

Leave of Absence

Wednesday, March 28, 2012

HOUSE OF REPRESENTATIVES

Wednesday, March 28, 2012

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received communication from the following Members who have asked to be excused from today's sitting of the House: the Member of Parliament for Tunapuna; the Member of Parliament for Chaguanas East; the Member of Parliament for Couva South and the Member of Parliament for Point Fortin. The leave which the Members seek is granted.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Heritage and Stabilisation Fund of the Republic of Trinidad and Tobago for the year ended September 30, 2011. [*The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal)*]

To be referred to the Public Accounts Committee

2. Annual report of the Heritage and Stabilisation Fund for the year ended September 30, 2011. [*Hon. Dr. R. Moonilal*]
3. Annual audited financial statements of National Quarries Company Limited for the financial year ended September 30, 2009.

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

4. Administrative Report of the Sangre Grande Regional Corporation for the period October 2010 to September 2011. [*The Minister of Local Government (Hon. Chandresh Sharma)*]

ORAL ANSWER TO QUESTION

Minister of Tobago Development

(Credit Card Issued to)

50. **Dr. Keith Rowley** (*Diego Martin West*) asked the Hon. Minister of Finance:
 - a) With respect to the Government issued credit card assigned to the Minister of Tobago Development, could the Minister state whether this card has been used in keeping with the written guidelines established for use of this card?

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- b) If this card was ever used for transactions inside of Trinidad and Tobago (contrary to the guidelines), could the Minister state each and every instance and identify the purpose for which the transaction/s was made locally?
- c) Could the Minister also state:
 - i. The total amount of expenses incurred as local transactions on this card;
 - ii. The total outstanding balance on this card as it existed on March 2, 2012?

The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal): Mr. Speaker, the Government Individual Travel Card was agreed to by Cabinet on August 26, 2004. Eligible persons can access the facility which is available through First Citizens Bank. Processing of applications includes the requirement for the applicant to sign an application form and the following terms and conditions are relevant to the question: Condition No. 1—the use of the card is not mandatory, if however the person opts to accept the card, it must be used for all official overseas travel and local entertainment expenses. Cabinet approval is necessary before the card is used for travel.

Condition No. 7—the card is not to be used for private purposes or foreign entertainment. Condition No. 8—no local cash advances are to be made with the card; however, cash withdrawals are allowed while on overseas travel. The charges for such withdrawals must be borne by the cardholder. Condition No. 10—the cardholder is responsible for the prompt payment of all charges on his or her account and is personally liable for all indebtedness resulting from the use of the card.

The card was not used in accordance with the agreed terms and conditions, since the Minister acted in contravention of Condition No. 8 by making local cash advances.

According to the records of the Treasury Division of the Ministry of Finance, the Minister of Tobago Development applied for a Government Individual Travel Card in May 2011 which was used for the first time on June 13, 2011. Local cash advances in TT dollars were made during the period June to September 2011, the total amounting to \$18,040. These cash withdrawals were used for the purpose of local entertainment in conditions where such purchases were not possible using a credit card or any other type of card.

With regard to part (c), the total amount of expenses incurred as local transactions on this card made as at December 2011, was \$68,048.16. Of this amount, \$46,940.64 relate to authorized expenditure of local entertainment which was incurred by the cardholder, and \$18,000.40 relates to local entertainment for which cash advances were used.

Mr. Speaker, one needs to take in mind that there is, and has been, no indebtedness resulting from use of the card contrary to the conditions for its use, Condition No. 10. At no time did the Comptroller of Accounts issue instructions to the Ministry of Tobago Development to have amounts deducted from the salary of the Minister, pursuant to Condition No. 15. This card has never been cancelled as a result of unpaid balances and no transaction has ever been dishonoured by the bank, so there were no violations of Conditions Nos. 16 and 17.

Mr. Speaker, one would just note in relation to part (c), according to the information provided to the Treasury Division of the Ministry of Finance from First Citizens Bank, the outstanding balance on the account as of March 02, 2012, was nil. This is in stark contrast to other office-holders over the past years in the Government of Trinidad and Tobago, who to this day are still indebted to the Government of Trinidad and Tobago for moneys utilizing Government credit cards. May I also add for the benefit of the Leader of the Opposition and former Minister of Housing, that it is indeed a former official of the Housing Development Corporation, Mr. Noel Garcia, who is still owing to the Government of Trinidad and Tobago over \$500,000 drawn from a Government credit card when the Leader of the Opposition served as Minister of Housing.

Hon. Members: Shame!

Dr. Rowley: Mr. Speaker, I thank the Minister very sincerely for the information. I would like to ask the Minister if he is prepared to answer the question which specifically asked that the Minister in each and every instance identify the purpose for which the local entertainment was incurred. We got no answer to that. That is what I would like him to answer.

Hon. Dr. R. Moonilal: Mr. Speaker, as I indicated in the answer, the credit card was used. There was a total of \$18,040 used between June and September with withdrawals. The purpose was for local entertainment in conditions where a credit card could not be tendered. The hon. Leader of the Opposition knows that you cannot buy 10 “crab and dumpling” using a credit card for local entertainment.

Dr. Rowley: Is the Minister telling us that the Minister for Tobago Development bought \$18,000 worth of crab and dumpling and therefore could not

use her card? [*Desk thumping*] In the case of the volume of untruths told around this instance, we of this Parliament as the people's custodian specifically ask the Minister: is the Government prepared to tell us the specific instances identifying the purpose for which the card was used locally? Costs ranged from \$200 to over \$3,000 in local entertainment. We asked the Government to tell us specifically what was the nature of the entertainment.

Mr. Roberts: She was buying a wig!

Hon. Dr. R. Moonilal: Mr. Speaker, I sought in the answer to indicate, when asked the purpose, that the purpose was local entertainment which falls under the conditions for use of that card. If the Member would like me to come back and say, "Crab and dumpling, doubles, mauby, juice,"—or if the Member would like me to come back and say, "Ten coconut to provide coconut water for an event," we are prepared to do that. We will bring a shopping list to explain the various purposes. But the purpose was for local entertainment for which that card can be used. The withdrawals have been the problem; that is really the issue.

Dr. Rowley: Mr. Speaker, the Member is inviting me to come back with a question, when he has in front of him the question: "state each and every instance and identify the purpose for which the transaction/s was made..." Why is he advising me to come back? I am here already.

Hon. Dr. R. Moonilal: I have said the purpose. What he wants now is not the purpose, it is the content of the sale. That is what he wants, not the purpose it was used for. The purpose was local entertainment. What he is asking for is the content of the sale. That is a shopping list, but the purpose is very clear, local entertainment.

Dr. Rowley: Since the Member has gratuitously offered us information about Noel Garcia's credit card in the Ministry of Housing, could the Minister tell us what he is doing about collecting that money which is owed to the Government?

Hon. Dr. R. Moonilal: That is the matter that will be before the court shortly to which you may well be named. [*Laughter*] [*Crosstalk*]

Hon. Members: "And yuh wanted de answer?"

Mr. Speaker: Please, please, please, no crosstalk.

Miss Cox: What do you do when people do not answer a question? [*Crosstalk*]

Mr. Speaker: Please, please, hon. Members, I am on my legs. Could you observe Standing Order 40(b) and (c). Shall we proceed?

LEGAL AID AND ADVICE BILL, 2011

Order for second reading read.

The Minister of Justice (Hon. Herbert Volney): Mr. Speaker, I beg to move:

That a Bill to amend the Legal Aid and Advice Act, Chap. 7:07, be now read a second time.

There are so many persons in this country who have not been able to access legal aid for a variety of reasons. For example, there is a good gentleman in Tobago who a few years ago, I am advised and readily believe, was the owner of a number of dump trucks as well as backhoe and heavy equipment, who told me that on instructions from certain persons—and he was guarded to ask me if legal aid would cover him, if need be—certain materials were picked up at the Scarborough Hospital and carried to a place called Landate.

1.45 p.m.

The man's name I have passed on to the hon. Attorney General, because the point I am making is, people, especially some of our brothers from Tobago, who live in glass houses must learn not to throw stones [Desk *thumping*] and if the information that is at hand is carried its full length, we will very shortly have a new Leader of the Opposition. So please, I have seriously considered, and I have had to advise this goodly gentleman, who now resides in Trinidad, in my constituency, whose word I have no doubt I can believe—please, the Member should not push his head into his shell like a tortoise, because these are facts that I have every bit of evidence to believe to be true. And this good gentleman asked me, “Before I proceed, could I get legal aid?” So that is the connection between this Bill that I am about to pilot, and the statement that I have made to this honourable House, that I direct in particular to the Leader of the Opposition and Member for Diego Martin West.

The next thing is that this Member seems to be following his colleague from Port of Spain South in the public domain, and that is why it is important that we have legal aid, so when the time comes even Members of Parliament may qualify for legal aid; they may need it because when they can continue to indulge this country in gutter politics—[*Interruption*]

Mr. Roberts: “Aie-yaie-yaie!”

Miss Cox: Mr. Speaker, 36(6), the Member is imputing improper motives.

Hon. Member: 36(6)?

Miss Cox: 36(5). [*Laughter*]

Mr. Speaker: Hon. Member, I know it is a bit early in your presentation, so I am giving you an opportunity to—[*Interruption*]

Hon. H. Volney: Link it?

Mr. Speaker:—yes, but I do not think this debate is about Members of Parliament, I think you should stick to the context of the contribution that you are about to make, and try to refrain from imputing any improper motives to any Member of Parliament. Continue.

Hon. H. Volney: Yes, Mr. Speaker, I would be guided accordingly, but the point of the amendment to the Legal Aid and Advice Act is to provide, as broad a net, to persons who may require it for the ways of their mouth, so that they will be careful when they open their mouth, especially when they open their mouth outside of this honourable Chamber where they are protected.

