidad and Tobago and nothing prevents the Government from treating with the request made by the Member for Couva North, in keeping with the purpose for us being in this Parliament. When you look at the source of why we are here today, it is to treat with the amendments made in the other place, and when we look at the earlier source, it has to do with what obtained in this Parliament on Monday and Wednesday last.

In keeping with the amendment that came from the other place and in keeping with the contribution of the hon. Minister of Finance in respect of clause 8, I want to treat with clause 8 in a holistic manner because it deals with the Inspector of Banks and the Minister went on to say the powers of the Inspector of Banks and to include new powers. I also want to talk a little about the Central Bank and the Governor of the Central Bank in keeping with clause 8; all the provisions, A to E, including (a) and (b) of E.

Now the first thing one has to ask, the simple-minded citizen of Trinidad and Tobago is asking: What is the power of the Inspector of Banks? That is what obtains at the Central Bank:

"The Inspector shall examine all applications for approvals..."

So we know that, but in this current context:

"The Inspector shall make or cause to be made such examination and inquiry into the affairs or business of each—

(a) licensee;

(b) financial holding company;

(c) subsidies of a licensed domestic institution in Trinidad and Tobago…

as he considers necessary or expedient, for the purpose of satisfying himself that the provisions of this Act are being observed and that the licensee or financial holding company or subsidiary is in a sound financial condition."

That is the first cause of concern. Did the Inspector do his job?

Mr. Imbert: I thank the Member for giving way. Could you please refer me to which amendment you are speaking about? I am lost.

Mr. Sharma: It is very unfortunate that the Minister will waste my time to ask that. I did indicate from A. Shall I read it out to you?

Mr. Speaker: Please, concentrate your remarks on the amendments and address me.

Mr. Sharma: In response to the Minister, it is clause 8 A, B, C, D, E and (a) and (b) of E. I was making the point about the role of the Inspector, because the Minister, in presenting to the House just now, told us of a number of additional new powers of the Inspector:

"The Inspector shall make or cause to be made such examination and inquiry into the affairs of any representative office of a foreign financial institution located in Trinidad and Tobago, if in the opinion of the Inspector, such examination and inquiry is necessary to verify that no business activity other than referred to in section 50(2)(a) is being carried on."

When we arrived at this, something happened, and I want to revisit. The statutory requirement of the company that caused this today was $16 billion; the company then had in 2007, $25 billion, made up of Republic Bank shares—

Mr. Speaker: If you are dealing with A, you are inserting after the word "Inspector after consultation with the Governor". You need to concentrate your comments on the amendment.

Mr. Sharma: Thank you, Mr. Speaker. Can I also comment on the contribution made by the Minister?

Mr. Speaker: Yes.

Mr. Sharma: And I am referring to that. Clause 62(8) states:

> "In the performance of its duties under this Act, the Central Bank shall at all reasonable times have access to all books, records, accounts, vouchers, minutes of meetings, securities and any other documents, including documents stored in electronic form..."

Both the Governor of the Central Bank and the Inspector, as the Minister just indicated, have access to this information. If that was treated with, based on the powers available to the Inspector and the Central Bank Governor, then we would not be in this position today. So the Minister, in expanding the duties of the Inspector, should tell this House why the Inspector did not treat with what already obtained in law. It goes further at subclause (10):

> "Where a person fails to comply with a request to provide information under subsection (7) the Inspector shall restrict any further transactions among the licensee and the financial holding company…"

So the Government raised a lot of concern that the financial institution is receiving deposits, et cetera, but here it is very clear that the Inspector had the powers to treat with, meaning to allow it to continue or not to continue. So when the Minister tells us today that this is intended in addition to everything else, to give additional powers to the Inspector and to the Central Bank, it already existed.

Further, when you look at clause 8 A, "after consultation with the Governor", and B, "…the Inspector is of the opinion that…" we have to look at the functions of the Governor. What does the Central Bank do. The first thing, it is banker to the Government, which we know. The Central Bank provides advice, maintains deposit accounts, receives foreign exchange. The first one I want to treat with: "provides advice". What was the advice given by the bank? It seems as if the advice was ignored in keeping with clause 8 A, "after consultation with the Governor", and B, "if in the opinion of the Inspector" and substitute the words "if after consultation with the Governor the Inspector is of the opinion that,".

So the first thing is: What was the advice given" A second responsibility of the Central Bank and the Governor here "Preserving Financial Stability". How did the Governor and the Central Bank preserve financial stability? It says "Supervision and Regulation".

"To ensure the stability of the financial system,.."