I cannot but observe again, as I did on the last occasion when I was on my feet in this honourable House, that the hon. Member for Diego Martin West has carried that side of the House even “further low”. I have to ask the question, whether, in coming to this honourable House, the hon. Member uses the elevator. Because if he uses the elevator, then he ought not to speak in other places or question why it is—[*Interruption*]

Miss Cox: Mr. Speaker, 36(1), what is the relevance of this discussion here? We are dealing with the Legal Aid and Advice Bill.

Mr. Speaker: I am giving him an opportunity to connect the Bill. Continue.

Hon. H. Volney: Mr. Speaker, I do not want to go further on it, except that the hon. Members on the other side—[*Interruption*]

Hon. Member: St. Ann’s for sale, I do not want to buy it.

Hon. H. Volney: Mr. Speaker, could you—before I am rudely interrupted again.

Mr. Speaker: Hon. Members, could I ask for your cooperation, and let us not get into the crosstalk—[*Interruption*]

Dr. Rowley: He is provoking us.

Mr. Speaker: Yes, but even though he is provoking you, take notes.

Dr. Rowley: We are taking notes too.

Mr. Speaker: Yes, take notes, I am trying to avoid the crosstalk. We live in a democracy, and there is freedom of speech in this Parliament, and every man, every Member of this honourable House will have the chance to speak. So, please take notes, but you cannot, while a Member is on his legs, any Member, interrupt that Member, via a stream of interjections, that could border on disorderly conduct. I would like Members to really allow the hon. Member to speak, and he has the full protection of the Chair, because he has freedom of speech in this Chamber. Continue, hon. Member.

Hon. H. Volney: Thank you, Mr. Speaker.

Mr. Roberts: Dry your tears.

Miss Cox: Speak, hon. Member, speak.

Hon. H. Volney: When I speak the hon. Member jumps up with 36(5), 36(4) and 36(3), but I have a serious Bill here to pilot today, and I propose to return in order to connect it when I come to wind up, but for now let me present the Bill.

Hon. Member: Yes, man.

Mr. Speaker: No crosstalk.

Hon. H. Volney: It is what I call rude interruption. You know, after you have been—*[Interruption]*

Mr. Speaker: Hon. Member, please. Forget the rude interruption, let the Speaker be responsible for the interruptions, but this is the crosstalk I am trying to avoid. Address your remarks to the Chair, and not to Members of this honourable House. Let the Speaker deal with interruptions, you just address me. You will have no interruption from me. Continue.

Hon. H. Volney: Thank you, Mr. Speaker. This Bill represents one of many initiatives on the part of our Government to improve the workings of the criminal justice system. One of the many initiatives, I repeat, according to the hon. Member for Diego Martin, the hon. Minister of Justice and the Member for St. Joseph, the only thing that he has done by leaving the bench is to, leave the bench. That is the only contribution that I have made. The audacity and that is why I am here to bring yet another Bill, so that those words can be swallowed—*[Interruption]*

Mr. Roberts: With mauby.

Hon. H. Volney:—with mauby, thank you. [*Laughter*] The current legislative provisions governing the access to legal aid by persons in need are grossly outdated in significant areas, creating a situation which puts some of the most basic of constitutional rights of the people in jeopardy.

When the Legal Aid and Advice Act was enacted in 1976, it was done so with the main intent of making legal aid and advice readily available to persons of small or moderate means, and to enable the cost of such aid or advice to be defrayed, wholly or partly, out of moneys provided by Parliament. However, persons of moderate means were never able to qualify for such aid, and in fact, it can be argued that the Act in its current form is not achieving even the most basic aims for which it was intended.

Our Government, our People's Partnership Government, and I say that with such enormous pride, our People's Partnership Government is cognizant of the fact that legislation alone cannot cure the ills that plague the criminal justice system, but we are steadfast, I repeat, steadfast, in our resolve to implement legislative measures which will strengthen and enhance the administration of justice. I feel strongly that the amendments being proposed today will ensure that the Legal Aid and Advisory Authority is, once again, placed in the best possible position to adhere to its statutory mandate, and to ensure that legal aid and advice is accessible to the people of Trinidad and Tobago who are least able to afford same.

The Legal Aid and Advice Act was last amended in 1999. This amendment served to give legal effect only to some of the changes that were approved by a 1982 Cabinet Note. In 2009, the then Cabinet agreed that urgent amendment to this Act was necessary, particularly for the purpose of widening access to legal aid, especially in relation to minors, quite possibly the most vulnerable category of persons within our criminal justice system. However, no amendments were made pursuant to the decisions taken by that Cabinet, that is, their Cabinet. So strictly speaking the Legal Aid and Advice Act which exists today embodies some provisions, the real usefulness of which may have expired almost 30 years.

It is against this backdrop that we in this Ministry of this Government propose this amendment Bill which seeks to address deficiencies in the existing legal aid law. It is expected that these proposed amendments will effectively treat with the issues that have come to bear on the efficient operations of the Legal Aid and Advisory Authority since the last series of amendments to the Act in 1999—during the time of the United National Congress Government, I might point out—and it is hoped that these new measures, along with many others proposed by our People's Partnership Government, will restore public confidence in the criminal justice system.

One of the main issues that these amendments will address is the eligibility of persons seeking access to the services of the Legal Aid and Advisory Authority. I pause here to say that it is a matter of express interest on the part of the Member for Port of Spain South, who I think in her wisdom will see it in her way, during the course of the day, to support this measure.

At present, legal aid in civil actions in the Supreme Court is made available to persons whose disposable capital does not exceed \$5,000, and whose disposable income does not exceed \$7,000 a year, and that is in our Trinidad and Tobago currency, after prescribed deductions are made from income earned during the prior 12 months.

In our present economic climate, these provisions essentially allow only the unemployed or the part-time employee to access legal aid services. This has resulted in a situation where persons genuinely unable to afford private legal representation are unable to access legal aid. These amendments are thus geared towards making legal representation accessible to those who genuinely need it, but who cannot afford legal aid.

Another significant change, which will be effected by these amendments, is the introduction of a duty counsel scheme. Under this scheme mechanisms will be put in place whereby immediate access to legal representation and advice will be provided to minors, from the moment that they are detained on suspicion of having committed any criminal offence. The same facility will be made available to adult offenders who are detained on suspicion of having committed a capital offence, and certain other indictable offences as may be specified by the Minister by order.

2.00 p.m.

It is intended that legal aid would now be provided to such persons as soon as practicable after their arrest and at the earliest opportunity during their detention. This latter amendment is also necessary for the efficient operation of the newly passed Administration of Justice (Indictable Proceedings) Act, that is the Act to abolish preliminary enquiries, and will ensure that legal services are available to potential legal aid applicants at the point when they need counsel most. Consultation with the authority has revealed that it has been their experience over the years, that litigants often seek legal aid and advice when it is too late, usually at a point when they have already compromised their legal position.

Under this proposed scheme, however, duty counsel would be available to persons from the very beginning of the criminal justice process, 24 hours a day and seven days a week. Regulations to govern the operations of this scheme are

currently being drafted. This type of scheme is by no means a novel idea as it already exists in countries such as Canada, the United Kingdom and, even, regionally in Jamaica. A study visit, coordinated by the Law Society of England and Wales, was undertaken by some members of a Legal Aid and Advisory Authority team in October of 2006, during the tenure of the last administration.

This visit allowed participants the opportunity to observe first-hand the operations of the duty counsel scheme in England and Wales. Persons who made this trip reported on the smooth operation of this scheme in the United Kingdom, and further commented on the high level of networking among the courts, the police and the law society—that is the body responsible for organizing the call centres through which attorneys-at-law on the duty counsel panels were contacted in a timely manner on behalf of suspects needing their services.

Mr. Speaker, while our beloved country, as many more developed countries, has enacted forms of free legal assistance and advice to those unable to pay for such, the outmoded provisions of our legislation essentially negated the realization of this benefit for many of our citizens in urgent need of such a service. Surely, I can say with conviction that the neglect of changing this Act by a timely intervention, by a timely legislative amendment in years gone past has been a disservice by the PNM Government to the poor and those persons who need legal aid. The proposed amendments, which will widen access to legal aid, are designed to so modernize our existing legislation that the international conventions to which we have assented since 1978 can be reasonably effected.

I refer here to the United Nations Covenant on Civil and Political Rights. The article of this covenant promotes the ideal that all persons are equal before the courts and tribunals. The covenant holds that in the determination of any criminal charge against a person or of that person's rights and obligations in a suit at law, such a person shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

Further, in accordance with the provisions of Article 14(3) of the covenant, an individual has the right, and I quote:

“To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him,”—or her—“in any case where the interests of justice so require, and without payment by him in any such case if he”—or she—“does not have sufficient means to pay for it.”

Additionally, the introduction of the duty counsel's scheme clearly recognizes the need to protect juveniles under the law. This initiative will for the very first time bring our legislation in line with our international obligations, which necessitate the provision of mandatory free legal assistance for arrested or accused juveniles.

More specifically, this will allow Trinidad and Tobago to adhere to the spirit of the United Nations Convention on the Rights of the Child to which we are a party. Article 37(d) of this convention provides, and I quote:

“Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.”

Mr. Speaker, this Bill will specifically address existing eligibility provisions for legal aid in High Court civil matters. These provisions are woefully inadequate and restrict access to persons of moderate means, the very category of persons that the existing Act is meant to provide for. Many of our citizens fall into the category of moderate means.

At present, an applicant for legal aid in High Court civil matters must not be in possession of or entitled to disposable capital in excess of \$5,000 per annum. *[Interruption]* Additionally, for the 12-month period immediately prior to the date of the application, such a person must not have received a disposable income in excess of \$7,000 per annum in order to qualify.

This disposable income figure is obtained by calculating the total sum received by an applicant and his spouse or her spouse over the 12 months immediately preceding the date of the application and deducting, therefrom, a personal income sum of \$1,080; \$600 for a dependant up to a maximum of three dependants and \$2,400 per annum for rent; in other words, \$200 for rent. Where in this day and age can anyone get, even a room for \$200 to rent? That is, we are living in the dark ages when it comes—

Mr. Baksh: That is for one hour.

Hon. H. Volney: That is for one hour, I am told. How do you know that, Member for Naparima? *[Laughter]*—contributions being made to the National Insurance Board, any income tax payments, national insurance pensions, old age pensions, public assistance benefits and disability benefits.

By virtue of this Bill our People's Partnership Government proposes to increase the maximum disposable capital from a ceiling of a mere \$5,000 to a ceiling of \$20,000. It is further proposed that disposable income be increased

from a figure not exceeding \$7,000 to a figure—that is an annual figure—not exceeding \$36,000 over the 12-month period immediately prior to the date of the application after deductions are taken into consideration.

These proposals were arrived at after a thorough consideration of figures attached to the existing minimum wage, old age pensions, national insurance pensions and benefits, and social welfare benefits, the average number of dependants in a low socio-income family, the average cost of rent and the cost of basic items, and other necessities in Trinidad and Tobago today, that is, in 2012.

These proposals have also been made after consideration of statistics over preceding years relating to the upper and lower income levels of applicants, who, based on the existing provisions of the Act, were not eligible for legal aid in civil matters in the High Court.

It is further being proposed, that the definition of disposable capital and disposable income be redefined to include the income of spouses in both legal as well as common law unions. Under the existing legislation only the income of spouses in a legal union is considered. In raising the levels of disposable income and disposable capital for eligibility purposes, the Government also acknowledges the requirement that all applicants qualifying for legal aid make a measure of contribution towards the cost of their legal fees where they are able to do so.

It is in light of this, hon. Member for Diego Martin West and other Members of this honourable House, that the provisions of the existing Act governing contributions from aided persons were amended to provide for contributions that would be commensurate with the proposed increases in disposable income and disposable capital.

This honourable House is asked, however, to take special note of the discretion of the authority, the discretion of the Legal Aid and Advisory Authority, to decide in cases where circumstances so warrant that this contribution from an aided person be waived entirely. This recognizes the fact that in our country there are people who are so poor that they cannot even assist with making a contribution to legal aid, in which case, the Legal Aid and Advisory Authority can say, “We recognize that you are unable to help so, therefore, legal aid will pay the entire cost of legal assistance.”

Contributions collected, however, would be used to offset the cost incurred by the State in providing these heavily subsidized legal services to a wider section of the public.

Further amendments are being proposed which would give the director of the Legal Aid and Advisory Authority the discretion to grant legal aid to an applicant

who would not qualify for legal aid under normal circumstances. This discretion would be exercised where there are extenuating circumstances.

Mr. Speaker, the current Act makes provision for non-residents to obtain legal advice after having been resident in Trinidad and Tobago for a period of six months. This amendment Bill will remove this time limitation so as to mitigate the adverse impact on this particular group of persons which, may include, for example, traffic persons and those who wish to bring claims associated with unlawful immigration detention.

Amendments are also being proposed to the First Schedule of this Act which deals with fees and expenses to be paid to attorneys-at-law. Attorneys would be pleased to know of the increased fees that would now be made available, but they must still understand that the basis of legal aid is a virtual giving back to society for all the benefits that membership in the legal profession brings to them. I want to repeat that for those lawyers who seem to think that legal aid is payment for their services. Legal aid could never pay for your service. The basis of legal aid is that you, the lawyer, will give back something to the country by helping the poor, and legal aid is merely intended to assist you in that process.

2.15 p.m.

So I repeat, attorneys would be pleased to know of the increased fees that would now be made available, but they must still understand that the basis of legal aid is a virtual giving back to society for all the benefits that being a lawyer brings to them, to us but I have done my time. As an attorney at law, I remember doing murder trials for \$1,500 for a whole murder trial. Mr. Speaker, \$1,500 and that was not too long ago, just about 20 years ago.

I remember one Christmas I started a legal aid and after two weeks we were not even halfway in the trial and the lawyer who was representing the other accused, he was being paid handsomely, privately, and I wondered why the man was only cross-examining because I wanted the trial to come to an end as quickly as possible—[*Laughter*—]but he was only cross-examining, and for his effort both the accused was convicted of murder. I got paid \$1,500 and I think he got paid \$150,000.

Mr. Sharma: That was to make sure you worked for your money.

Hon. H. Volney: So I worked for my money, hon. Member for Fyzabad. But now, with this timely intervention, the fees that are payable to attorneys to do murder trials could be as high as \$30,000; so lawyers could be once again

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encouraged even though most of them think that for a murder trial this is chicken feed. Well, it is not chicken feed for the State and lawyers who get the \$30,000 for doing such a case must recognize that there is a pro bono element in doing legal aid and this \$30,000 is to assist them so that they can take their work seriously and do their work properly.

The hon. Member for St. Augustine who has spent many a day in court under legal aid, would tell you that he would work for \$1,500, sometimes \$750 to do a rape case. [*Inaudible*] Yes exactly.

So, Mr. Speaker, this present schedule provides specifically for the quantum of fees payable by the director of the authority on the written authority of a court of summary jurisdiction or a presiding judge. These proposed increases are being made in light of the ever increasing and prohibitive difficulty in retaining attorneys at law on legal aid panels, willing to be assigned to matters especially at the high courts of justice. A perfect illustration of this can be seen in an article published in the Trinidad *Guardian* on March 21, 2011, headed:

“Legal Aid Board Member: Lawyers not paid enough for cases.”

According to this article, Khemrajh Harrikissoon, member of the board of the Legal Aid and Advisory Authority was quoted as saying that:

“...lawyers on the panel were reluctant to take divorce cases because they believe they were not paid enough.”

Mr. Harrikissoon lamented this situation particularly in the case of domestic violence victims seeking legal aid for divorce proceedings.

Mr. Speaker, I now come to address the issue of the constitutionality of the Bill. The Constitution is the supreme law of the land and any legislative provision which is inconsistent with it is void to the extent of the inconsistency. This is clearly stated in section 2 of the Constitution. Therefore, Parliament cannot by simple majority legislate in a manner which is inconsistent with the Constitution. Notwithstanding the recognition and declaration of our fundamental rights and freedoms in sections 4 and 5 of the Constitution, provision is made for Parliament to abrogate these rights. Any piece of legislation which is inconsistent with sections 4 and 5 is required, pursuant to section 13(2), to be passed by a special majority vote of not less than three-fifths of the Members of each House.

It is well established that in every democratic society that the rights of the individuals must be balanced against the interests of national security, the public and economic well-being of the country and the effective functioning of the

criminal justice system. When these interests conflict, the public interest or the common good must prevail where reasonably justifiable. Our Government, our People's Partnership Government is confident that this Bill is in fact reasonably justifiable in accordance with section 13(1) of the Constitution.

This Bill is one that seeks to modernize the criminal justice system and implement legislation that would ensure that the rights of citizens, specifically the right to counsel and to the protection of the law as enshrined in the Constitution would be further protected. It is the duty of the Government to put in place whatever measures may be necessary to ensure access to justice for our citizens who are unable to access the same for economic reasons, for the reason that they are poor or they are unable. Whether they are poor or not, there are times even the best of us are broken, we have nothing in our pockets and that is well known to Members of Parliament on both sides of the House.

Dr. Moonilal: I am like that most of the time.

Hon. H. Volney: The hon. Member from Oropouche East says, he is like that most of the time.

Mr. Roberts: Not North/East though.

Hon. H. Volney: Not Diego Martin North/East; never!

So Mr. Speaker, this Bill is one that seeks to modernize our criminal justice system. It is the duty of the Government to put in place whatever measures may be necessary to ensure access to justice for our citizens. This Bill is a manifestation of that resolve of our Government. Mr. Speaker, an established principle of constitutional jurisprudence is that no right is absolute and there are instances in which rights claims should yield to competing social considerations. In other words, the rights of each individual must be balanced against the right of the State to protect all individuals collectively.

It may be argued that the procedure regarding the provision of legal representation by duty counsel for certain classes of persons, minors and suspects charged with committing capital offences or suspected of committing certain capital offences and certain indictable offences, is discriminatory and therefore contrary to the right of an individual to equality before the law and to the protection of the law.

In relation to the provision of the duty counsel, our Government has acknowledged that minors are the most vulnerable in our society and their rights must be protected from the moment they become exposed to the criminal justice system. In relation to adults who have been charged with the commission of a capital offence or

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certain indictable offences, the mandatory and automatic provision of free legal aid assistance is an acknowledgement by our Government, the People's Partnership Government, the Government of the people, that this category of persons must receive protection in the interest of justice. [*Desk thumping*] This is having regard to the seriousness of the alleged offence and the corresponding severity of the sentence. The abrogation of these rights may similarly be cited in relation to the proposed increase in the quantum of the fees payable by a person seeking legal advice from a fee not exceeding \$10, to one not exceeding \$500.

Mr. Speaker, we are trying to get away from people obtaining \$10 advice. Ten dollar advice is worth just that—\$10. We have raised it to the goodly sum of \$500. This is not to say that those who cannot even afford the \$500 cannot get it free. But at least what they would be getting free that is paid for by the State would not be \$10 worth of advice, but \$500 advice.

Some have identified this move as a form of discrimination against the poor as it disenfranchises them from ascertaining or defending their constitutional rights. But as I alluded to earlier, Mr. Speaker, we have made provisions in this Bill for the director to exempt such persons from the requirement to pay for legal advice, where he or she is satisfied that the applicant is unable to afford such payment. This is in an effort to address these potential inequalities.

Additionally, the director is given the authority to approve an application for legal aid in extenuating circumstances, where the applicant does not meet the necessary means test of requirement. Member for Port of Spain South, you would be happy to hear this, because here it is that just about anybody in extenuating circumstances, whatever they be, can access legal aid, once the director approves the application on the basis that there are extenuating circumstances where the applicant does not meet the necessary means test requirement.

These proposed amendments to this Bill would therefore make justice more accessible and timely for those of our citizens most in need. As hon. Members would know however, most legal aid schemes the world over require applicants to make a contribution towards the cost of obtaining legal aid. And what is proposed is in accordance with established practices. Our Government is duty-bound to respond to the needs, hopes and expectations of our people and this Bill is proposed with the collective interest of all our citizens in mind.