What obtained in Trinidad and Tobago, both by the Inspector and the Governor of the Central Bank, certainly does not reflect stability in the financial system.

> "the Central Bank conducts regular inspections (or examinations) of operations of licensed financial institutions through its Financial Institutions Supervision Department."

So, again, one has to ask, based on what the Minister said, that the Central Bank did not treat with what was required of it and giving it more powers today does not treat with the concerns the national community has.

"The first Supervision Department was established in 1968…"

And the first time it was attended it was under the UNC administration in 1993 when we came with the Financial Institutions Act of 1993.

Mr. Speaker: I am trying to help you, you know, but you are not helping yourself. Please, you need to stick to the amendments.

Mr. Sharma: The Government keeps talking about the amendments but we have to treat the amendments in context with what the hon. Minister said. The Minister brought to the House to give additional power to the Inspector who is an agent of the Central Bank and advises the Governor of the Central Bank. So I cannot say it in any other context; I must treat with what the Minister said, unless I am directed not to. If that is the case, I will take my seat immediately.

"The execution of the supervisory and regulatory function…"

which is key to it. In recent years it is said that the Central Bank is given more and more power, more and more resources, and the submissions of the Minister to empower the Inspector of Banks today do not treat with the concerns. For instance, at that time at the Central Bank we had Economic Intelligence and Research, which is a highly funded outfit and the bank has that access; the Inspector has that information. That is a costly thing. We send people on training programmes. I will conclude:

> "The Bank's Research Department monitors economic and financial developments in the international and domestic economies, and this provides the basis for the conduct of monetary policy."

So that here the Central Bank has all the powers as it exists; the Inspector has all these resources at his disposal. The Governor of the Central Bank has all the assets at his disposal and is not treating with the concerns.

So in keeping with what the Member for Couva North indicated, I am of the opinion, we need to defer this, revisit it and come with something comprehensive that can add value and to make sure that the situation that we find ourselves in, is never repeated.

Thank you very much.

Mrs. K. Nunez-Tesheira: Mr. Speaker, I do not know where to end, but I can tell you the only contribution that I feel I can respond to is the contribution, with all due respect, of the Member for Tabaquite. I think he summed it up well. Yes, we listened and having heard, by making the changes to the amendments having been made in the Senate, it would address the issues of natural justice and due process.

I just want to say, I do not know what is to be gained by—you give the Inspector powers; so you give him powers; he must have responsibility. Directing the insurer with responsibilities and authority—to say that I direct the insurer; it is any person, an employee. It merely means that you want to ensure compliance. I do not know what else there is to say on it, with all due respect.

With those very few words on that, I beg to move.

Question put and agreed to.

Clause 10.

Senate amendment read as follows.

In the proposed section 68(2), insert after the word "circumstances" the words "including matters presented by the insurer,".

Mrs. K. Nunez-Tesheiria: Mr. Speaker, I beg to move that the House of Representatives doth agree with the senate in the said amendment.

Mr. Speaker, the amendment sought here really is, again, an issue of being explicit rather than implicit. It is a question of looking at the issue of opportunity to be heard and natural justice. All it merely says, which would have been implied, but to be explicit and for the clarity, after the word, "circumstances", "including matters presented by the insurer", merely underscores the point that if any decisions are to be taken that in making the determination one looks at the circumstances and clarifies and saying very explicitly that the insurer will have an opportunity to be heard consistent with all the principles of natural justice and due process.

That is all that I really have to say on that amendment. I beg to move.

Question proposed.

Question put and agreed to.

ADJOURNMENT

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, I beg to move that this House do now adjourn to Friday, February 13, 2009 at 1.30 p.m. We are going to change the order of "Bills Second Reading" as follows: We will be doing the Bill to provide for the protection of personal privacy and information, followed by the Bill to give legal effect to electronic documents, records and signatures; then Bill No. 1, to amend the Status of Children Act, Chap. 46:07 and to provide for DNA analysis in civil proceedings. If we have time we will try and do all three, but we certainly are going to be doing the one to deal with personal privacy and information.

I have also given an undertaking to the Opposition Chief Whip that we will do three Motions on the Adjournment on that day, which would be Motions Nos. 2, 6 and 7.

Mr. S. Panday: What are they?

Hon. C. Imbert: Matter No. 2: The need for Government to state what action, if any, it intends to take to bring immediate relief to provide safety, et cetera. That is from the Member for Tabaquite. Matter No. 6: Failure of the Government to introduce the relevant regulations order to establish the process, procedure for the Commissioner of Police. That is your matter, Member for Princes Town North. Then matter No. 7: the newly constructed building in Chancery Lane, San Fernando to be used to ease the overcrowding at the hospital. That is the Member for Caroni Central.