Mr. Speaker, Members of this honourable House, I now turn to the provisions of the Bill. Clause 1 of the Bill contains the short title and clause 3 contains the interpretation provision.

Clause 4 would amend section 3 of the Act to allow for inclusion on the Board of the Legal Aid and Advisory Authority of at least one attorney-at-law from Tobago. This attorney would be one who has a resident practice in Tobago and who is also nominated by the Tobago House of Assembly. This person would serve on the board as a representative of the Tobago House of Assembly addressing an existing requirement in the Act, that in nominating persons for appointment to the authority due regard should be given to regional representation.

Section 4(3) of the Act has been amended. Under the existing Act an attorney-at-law aggrieved by a decision of the Legal Aid and Advisory Authority to exclude him from the legal aid panel has the right to a Judge, a right of appeal to a judge of the High Court with the decision of that judge being final. By virtue of clause 5 of this amendment Bill such decisions will no longer be final.

Clause 6 seeks to insert after section 4 a new section 4A that would authorize the director of the authority to prepare and maintain panels of attorneys-at-law who are willing to serve as duty counsel with the responsibility of providing legal representation to minors detained on suspicion of having committed a criminal offence and to persons detained on suspicion of having committed a capital offence or such other indictable offence as the Minister may by order specify.

2.30 p.m.

Clause 7 of the Bill amends section 12 of the Act so that the end of the financial year of the Authority now coincides with the end of the fiscal year which is recognized as September 30 of every year.

Clause 8 provides for the procedure regarding legal representation by duty counsel for suspects. Clause 9 seeks to amend section 17 of the Act which deals with applications for legal aid for the defence of persons before the High Court. This clause will remove the time constraint of three months after committal for the making of a legal aid application by persons committed to stand trial in the High Court.

Clause 11 would amend section 23 of the Act to increase the quantum of disposable capital and disposable income, the parameters of which delimit the eligibility of an applicant for legal aid. The effect of this is that the maximum disposable capital would be increased from a ceiling of \$5,000 to \$20,000 and the maximum disposable income from a ceiling of \$7,000 to \$36,000 per annum or \$3,000 per month. Basically, what this means is that an old age pensioner or a person in receipt of an old age pension could now access legal aid in Trinidad and Tobago.

Clause 12 seeks to repeal section 24 of the Act and substitute a new section that would authorize the director to approve an application for legal aid in extenuating circumstances where the applicant may not meet the necessary requirements. Clause 12 further provides that such an approval, given by the director, shall be ratified by the authority at its next meeting.

Clause 13 seeks to amend section 25 to, inter alia, provide for the increase in the quantum of disposable income considered, as referred to in section 23 of the Act. Section 25 would be further amended with the effect that the definition of “spouse” under the Act would be widened to include a cohabitant as defined under the Cohabital Relationships Act, Chap 45:55.

Clause 14 would amend section 26 to bring this section into alignment with the increased quantum of disposable income provided for in the Bill.

Clause 18 seeks to amend section 33(4) to increase the sum recovered above which an aided person will be required to pay cost in a civil matter. This figure has been increased from an award by the court, of \$1,000 to an award of \$4,000.

Clause 20 seeks to amend section 37(1) to remove the period of six months residency required for a person to be eligible to receive legal aid in accordance with the Act. This clause will also amend section 37(4) to increase the fee that may be payable by persons seeking legal advice. The existing fee, as I said before, of \$10, is clearly outdated and has now been increased to a fee not exceeding \$500.

I want to ask all the Members present and all those listening to please bear in mind that this amendment has the effect of permitting the director to require that persons seeking legal aid pay anything from \$10 up to \$500 for such advice, with the director retaining the discretion to charge no fee at all, not even \$10, where the circumstances may so require. This amendment is not to be misconstrued as creating a situation where poor persons now have to pay a mandatory \$500 in every case where legal advice is sought.

Clause 22 seeks to amend section 40 of the Act to empower the Minister responsible for legal aid to make regulations to govern the operation of the duty counsel scheme.

Clause 23 would amend the First Schedule to increase the quantum of fees and expenses to be paid to an attorney-at-law giving legal assistance to persons under the Act. This increase will apply to attorneys conducting legal aid matters before the Magistrates’ Court, the Criminal High Court and the Court of Appeal.

Clause 24 seeks to amend the Second Schedule to the Act to add to proceedings for which legal aid may be granted under the Act. A person may now obtain legal aid in connection with proceedings even before the Environmental Commission.

So this Bill is proposing amendments to major sections of the Act as an immediate response to the existing dire situations coming to the attention of our Government regarding the regulation and the administration of legal assistance to those most in need.

I must acknowledge here today that much work had been done by the previous administration with regard to those improvements—[*Desk thumping*]*—*but we have seized the opportunity—

Mr. Roberts: “Clap all-yuh self good nah man.”

Hon. Member: “And we thing; and we thing.”

Hon. H. Volney: I will repeat it. Hon. Member for La Brea, you would like to hear this.

I must acknowledge here today that much work had been done by the previous administration—[*Desk thumping*]*—*with regard to these improvements, but we, on this side have seized the opportunity to tie up the loose ends and to do the necessary to ensure that this process was taken to its logical conclusion in the shortest time possible.

There is no doubt that the sums currently offered for representation in criminal matters are grossly uncompetitive and cannot attract the level of dedication necessary for members of the legal fraternity who eye legal aid for money—and there are many, especially in our criminal courts—in providing quality service to our citizens in need of it

Over the years there were so many lawyers who have contributed and who have helped the poor. From my days as an attorney I did my bit. I think that the hon. Prime Minister did legal aid; the hon. Member for Oropouche East has not had an opportunity; the people grabbed him from doing legal aid and put him to make the legal aid Bill better, and that is why he is here today. The hon. Member for St. Augustine has spent years in the trenches providing for the poor, and there are many others. Senior Counsel, Mr. Israel Khan, started his profession. Miss Dana Seetahal, Mr. Gilbert Peterson, all these people have become today, senior counsel. They started as legal aid lawyers.

So this is a recognition; this Bill today, I pay in it, tribute to all those lawyers over the years who have helped the poor through legal aid. [*Desk thumping*] In it is a little recognition that there is a little more in it for them. It is now a little more

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than “cacada”, as they will say. While it is not parliamentary language, you will forgive me, Mr. Speaker, if I use a language that the poor man will understand, certainly the Member for Port of Spain South will understand. She will know what “cacada” is.

So it is a little better than that now. We have carefully considered in this amendment Bill the proposals of the previous administration, and we have gone a step further to ensure that access to legal aid is made available to those persons who would not otherwise be able to afford legal representation, or have access to the courts, thereby holding true to the constitutional guarantee of equality before the law.

Our Government, hand in hand with the Legal Aid Authority—and here again, it would be remiss of me if I did not also recognize the yeoman service of the staff of the Legal Aid Authority who have had over the years to work under the most telling circumstances. They have carried the burden of administration and they have done well, and I pay tribute to them today, those present and those gone past under the old law. We in this Government have made it easier for them to carry that burden.

Our Government, hand in hand with that authority, will be providing increased and improved access to justice as we continue to be ever mindful of our statutory responsibility to the citizens of Trinidad and Tobago, that is, making legal aid and advice readily available to persons of small or moderate means, as this is a Bill for the poor man, because this Government cares about the poor man.

It is with this responsibility and underlying promise in mind that I ask for the full support of our colleagues, those on the other side, the hon. Members of this House, on these amendments today. I have no doubt that they will support this Bill as their colleagues in the other place did, and I have no doubt that these measures will be of inestimable value to the lives of our citizens and the future of our nation.

So having regard to the foregoing submissions, I commend the Legal Aid and Advice (Amdt.) Bill, 2011 to this honourable House, and I beg to move. [*Desk thumping*]

Question proposed.

Mr. Colm Imbert (*Diego Martin North/East*): [*Desk thumping*] Thank you, Mr. Speaker. Mr. Speaker, the hon. Member for St. Joseph introduced his presentation, apart from certain irrelevancies, by saying that he is working and that he has brought yet another Bill to the Parliament, and throughout his presentation he beat his chest in his normal way, boasted about everything that he is doing; the wonderful things that he is doing.

Let me just do a little recap. The hon. Minister of Justice brought the DNA Bill to this House. It was a mess. He brought the Indictable Offences (Preliminary Enquiries) Bill to this House. It was a mess. He brought the Electronic Monitoring Bill to this House. It was an absolute mess. And what is characteristic of these pieces of legislation brought by the hon. Minister, which are now all stuck in some no man's land—because we on this side have pointed out the gross inadequacies, flaws, contradictions and impracticalities in these pieces of legislation brought by the hon. Minister. As I said, they are stuck in no man's land, because they have to go back to the drawing board to fix the mess that the hon. Minister brought for us. But, he beats his chest he has done so much work. And, now, he has brought this Bill, which I am afraid, is yet another mess.

2.45 p.m.

I am asking the Minister of Justice through you—I do not know what this gentleman does when the day comes. I know what he was doing for the last couple weeks. He was campaigning for a post in the UNC, in which he unfortunately was unsuccessful. I know what he was doing, I saw him on TV. But, I do not know what the honourable gentleman is doing when he is at his day job, because there is so much wrong with this legislation.

Let me state at the outset in the same way the hon. Minister was mistaken that he would be successful in the internal UNC election, he had no doubt he would win; he did not win; in the same way he has no doubt that we would support this Bill. You are mistaken. You are wrong. If you go back into the parliamentary record, you will see there are many distinguished practitioners who have a distinguished record of disagreeing with the other place.

Not so, Mr. Speaker? If one goes into the record one will see that many independent-minded leaders in various Parliaments on mature reflection and on hindsight and with new information coming to hand have disagreed with their own members in another place. Not so, Mr. Speaker? Mr. Speaker, I am not hearing you. It is all right, I will not draw you into the debate. But there are many famous persons who have done that.