2.30 p.m.

Legal Aid and Advisory Authority (Briefs to Lawyers)

Mr. Subhas Panday (*Princes Town North*): Mr. Speaker, the matter I have on the adjournment is one that deals with the Legal Aid Advisory Authority. It deals with payments to attorneys who are on the legal aid roll and who attend matters assigned to them by the Legal Aid and Advisory Authority.

The Legal Aid and Advisory Authority is an authority which appoints attorneys to represent persons of specific means. However, it has become so onerous that attorneys have found it difficult to assist in this regard. Long ago, when persons became attorneys-at-law, they came from wealthy families and the landed gentry and they could have done pro bono work. However, many senior persons have said: Why do the young attorneys not do the pro bono work and they will get experience?

There are two problems with that. One is that many persons who have become attorneys in the recent past came from humble financial surroundings and need assistance to take them through. The second point is that, if you tell young attorneys to go out there and do pro bono work to gain experience, that may be so, but persons who have serious matters are being assigned very junior attorneys and do not get the right representation.

The judges of Trinidad and Tobago have observed what has been happening and have decided that no practitioner with less than seven years experience would be permitted to conduct a defence on behalf of a murder accused who is on the legal aid panel. The result is that persons with the experience are saying: "I am not going to work for that because the payments are very small." Also, those who have been attorneys for seven years and over, when they look at the kinds of briefs that are given out by the Government—the million-dollar briefs—they are asking why they must work for nothing, when they can pick out one or two attorneys and give them briefs.

I see the Member for Pointe-a-Pierre is smiling. I do not know if she knows what I do not know, but there are certain attorneys who are favoured by the Government, but the Government gives them briefs and pays them pittance. Most likely people in the public service who do most of the work are given special privileges.

Persons have decided, therefore, to tell the judges that they do not intend to carry on this situation any further. What has resulted is that the criminal justice system has now almost collapsed. It has been said that less than 20 per cent of persons who commit crimes have been detected and it is said further that persons detected as criminals, less than 1 per cent, have convictions against them.

The reason for that is that attorneys do not want to work for the Legal Aid and Advisory Authority under those conditions and as a result of that the criminal justice system has ground to a halt. When a matter comes to the Assizes, it stays there for 25 or 30 adjournments. Witnesses get despondent; they are killed during that period and, as a result of that, criminals walk free.

It is instructive at this stage to read a statement by a judge. I read from page 7 of the *Newsday* dated January 30, 2009:

"Judge: Criminal justice system slowly grinding to a halt.

With over 25 adjournments of a murder case and being able to list only five of 75 cases for trial, a High Court judge has warned that the criminal justice in San Fernando has collapsed."

That means very little is taking place in the criminal justice system. How do we intend to deal with crime when the criminal justice system is not working?

> "Justice Herbert Volney yesterday said that due to the lack of institutional capacity of the Legal Aid and Advisory Authority (LAAA), judges would be sitting with very few, or no cases on their list…"

We are passing legislation in Parliament about paper committals, speeding up the judicial system and the judge is saying that you may speed up whatever system you have, but very soon judges will be sitting with very few or no cases on their list.

> "and in the next three months, the courts are more than likely to be idle."

Imagine, with the crime rate so high, a judge is lamenting that in three months time the courts will be idle and no cases taken.

> "Volney was yesterday presiding in a Cause List hearing in the San Fernando First Assize Court when he said that the LAAA 'must stop paying pittance to attorneys'."

I am certain he would have taken into consideration the kind of million dollar fees that other attorneys get.

> "A defence attorney in a murder case, the duration of which often extends beyond a month, is paid $10,000, while $3,300 is paid to the instructing counsel."

There is a matter at the San Fernando Assizes at this time which started on September 16. It went from September to October, November, December, January, and the case has not been completed as yet. It is a murder trial involving three accused. How do you expect people to live, to buy clothes, pay transport to do such a matter? As a matter of fact, many attorneys are indicating that they are being paid less than a CEPEP worker per day.

> "For rape, robbery and fraud cases, the LAAA pays between $500 and $1,500 to the respective advocate attorney."

Fraud matters are very complex matters. Robbery and rape are very serious matters, but they will pay an attorney $500 to do a rape case. People say they are not going there and will take almost a month to do it.

> "Addressing a battery of attorneys at yesterday's hearing, Volney noted that attorneys were shying away from representing persons in criminal matters in the High Court. He noted that between September, 2008 and January, 2009, he was successful in setting down only five cases…from a…List of 75..."

So 75 cases came before the court for preparation for trial and only five could be listed. So 70 cases went back to the Cause List and they do that for over 25 times before anything takes place. He said:

> "This is pathetic and untenable. The backlog is of alarming proportions and the situation is worsening in spite of efforts of judges to get as many cases off the list…"

Mr. Speaker, I know that there are many attorneys that judges beg to give the court help. There are many attorneys who try to give help occasionally, but the system itself has fallen because of the legal aid.

> "Volney was at the time dealing with a case in which an accused was charged since 1992,"—16 years ago. The witness would have either died or migrated. That person was charged—"with uttering false documents to obtain money."

It is 16 going on to 17 years and the case cannot get off the ground.

He referred to other cases where people have been in custody awaiting trial for over five years for simple matters such as possession of narcotics. He reiterated that there were three men awaiting trial who have had their cases adjourned 25 times and the Cause List is held not shorter than a month, so these people have been to court for 25 times and attorneys have refused briefs from the LAAA to represent them.

Mr. Speaker, the situation is really chronic; it is bad. Something must be done now to get the judicial system going. This is the case not only in the criminal department, but also in the civil department.

For a preliminary enquiry at the Magistrates' Court, which may last six months, they pay about $300. In petty civil matters, they pay $75. How do they expect justice to be delivered in the courts? Regardless of the number of judges appointed, regardless of the system put in place, regardless of how much legislation we pass, if we do not put the infrastructure in place, we are going nowhere. That is why I have decided to bring this matter on behalf of the Criminal Bar Association and lawyers in San Fernando, who have asked me to raise it.

The Criminal Bar Association, since Wednesday, December 17, 2008, has made recommendations to the hon. Attorney General and to the Government that there be given, across the board, a 100 per cent increase. I humbly submit that that is really tinkering with the problem. We must give the judges some discretion that if we set a limit of a 100 per cent increase, that is, taking into consideration that a matter may last for about one month, what happens when a matter goes for

one or two months? I humbly submit, we should have legislation passed in the Parliament to give judges discretion to award whatever fee they think necessary when a matter goes beyond a certain period.

2.45 p.m.

Another problem we have experienced in the court is if you are rich and accused, you could hire any number of forensic experts or expert witnesses to go to court, but when you are assisted by the Legal Aid and Advisory Authority you cannot afford that type of expertise. As a result, attorneys find great difficulty in adequately representing their clients. We must give every single person a fair chance; a person who has been charged with an offence to be deemed innocent until proven guilty. In that process, he must be given all the assistance to prove his innocence, if he is really innocent. If, at the end of the day, the decision comes—[*Interruption*]

Mr. Speaker: One minute more.

Mr. S. Panday:—against him, he has to stand the consequences. He and the society must know that he has justice. By so doing, indeed, we would be able to deal with the criminal justice system and put the population at ease knowing that their matters have been held swiftly, to develop and build this country. Thank you.

The Minister of Legal Affairs (Hon. Peter Taylor): Thank you, Mr. Speaker. I thank the Member for giving me the opportunity to respond to, what is no doubt, an important issue and really to correct some inaccuracies that were mentioned during his presentation.

Let me suggest at the outset that the statutory mandate for the Legal Aid and Advisory Authority was really to provide legal representation to persons of small or moderate means. Contrary to what my friend suggests, the legal aid system was never intended to provide a salary for attorneys. If anything, it was really a supplementary mechanism for young attorneys to earn additional money. It was never intended that attorneys coming out of law school would get on the legal aid scheme as a means of mainstream income. That is the first point.

Philosophically, the Legal Aid and Advisory Scheme has provided very important benefits. I was a beneficiary of that same system. I remember when I came out of law school; I joined a firm that did not do criminal law. But by virtue of registering on the legal aid programme, I had the benefit of working with Pamela Elder SC in a capital matter and the experience that I gained from that would not have otherwise arisen unless I had joined a criminal practice. I

remember, that was probably four or five years ago, that the ceiling for the senior counsel was $10,000. I would have served the role as an instructing attorney and my fee would have been one-third of that, roughly $3,000. I worked, as well, on another capital matter with Osborne Charles. Over a period of time, through legal aid, young attorneys are able to garner experience and at the same time earn a fairly reasonable income. That, of course, is not to say that there is no room for improvement.