Let me go into the meat of the matter and explain to the hon. Minister why unless you make suitable amendments to this legislation, we would be unable to support it. The purpose of the amendments—and I must say the purpose is laudable. Nobody is arguing about the increase in the ceiling in terms of disposable income, in terms of the ceiling with respect to disposable capital. I do not know about the fees part. As the hon. Minister said, this is supposed to be pro

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bono, it is supposed to be public service and it is supposed to be giving back, but it is not unreasonable to increase the level of fees for persons doing legal aid to the levels that are in this legislation. I would not quibble about that.

Let us deal with the meat of this legislation. What the hon. Minister would want us to agree with is to amend the provisions in the parent Act, essentially section 25 of the parent Act, which deals with disposable capital and disposable income. And, of course, once again, as the Minister did not present the Bill, I will present it.

So, we have to go into the meaning and nature and intent of the words “disposable capital” and “disposable income”. We have to understand them. And let us deal with the capital first because that is where the biggest irregularity occurs in terms of what the Minister is attempting to do. Section 25 (1) of the parent Act reads as follows:

“25. (1) For the purposes of section 23 and 24—”...

well 24 is no longer relevant, it is being dealt with.

““disposable capital” means the property of which the applicant is possessed or to which it is entitled exclusive of—

- (a) the subject matter of the proceedings;
- (b) wearing apparel of the applicant;
- (c) tools of the trade of the applicant,
- (d) household furniture used by the applicant in his house;”—and this is the part that the Minister has missed, staring him right in the face and he missed it—

“(e) a dwelling house, owned, used and exclusively occupied by the applicant and his family as his house assessed at an annual value of not more than one hundred and fifty dollars;

Why did you not amend that section if you wanted to increase the availability of legal aid to persons in need? Why did you not make an appropriate adjustment to section 25(1)(e)? And since the Minister did not present it and obviously does not understand it; I am sorry to say that but it is clear you do not understand, otherwise you would have changed that. Let me explain what annual value means.

The annual value comes out of the land and building taxes legislation, and it means the gross annual rental or value of a property. It means the rent that one would receive for the property. Mr. Speaker, I am sure you can do the maths: \$150 a year is

\$12 and a few cents per month. How many houses in Trinidad and Tobago have an annual rental value of less than \$12? I am not aware of any; there may be some.

So by changing the disposable capital from the existing figure and increasing it to \$20,000, as the Minister has done, the Minister has completely ignored the fact that this \$150 annual value was put into this law some time when they had the great flood; when Noah was building the Ark; when renting a property for \$12 a month was something. That would have been a modest dwelling house. So the Minister has to change that and put a figure in there that is consistent with modern realities. [*Desk thumping*]

Go to the Valuations Division—and that is why we say make appropriate amendments to this legislation and we would support you. Nobody could be opposed to increasing the qualifications and widening the net and allowing more persons to avail themselves of legal aid. Nobody could be opposed to that. But, you have done something that makes no sense.

So, I am putting it to the Minister, go to the Valuations Division in the Ministry of Finance and get an appropriate figure for the annual value and adjust it accordingly to bring it into the 21st Century. So that it would not exclude thousands, perhaps hundreds of thousands of persons who own their home whose annual value is way in excess of \$150. That is problem number one.

Problem number two: you need to do the maths, Minister. Let us look at disposable income. If we go to clause 25, the section that deals with disposal income on page 23 of the parent Act, you are changing \$600 a year. It is sort of a personal allowance for persons and going up to \$1,800—three persons at six. You are changing that to \$7,200, you are putting the limit up to \$7,200. As I said, nobody could argue with that. Then you are changing the personal allowance of the applicant. Let me go to your specific clauses to make sure that this is correct. You are changing \$600 and \$1,800 to \$2,400 and \$7,200 respectively. Then you are changing \$1,080, which is the personal allowance you give to the applicant—actually the other one for dependents—from one \$1,080 to \$4,320. So the allowance for dependants has gone to \$7,200, the allowance for the persons has gone to \$4,320. You are changing the allowance for rent from \$2,400 a year—\$200 a month—to \$9,600 a year—\$800 month.

Now, when you add that up—these things add up fast, you know, Mr. Speaker. Mr. Speaker, \$7,200 plus \$4,300 is \$11,520; add \$9,600, you get \$21,120. Then you add national insurance contributions which would have increased significantly over the years. Let us put a nominal figure of \$100 a month for NIS contributions; at \$1,200 a year that takes you to \$22,300. Income

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tax is out. It always was out, it remains out, whatever income tax you pay. So you are dealing now with your net income after tax.

National insurance pension which is now \$3,000; old age pension which is now \$3,000 and public assistance, you add up all of that and even if you put a cap on the combination of NIS and old age pension of \$4,000, which is what is in the law, you come up with a total before you even get to this \$36,000 that the Minister is talking about, of \$75,320. So the person can be in receipt of \$75,320 before the new allowance of \$36,000 kicks in, which takes it to \$111,320.

So, in the case of a 65-year-old seeking legal aid, who is in receipt of both NIS and old age pension, or NIS—let us forget old age pension, because there are income qualifications with that but there are none with NIS—they can be receiving additional income which is upwards of \$ 50,000 to \$ 60,000.

I want the Minister to do the maths. I am not challenging this. Do the mathematics and see that what you are doing is going to deal with the purpose intended. Was it really your intention, that a pensioner who is in receipt of additional income of say another \$50,000 would be eligible for legal aid? I am just asking you to take another look at that. Do the mathematics; add up all the deductions that are here. Do a spreadsheet and you will see, you will come up to the same figure that I have come up to. I just ask you to be careful about what you are doing, because it is not as simple as it is made out to be. I heard the Minister make a statement and he is just wrong. I have to assume that his advisors wrongly advised him because the Minister is what we call an expert. *[Interruption]* On the face of it, on paper, he is an expert. *[Interruption]*

Dr. Rowley: He does not look the part.

Mr. C. Imbert: He is a legal practitioner of some, I do not know how many years—30 years. *[Crosstalk]* “Ah go have to ask the Speaker to protect me.” He is a legal practitioner of some 30-years-plus. I do not know, I assume. He has been a judge for some period of time, so one would think that the Minister on paper is an expert and an expert is supposed to know in detail what he is dealing with. But, if you go to the parent Act, you see that old age pension was, is, always was, excluded from the calculation of disposable income. And I will read it.

“Disposal income means,” and I will just recite, so and so, “after deducting there from—National Insurance Board pensions; old age pensions...”

So it means in calculating the disposable income of the applicant for legal aid, you never took account of old age pension or NIS, which means that all old age

pensioners—because old age pensioners have to do a means test, and they have to demonstrate that they are not in receipt of other income, all old age pensioners would have been eligible for the legal aid in the past.

So it is just wrong for the Minister to say that under the new administration under his Government, pensioners will now be able to get legal aid. “You are wrong.” The disposable income criteria remove the old age pension from the calculation. So I do not know who is advising the Minister but you need to go through these numbers, and you need to see, you need to ensure that you are doing what you intend to do, because you say it is a Bill for the poor man. Somebody with an annual income of \$100,000 is a poor man? Maybe; maybe! Check it out! That is the advice that I would give the Minister. Make sure you know what you are doing.

The other thing and I mean this sincerely; in 1995—2001, we had a Government that hustled through a lot of legislation. Sometimes we would come into the Red House, five, six Bills on the Order Paper, “and they passing all, waashh, waashh, waashh, hundreds of Bills, man, and they boast about the number of Bills that they pass. Well, all of them gathering dust, because they cannot be proclaimed, they cannot be enforced, they cannot be implemented. The package of Children’s Bills is a case in point, gathering dust since the year 2000 because they were badly done. Haste makes waste! Move at the correct pace. You know, act in haste, repent in leisure. And, especially something like this, which I think would be a tremendous benefit to citizens of this country, go and look at these anomalies and fix them before you railroad this Bill through using your majority.

Mr. Speaker, the other thing which is an innovation, as the Minister said he is implementing what a previous Cabinet had intended to do, again nobody could argue with that. But this duty counsel scheme that the Minister is implementing, I have different words to describe it: piece meal or in local parlance, “ah half-pick duck”.

Because, Mr. Speaker, when you look in other jurisdictions, when you go to Canada—I took the opportunity of downloading the Duty Counsel Manual for Legal Aid Ontario—hundreds of pages—when you go to these other countries and you see the systems that they utilize, the detailed and comprehensive systems that they utilize for duty counsel and you see what is in this Bill, what we are being asked to approve is just unacceptable.

3.00 p.m.

If you go to the United Kingdom, you have the Legal Services Commission and you have the Duty Solicitor Manual. Now, I am sure the Minister is familiar with these things. But what is important in all of this, Mr. Speaker, if you go to

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Canada no distinction is made between a duty counsel who is available to a police station when a person picked up on suspicion and a duty counsel who is available to somebody who appears in court. Minister, you are introducing a “half-pick duck” because the duty counsel is a very innovative and much needed initiative in this country. No two ways about it! People are in distress. They have no money. They have no experience. They are traumatized. They do not know what to do. They may admit guilt. Some unscrupulous police officer may be harassing them to confess and so on. They do not have the benefit of legal counsel. I am sure you know these things.

In the United States they have the Miranda concept, the Miranda case, your Miranda rights. You must be advised of your right to legal counsel, et cetera. It is a very good thing that is being proposed, that we have duty counsel available to persons who are suspects, who are picked up on suspicion, and in a police station or wherever else they are being detained that they have duty council available to assist these persons using the legal aid system. No problem! But where is the parallel system, as occurs in the United Kingdom, of duty counsel in court? What the Minister has done? He has left the old—I would have to call it bureaucratic—system within the law for legal aid when you actually have been charged and you are appearing before a judicial officer. You have to apply for legal aid. You have to go through the process, and a person may still be in a traumatized state of mind. He may still require legal counsel, he may be asked to put in a plea; he does not know what to do; there is no duty counsel there to help him and so on; he has to go through the process of applying for legal aid. What they do in the United Kingdom—I am sure the hon. Minister knows because as I said on paper he qualifies as an expert—you have a parallel system. You have two duty solicitor schemes operating parallel.

The police station duty solicitor scheme enables a person who is arrested on suspicion of an offence is able to consult with a solicitor either in person or on the telephone, and then you have the court duty solicitor allows a person who has already been charged with an offence to consult with and be represented by a solicitor at the Magistrates’ Court on his first appearance. I would ask the Minister—we will support that. Put it in. Do not limit this duty counsel to simply suspects; expand its application to persons who are charged and appearing before a magistrate or a judge, and then we will truly be joining the rest of the world and developed countries and entering the 21st Century in terms of legal aid.

England has the duty solicitor for the police station. You need help in the police station—you call or whatever; they may even have somebody there in the police station in some jurisdictions—the person is in the police station and dealing

with somebody who has no legal representation and in the court it is the same thing. The person is resident in the court—[*Interruption*]

Miss Mc Donald: That is right.

Mr. C. Imbert:—or in courts that do not have much traffic, they are on call. That is what my research has told me.

Mr. Speaker, lest we underestimate the situations that a person can get into with respect to the requirement for legal counsel, just let me read from the Duty Counsel Manual Legal Aid Ontario. Availability of Duty Counsel. Criminal Duty Counsel. Duty counsel should be:

“Located in and around court.

Proper signing in the duty counsel office and in the corridors is helpful both in attracting clients and explaining limitation on their services, duty counsel should attend between half an hour and one hour before court so they can interview people as they arrive at court, cell interviews should also commence at least one hour before court depending upon inmate arrival time”

And then it makes a comment:

“Unfortunately many accuse attend just before or after court commences and unless the court automatically adjourns in recognition of the problem, duty counsel should request a client’s matter be stood down to give”—them—“an opportunity to meet with the client.

It is a detailed technical manual in Legal Aid Ontario which spells out all of the guidelines, the practices and the protocols in terms of duty counsel.

A duty counsel might ask for a matter to be stood down so that the person’s counsel could attend, to obtain a trial date, to have a resolution meeting, to maybe make a guilty plea, whatever, to plea bargain and so on. That is one thing a duty counsel can do because they are right there in the court. They can ask for an adjournment so that the person can go and retain his private counsel or he can complete his application for legal aid.

A lot of these people who find themselves in trouble with the law they are not the most literate sometimes. They may have dropped out of school; they may find themselves in difficulty even submitting the application for legal aid. The duty counsel is there to assist them in the court to prepare the application for legal aid.

Minister, we on this side would ask you to expand the functions, the duties, the role and responsibilities of duty counsel, not simply to a person who is a suspect, but

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somebody who has been charged with a crime. That is why we are saying that we want you to do some work on this Bill before we can give you our unqualified support.

Now, Mr. Speaker, there are other peculiar aspects of this legislation that the Minister really did not explain. Clause 12 of the amendment Bill repeals section 24 of parent Act and replaces it with the following:

“Where there are extenuating circumstances, the Director may approve an application for legal aid even though the applicant does not meet the necessary requirements.”

The Minister simply expanded on that by saying that with this innovation—let me get his exact words—anybody who is in need of legal aid could get it once there are extenuating circumstances, but did not explain what they are. What does that mean? Right now there is an income ceiling. Right now the limitation for legal aid is a disposable income of \$3,500 with a band up to \$7,000, inside which the authorities can use their discretion and determine whether someone should assess legal aid. You have taken the income qualification out altogether. You have put it solely in the hands of the director without any guidelines. *[Interruption]*

Miss Mc Donald: That is right.

Mr. C. Imbert: It is carte blanche—it is an open blank page where the director and the director alone will establish extenuating circumstances.

What I do not like about that is the potential for judicial review because an aggrieved person who has applied for legal aid saying that because of certain issues—he may own property but it may be tied up in a legal dispute; he may not be able to get access to it; he may have income but he cannot get it; whatever the extenuating circumstances are; he may have cancer; he may have a serious medical problem, one could use the common English meaning of circumstances and come up with scenarios.

What is happening here is that you are going to allow the director to give person A legal aid even though he does not meet the means test and then use his discretion and say person B must not get it leading to judicial review. It is much better to particularize some sort of criteria which could give a definition for the phrase, “extenuating circumstances”, whether you use an income ceiling or whether you use economic criteria to particularize what extenuating circumstances mean. But to leave it so and say in extenuating circumstances the director could waive the income requirements, you are opening up a Pandora’s box of judicial review applications from aggrieved persons who will plead discrimination and that they are not being

treated equally in the sight of the law by the authorities. That is something else that I think you need to go back to the drawing board and see if you can tighten up what you mean when you put the phrase “extenuating circumstances.”

3.10 p.m.

The other thing that strangely has come out of the Act is section 37. Section 37 of the parent Act deals with the residency requirement and it states as follows:

“Subject to this Part legal advice shall be available to persons resident in Trinidad and Tobago for a period of at least six months.”

Now, the Minister sought to explain that by saying that this would allow persons who are trafficked, persons who are brought here against their will and used for nefarious purposes or whatever, and persons who find themselves in trouble with the immigration authorities who may not have been here for more than six days, might not even be six hours—I could see that. But, the hon. Minister just gave those two examples that this is intended to deal with persons who are victims of human trafficking, and persons who find themselves running afoul of the country’s immigration laws who would have been here for less than six months. But by removing the residency qualification, it now applies to everybody who has been in Trinidad and Tobago for five minutes; regardless of their nationality, you are giving them access to legal aid.

Again, I would like the hon. Minister to go back in time and see why that six months residency requirement was there. No one could argue with a special window for persons who have been trafficked, persons who have been detained by immigration and so on, being given special consideration in terms of their residency, nobody could argue with that. Because without that, what it means is that somebody who came in last month and got caught in a sting operation or whatever, and has now been detained would not be eligible for legal aid, and that is really inhumane. I can understand the thinking behind it, but I do not think that the clause should be so loose that it is now open season that anybody, no matter what country they come from, whether they land in Trinidad and Tobago for three minutes, is now eligible for legal aid if they meet the income requirements of this law.

Dr. Moonilal: Three minutes and “yuh” in legal aid. For what? Littering the airport?

Mr. C. Imbert: No, they may have a false passport. Mr. Speaker, through you, the hon. Minister of Housing and the Environment tends to make these—I am trying to find a word that I will not be ruled out of order and the words that

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went through my mind were “juvenile”, “childish” and so on; but “I can’t say dat.” But, Mr. Speaker, the Minister of Housing and the Environment tends to make these emotional outbursts without thinking it through.

A person may land in the airport and it may be discovered that the person has a false passport, or they are caught with cocaine, and they have been on Trinidad soil for 10 minutes. As they come off the plane, the sniffer dog establishes that they have drugs on them, and they pick them up, and they “gone” inside. According to this now, they are now eligible for legal aid at the expense of the taxpayers of Trinidad and Tobago. This is not somebody who is the victim of a crime because a trafficked person is a victim, but somebody who is smuggling drugs is certainly not a victim. Why should they benefit from the provision for legal aid which is intended for poor people in Trinidad and Tobago who live here and who find themselves in difficulty?

Dr. Rowley: Paid for by taxpayers.

Mr. C. Imbert: So, I would like the Minister to look at that very carefully. Go back in time and see if you can establish why the residency requirement was placed in the law.

Mr. Speaker, the other provisions that one has to look at—let me go back to the Bill itself. [*Interruption*] You know that you are always saying that. Mr. Speaker, through you, this is just a personal thing. Every time we complain about some provision in a law, you say, “some fella in the other place asked for it”. That is not how you run a country! [*Laughter*] Just because somebody ask for it—so if a man ask you to jump off a 10-storey building without a parachute, “yuh go jump? [*Crosstalk*] It made sense at the time. Well, it still made sense to you. So a drug trafficker comes and lands in Trinidad and Tobago and in 10 minutes they hold him, he is entitled to legal aid from the taxpayers of this country and he is from Colombia or somewhere like that? I think we need to look at that.

Dr. Rowley: Not my taxes.

Mr. C. Imbert: Let the person who paid them to traffic the drugs through our airport deal with their legal expenses and find a lawyer for them. Why we, the taxpayers of this country, must pay for lawyers for drug traffickers from another country? No, no, this is not a trivial matter. These are the things that I am asking the hon. Minister to look at very, very seriously, Mr. Speaker. Because, you know, as I said, the hon. Minister beat his chest, “get on”, talked about the wonderful work he has been doing, but there are so many inconsistencies.

I read all the clauses on duty counsel from clauses 6 coming up, and reading it through, all the while, all I am seeing—let us look at clause 5.4A.(1):

“The Director shall prepare and maintain panels of Attorneys-at-law to be known as Duty Counsel who are willing to—

- (a) provide legal representation for a minor as soon as possible after the minor is detained...”

So what happens when the minor is in court? The same minor, who does not have the wherewithal, may not have the mental capacity, may not have the education, may not have the ability to apply for legal aid, you are giving him legal aid when the police hold him, but you are not giving him duty counsel when he goes into court and makes his first appearance and so on, Mr. Speaker? I read all through this, and I am just not seeing the comprehensive approach to duty counsel that I have seen in other countries. So, I would ask the hon. Minister—we need to deal with this.

If we are going to bring in this innovation, which I wholeheartedly support, the whole question of duty counsel, duty attorneys, duty solicitors, whatever, I think it has to be, at the very least, similar to the system in England where you have a police station duty counsel roster and you have a court duty counsel roster. Because the danger to the person is just as serious, whether they are in the police station or whether in the court; the question of intimidation, the question of being overwhelmed by the circumstances, is equally present in the police station when they are picked up to when they appear in court. I mean, it has to be a frightening thing, Mr. Speaker. “Yuh get pick up for something, yuh innocent, yuh gone to court, yuh never were in a court before, yuh sit down there” and some very stern-looking person looking at you, and “What is yuh name?” and “Speak up.” It could be very disconcerting and very intimidating especially to a young person.