I want to address the matter of the quantum. I want to correct a point. I think the Member said that capital matters or sexual assault matters are $500. Under Part III, in respect of non-capital offences of unusual length, the maximum discretion that a judge has is to recommend fees not exceeding $5,000. In respect of non-capital offences, the ceiling is $2,500 and in respect of capital offences, the ceiling is $10,000. It is not that the Government has not been mindful of the need to change. In fact, a new draft policy is supposed to come before Cabinet soon. Over the last 12 months, the Legal Aid and Advisory Authority has been soliciting the views of different stakeholders to determine from them what would be a reasonable increase.

The views of the Criminal Bar Association were solicited and they did respond by letter dated Wednesday, 17, October 2008. The Member speaks directly to the Criminal Bar Association more than anything else. I want to read into the record the response of the President of the Criminal Bar Association. I would read the relevant parts. It was addressed to the Chairman of the Legal Aid and Advisory Authority.

"Dear Sir

The Criminal Bar Association has been asked to review the proposed amendments to the Legal Aid and Advisory Committee and provide its views. Having reviewed the proposals forwarded, we wish to make the following observations:

In relation to the value of remuneration, the Criminal Bar welcomes effort to review the fees paid by the Legal Aid Authority and although we have not specifically canvassed the proposed increases, the general consensus is that the increases are reasonable and will be of assistance in encouraging more practitioners to assist in taking legal aid cases.

The Criminal Bar Association would like to commend the authority and offer its support in relation to its duty solicitor scheme."—which is something I mentioned a while—"We think such a proposal should be encouraged and we would be happy to assist."

The proposed recommendation is that the fees be increased by 100 per cent. That is the proposal across the board. We have the concurrence of the Criminal Bar Association. We sought and received their views and we are happy for their support.

One of the weaknesses, I think, of the legal aid system, as it presently obtains, is that if someone is arrested on a Friday, Saturday or public holiday, when that person is taken to the police station, he or she does not immediately have access to an attorney. It is for that reason that one of the recommendations proposed is to adopt the Duty Solicitor Scheme that obtained in England; you would be familiar with that. What that provides is a 24/7 service, where attorneys are on call and they are now able, once somebody is arrested, to go directly to the police station and get the basic information very early; in such circumstances, at the outset of the incarceration, to provide legal representation. As practitioners, we know the most critical time to establish a person's defence would be in the immediate aftermath of his or her arrrest, before the police might have the opportunity for questioning him or her without the benefit of counsel. That innovation is definitely very welcome. I think that it is one of the measures that would certainly improve the service that the Legal Aid Advisory Authority offers to citizens.

Let me just outline the benefits. The Scheme is also geared to benefitting minors, particularly as they are most vulnerable in a general sense but more so when they are incarcerated and unable to provide the name of a parent or guardian. In the case where they have no one to fend for them, we think that the scheme would benefit such vulnerable persons. It speaks volumes for the wider implications for criminal deviance and for juvenile deviance in the society. The authority feels that the rights of citizens, particularly the right to counsel and protection of the law, would be greatly assisted. I am really happy that we have come to that point where the matter, as I have said, is due to go before Cabinet.

The Member raised other points, but as far as the civil jurisdiction is concerned, he mentioned civil jurisdiction, I could only talk from experience because I was a part of it. Persons who apply for legal aid assistance of a civil nature such as land and family matters, the representation from the pool of attorneys we have at the Legal Aid Authority has been quite of a high standard. I remember, again, doing family law matters and the counsel who would come up on the other side are persons, eminent practitioners, whose name I would not call and they are providing legal aid service so I do not think the argument holds.

In the civil jurisdiction, the quality of representation you get is of a poor standard. There are many senior counsels. I have a listing of some of the attorneys who are on the legal aid roster. Member, I know you are a member of that panel

and, therefore, I do not think that it is a question of the quality of attorneys on the panel. As I said, we have representation from senior counsel right down. I can only commend the Legal Aid Authority for presenting the draft policy. It is very comprehensive. In the fullness of time, once the matter goes, as I have said, before the Cabinet, we will be coming back to Parliament to have the changes to the legislation enacted and we would have a much more comprehensive and financially beneficial programme.

Mr. S. Panday: Thank you. Would the Cabinet take immediate decision to deal with the crisis as it relates at this time—[*Interruption*]

Mr. Speaker: Not on a Motion on the Adjournment.

Hon. P. Taylor: Obviously, the Member was trying a supplemental, but I am not sure the Motion allows for that. With those words, I trust that I have addressed the matter comprehensively and I thank you.

Mr. Speaker: Hon. Members, whilst it is black Friday, remember the following day is Valentine's Day.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 2.59 p.m.