Therefore, I urge the Minister as I go through clause 8. It speaks about when a suspect is detained. Then, if you go to page 5 of the Bill before us, it speaks of a suspect being charged, legal aid is granted to him under this Bill by way of application, because when you go through, it is by way of a legal aid application. We have got to do better than that, Mr. Speaker. If you want to make changes; if you want to pat yourself on the back; if you want to pound your chest; if you want to say that you are doing something, that we now have a Ministry of Justice; and you are a man of great judicial experience and you understand the courtroom environment, then demonstrate to us that you understand what is going on. When you bring matters before this House, please do not give us a “half-pick duck”, or a piecemeal approach, to these very, very serious matters.

Miss Mc Donald: Buljol without saltfish. [*Laughter*]

Mr. C. Imbert: Buljol without saltfish; doubles without bara; channa without bake; pelau without meat. [*Laughter and crosstalk*]

Mr. Volney: Pencil without lead!

Mr. C. Imbert: Pencil without lead! [*Laughter*]

Mr. Volney: That is you!

Mr. C. Imbert: “You understand, eh?” [*Laughter*] You very well understand. All jokes aside; it is funny how your own words could come back to bite you.

Mr. Speaker, you know, just to get into the meat of this thing, let me go into some of the duties and responsibilities again of the duty counsel.

“Adjournments to obtain counsel

Most courts allow two to four weeks following the first appearance for a client to obtain a lawyer either privately or through Legal Aid...Duty counsel should be able to inform the court as to the reason for the delay.”—in the person submitting the legal aid application or obtaining private counsel—“At this point the court may grant a further adjournment to set a date for trial or preliminary hearing.”

Those are some of the duties of a duty counsel in the Ontario system. They are there to help the person who is charged and before the judicial officer to deal with a situation which they may be encountering for the first time.

“Often counsel for an accused request duty counsel to act as agent to request adjournments or set trial dates.”

As I said, I spoke about setting matters down.

Bail hearings; again, very important. The duties of a criminal duty counsel in the Ontario system:

“Conducting bail hearings...arranging the early release of accused persons is one of the most important functions of duty counsel as it is often significant in...”—terms of—as the rest of the criminal process—“If an accused is detained, he or she could spend several months in custody while awaiting a bail review or a trial.

Time to prepare for a bail hearing is often very brief. As part of that preparation, duty counsel must interview the accused, contact and prepare

potential sureties, review the synopsis and criminal record of the accused and when necessary, contact community resources...

Duty counsel in bail court also need to advise an accused on a possible guilty plea..."

These are some of the things that I spoke about.

You are in court for the first time, you are not well educated, you are not very literate and you are frightened. They give you some—I cannot remember the term for it—but “yuh went to the police station, dey hold yuh, dey give you some body music in the police station, so yuh all the worse for wear, yuh frighten, yuh doh know what to do, yuh have not come across this before.” If you have a duty counsel in the court—yuh have been charged, eh; yuh fingerprinted and charged”—you are in the court now making your appearance, the duty counsel would advise you to make a guilty plea; plea to a lesser offence—you know, maybe you can get off with a reprimand and discharge; ask for an adjournment and see if the person could get bail and so on.

This is why I am asking the Minister if you take a good look at what occurs in other jurisdictions, then, I think we can—we have no problem looking at this. The only thing is that we do not want to get set up like we got set up with the gang law. I mean, you could do what you want, Minister.

Mr. Volney: You were part of it.

Mr. C. Imbert: You could do what you want, Minister, through you, Mr. Speaker. You could use your majority and just pass this bad law where persons who have houses that rent for more than \$12 a month, which is virtually everybody in Trinidad and Tobago, will not be beneficiaries of your increased income provisions. You could do that if you want. You could pass this “half-pick duck” which only has counsels dealing with detained persons and not duty counsels in court. Or, you could be mature about your approach to legislation, and listen to what we have to say and make appropriate adjustments to the law, and as I said, you will get our unqualified support.

We do not intend to get set up like the gang Act, and I make reference to that because we sat there, we all worked in harmony, we all worked together, we made, what I considered to be, far-reaching improvements in our criminal justice legislation. Then, when the gang Act was bungled by the authorities during the state of emergency because they did not take the time to gather the justiciable evidence required to continue with the matter—as the Minister himself has said—

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when the authorities bungled it because they did not gather the evidence, the appropriate evidence, they said, “Is the PNM fault because it has something wrong with the gang Act; is dey tell we put this clause.” We, who are in the Opposition, with 12 votes, we tell you where to put and where not to put! We do not intend to get set up like that again. [*Desk thumping*]

3.25 p.m.

But, I am telling you that if you listen to us, go back and do the calculations with respect to disposable capital and disposable income; look very carefully at that provision that limits the rental value to \$12 per month for a house owned or occupied by an applicant for legal aid; look very carefully at the gross income of the person, taking account of NIS, old age pension, disability, personal allowance, allowance for dependants, the new provisions, plus the \$36,000, and see whether that is really where you want to carry this thing. If you do that, you would get our unqualified support. If you bully it through, we will not support the Bill. I thank you, Mr. Speaker.

The Minister of Legal Affairs (Hon. Prakash Ramadhar): Mr. Speaker, I think it is about time we remind ourselves of what our fundamental rights are in this nation. I shall, with your permission, read two sections. Under our fundamental enshrined rights is:

“the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

the right of the individual to equality before the law and the protection of the law.”

Having heard my friend from Diego Martin North/East—[*Interruption*]

Mr. Imbert: Do come at me again.

Hon. P. Ramadhar:—I want to congratulate you. There was merit in some of the arguments he has put forward, but fell fatally in relation to the one issue that I take umbrage at and that is the arrival on our shores or within the jurisdiction of this nation, to make a distinction between the right of a born Trinidadian or a citizen of this nation. [*Crosstalk*]

It is an internationally accepted law, that once you come within the jurisdiction of any state and you fall within—[*Interruption*]

Mr. Imbert: Take win.

Hon. P. Ramadhar:—the control of the laws, not only are you bound by those laws but you enjoy the protection of those laws and that is as elementary as you can get.

It is sometimes easy to forget that a human being anywhere in the world is a human being. And, therefore, the presumption of innocence that we enjoy in Trinidad and Tobago is a right that we should give to any human being entering within our system of justice. To believe that because a person is found possibly with an illegal drug or with some prohibited article, they are guilty with the knowledge that they were doing something wrong—we see many cases for instance, where yachties come in and they have relic muskets, if I may call them that—*[Interruption]*

Mr. Imbert: Cannons.

Hon. P. Ramadhar:—cannons, for decorative purposes, from a culture from which they have come, but under our law it is illegal, they still face the brunt of our law and, therefore, should be entitled to the rights and privileges of any citizen.

To that end, there is something called the equality of arms and I make that point. The State is a very powerful being. It has all of the resources that are available; the full police force, the DPP's department, the Judiciary, everything, and you have a person, whether they are Trinidadian, Tobagonian or foreigner, who finds himself being arrested and taken into custody. You are right, it is an extremely frightening thing, especially for young people; persons who have never had experience with the courts, and especially for innocent persons. That is why it is critically necessary—and I congratulate the Minister of Justice, for at least making the effort to improve upon a horrible situation.

I would give you some private and personal experiences, where persons go into custody as a suspect, knowing very little about an offence, but police officers—and I make no apologies about it because these are matters that have represented themselves in the court and have found themselves on record—have inveigled the weak and the unsuspecting to put signatures or even thumbprints on documents at the end of which it turned out to be confession statements.

I had many experiences where the timely intervention of a lawyer ensured, almost, that an injustice was prevented. It was necessary, especially for the poor, as the Minister of Justice has indicated, to put into the system, a right to access legal representation as soon as is practically possible. Before, as it was, you would find mothers and fathers searching far and wide, without money in their pockets or in their hands, going to lawyers and begging them: “Meh son geh lock up. He

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in the police station. Could anybody go help him? I know nothing about dis. Dey pick him up two o'clock dis morning." Very often, in fact nine times out of 10, lawyers would have refused to entertain them and the abuse that I have just described may have already been committed and they are taken to a court.

I think there is merit that there must be that continuous flow of legal representation from the point of arrest to the point you appear in court. [*Desk thumping*]

Mr. Imbert: Well said.

Hon. P. Ramadhar: Because we have seen, from practical experience, where police officers tell those who do not have the experience, the knowledge or sometimes the resources and they feel helpless: "Listen nah, yuh better plead guilty yuh know and yuh go get ah small fine. This is yuh first offence." [*Interruption*]

Mr. Imbert: This time is jail.

Hon. P. Ramadhar: "And if yuh fight it, yuh going tuh jail." That is the reality of it. Sometimes at the appellate level we see those complaints being made repeatedly. It is necessary to ensure that if our system is to remain protected, lawyers—yes, I know they do not like us generally, but we are very important in a society to ensure that the rights are protected and that no one is wrongfully abused. This is a necessary first step and I am certain the Minister of Justice would take into consideration some of the comments made by my learned friend.

Let me put things in context. Here we see this administration taking a very important decision to raise the fees for lawyers. That is important. I was given a document, and if I may be permitted to show from this document that in the last several years there has been a dramatic decrease in lawyers who have made themselves available to do legal aid work. Indeed—[*Interruption*]

Hon. Member: Increase?

Hon. P. Ramadhar:—a dramatic decrease. In 2007, there were 1,220 registered attorneys; 2008, 1,558, and I do not know what happened. That is about the time I entered politics. It went from 2008-2009, 438 attorneys from 1,558. Then in 2010, there were 503 attorneys on legal aid. If these figures are correct, that is frightening, because, it appears then that what has happened is that there has been a transition in the belief that as a lawyer, you are there to make money. This profession is a noble one. It goes far beyond money.

The Minister of Justice made some quick reference to it. When I was called to the Bar, fortunately I was born to, I shall not say a "hand-to-mouth" family, and I

was able to do a lot of work. My mother and father paid my rent for many months. My name became very big, winning all the cases together with Mr. Ravi Rajkumar. When we came into practice, we did not start in the Magistrates' Courts but we went to the assizes where the crunch really came. That is where life and liberty depended on the ability of the accused to have equality of arms. We gave it our all. We gained experience very quickly and we thank those who had gone before us, from whom we had learnt.

The point I am making is, in those days, the maximum fee on legal aid—and I still remember the day when I drove up to the Oxford Street office to sign up for legal aid, to put myself on the panel—was \$1,500. There were many times we did cases, six or seven weeks long, and “yuh” know what?—it is up to the judge to decide whether you would get your maximum. And if “yuh” fight too hard, there were times when you were penalized. I remember doing a case. I was not lucky before that judge, but I fought the case for about three weeks, at the end of which I got a cheque from legal aid for \$480. That was the recommendation of the judge.

A couple of weeks after, I had done another trial where the person pleaded guilty in the matter. They were serving time already and it was agreed by the DPP that we would take a guilty plea. For that, I was paid \$920. Sometimes messages could be sent by judges: “If yuh fight hard, yuh pay fuh it, literally, and if yuh cooperate, you are better recompensed.”

I remember doing a case before the Minister of Justice as a sitting judge, which went on for seven or eight weeks. Seven young “fellas” from Barataria were charged for murder. Do you know who appeared in that matter? It was Ravi Rajkumar, myself, Pamela Elder and Gilbert Peterson; all my classmates and we, as a team then—[*Interruption*]

Dr. Gopeesingh: Distinguished classmates.

Hon. P. Ramadhar: Yes, distinguished classmates, of whom I am proud—never took the view that the money was the important thing. You must have a conviction—sorry, wrong word to use. You must have a belief in your heart that you have a higher calling when you go into a profession. We learnt so much and gained such pleasure. The spiritual value in doing work and serving your people, you could never count that in cash, you never could. But success comes after, when you develop the expertise and the reputation as a committed professional to serve, to do your duty fearlessly and to give the best you can.

I remember having to make the statement to a friend and colleague of mine in whose statement I was quite disappointed when I was doing a case in the Second

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Assize Court in San Fernando that went on for about four weeks. He came to me and said: "You still doing that matter? That is legal aid?" I said: "Yes." He said: "Well, I done do seven already." I said: "Well, let me tell you something, this is no longer about the client, you know. This is about my duty to him and to my God."

I am very worried that a lot of young lawyers—I am not making that as a complaint but really as an ability now to identify sometimes that money is not all at the end of it, that we have a higher calling and a higher duty and when you do it with an open heart, success will come to you in more ways than you could ever imagine; not just professionally but in your personal life and in other areas. I think it is critically important to appreciate that we need to have a sustainable, legal system, where lawyers participate fully, not just for the money.

When my friend made the point about duty counsel being there only up to the point of a suspect and once they are charged there is no legal representation, there is provision here that once you are charged you are entitled to legal aid. The vision, as far as I understand it, is that the system of the provision of legal aid will be so fortified and made efficient that there would be an almost seamless transition from duty counsel to trial counsel. But I think we really do need to look at that and tighten up to ensure that there is no break in that seamless transition that we hope for.

Mr. Speaker, I just wanted to rise and to say, well done, Minister of Justice for bringing this Bill. There, of course, are things that we could improve upon and I am sure you will consider them as we proceed.

Many times we forget too that legal aid is not just for criminal matters, but legal aid plays a critically important part in the social fabric of our nation. Many, many, in fact the large majority of legal aid matters are for divorces, disputes including and involving matrimonial property, domestic violence, custody and maintenance. That is why it is so important to furnish legal aid with the resources necessary. I think, Minister of Justice, was it early last year or late last year you opened the building in San Fernando for legal aid? Congratulations on that. Before then, you probably had to get GPS to find the legal aid office in San Fernando. It was so out of the way, that persons had no clue where to find it and it was a difficult ordeal, first to find yourself to where the building was and then to get the assistance you required to fill out the forms. It was really a nightmare before you could even be considered for legal aid. I think they have done a great deal in simplifying it.

I also congratulate the Minister of Justice for choosing as the Director, Mr. Chaitram Sinanan who was a junior to me for many years and on his shoulders when many, many of the free cases that we had to do, because legal aid was so inefficient in

getting it even granted we ended up doing cases by the ton loads, literally, without hope or expectation of being paid. You chose well. Having that—and the staff, of course, at legal aid, Nancy Arneaud and many others, have worked tirelessly for all the years in trying to do things with very limited resources.

This Government is committed to giving them the resources necessary to do their jobs better, not for the sake of doing their jobs better for themselves but to serve everyone and to ensure that the system of justice is not hampered.

3.40 p.m.

I will tell you, Mr. Speaker, one of the greatest delays in the courts from time immemorial, well, as far as I could recall to the time I left practice, was the inability to have counsel appointed in a timely manner. You would go to the assizes and a person will come to cause list and they would appear without a lawyer. An order is made by the judge to ensure that counsel is appointed by the next occasion, and for whatever reason that goes on and on, and nothing could move unless that person is properly and well represented.

So I think tremendous improvements have already been made on that end and we continue to look into that. I feel very optimistic that we are in the right direction and slowly but surely, and sometimes even quicker than we expect, dramatic changes could be made in the delivery of our justice system.

I just wanted to rise and add my voice to this. This is critically important and it really does show that the simple things we take for granted, and sometimes forget are very important in the larger scheme of things, and we work together.

I heard my friend from Diego Martin North/East suggest that they may not support this Bill at this point in time, well, I wait to hear from the Minister as to his propositions as to some of the suggestions made by the Member for Diego Martin North/East.

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

Mrs. Patricia Mc Intosh (*Port of Spain North/St. Ann's West*): Thank you, Mr. Speaker. I am grateful for the opportunity to address this honourable House on the Bill under review this afternoon in this august Chamber. This is the Bill: “An Act to amend the Legal Aid and Advice Act, Chap. 7:07, 2011”, which was already debated and passed in the other place. But as evidenced from the contribution of my colleague from Diego Martin North/East, we can see that we have many concerns regarding this Bill.

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Mr. Speaker, I would like to begin by offering a definition of legal aid and I refer to the definition from Wikipedia which says:

“Legal aid is the provision of assistance to people otherwise unable to afford legal representation and access to the court system. Legal aid is regarded as central in providing access to justice by ensuring equality before the law, the right to counsel and the right to a fair trial.”

Legal aid is not a modern day 21st Century phenomenon. Historically, legal aid has its genesis in the 19th Century in Europe where social activists agitated for the right to counsel, and a fair trial for all especially with respect to the poor and disadvantaged who could not afford solicitors’ fees.

Legal aid was then commonly known as the poor man’s law, and provided for a waiver of court fees as well as the provision of a solicitor, who would act usually on a pro bono basis, as the hon. Minister of Justice was suggesting, that they should be giving back and act on a pro bono basis. But this was way back in the 19th Century; we are living in real times now, with real needs. In those days, that poor man’s law was not formally enacted and so those persons who were unable to afford a lawyer had to depend on the goodwill, generosity and charity of lawyers for legal assistance. In those initial stages, legal aid schemes focused primarily on family law and divorce. But with the onset of the industrial revolution in the late 19th Century, trade unions and workers’ parties began to agitate for enhanced workers rights, especially in respect of injury sustained on the job due to accidents and illnesses. This led to the enactment of legislation in many countries and in order to prevent industrial unrest by the early 20th Century many governments began to provide legal aid for workers.

Mr. Speaker, I would like to turn my attention to the provision of legal aid operations in Trinidad and Tobago. And I quote from the Ministry of Legal Affairs, Legal Aid and Advisory Authority:

“The Legal Aid and Advisory Authority was established in 1976 to provide affordable legal advice and assistance to citizens of Trinidad and Tobago. In keeping with this mandate the initial cost of accessing the service is \$10.00.

Old Age Pensioners, juveniles, and the disabled who get disability allowance automatically qualify for Legal Aid. Persons who seek representation for civil matters in the High Court must meet the qualifying income requirement. However, for criminal matters in the Magistrates or High Court, the Magistrate or the judge determines who is granted aid.

The resolution of legal matters brought before the Courts is dependant on many factors, so that there is no specific time frame within which the Authority can guarantee the resolution of a court matter.”

Mr. Speaker, this is what is unfortunate especially for old age pensioners, the matter in the court might take so long, these persons of a certain age might die before their cases are brought before the Magistrate. I feel this description which I just read reflects the intent of the Bill on which I would like to focus my attention.

By the tenor of the Bill, we see that the Government wishes to increase the amount of money relevant to the eligibility of the applicants in respect of the capital value, and also in respect of their disposable incomes, and we discussed that at length, and we also spoke about an increase in attorneys’ fees. We have no quarrel with increasing the fees for the attorneys and the ceiling for qualification for legal aid.

However, permit me to focus on the first of these increases which speaks to the question of eligibility. Clause 11 of the Bill proposes to amend section 23(2)(b) of the parent Act by increasing the sum from \$2,000 to \$20,000 in respect of capital value, as well as from \$3,500 to \$36,000 per annum in respect of disposable income. This income bracket reflects those citizens whose income is non-taxable and is equivalent to \$17.31 per hour.

We must remember, Mr. Speaker, the Act was enforced in 1976 and it was last amended in 1999, and the earning capacity of the citizenry has increased over the years. So it was not unexpected that this enhanced earning capacity is reflected in these proposed increases. All in all, what this Bill is saying is that citizens who have been beneficiaries of legal aid under the parent Act will continue to benefit: those individuals of exceedingly humble means who do not have any reliable source of income; women who are housewives and do not receive a salary; citizens who are unemployed and cannot afford three square meals for themselves or their families and citizens who do not enjoy continuous employment.

For example, we have the School Safety Officers who have been released from their contracts, some of them from October to December last year, they have been given a slip of paper, no contract, no terms or conditions, just a slip of paper saying that they report for work on a three-month basis, month by month, they do not know whether they are coming or going, they have no reliable source of income. So I am glad to see that they will be able to access legal aid, and we have many of these persons in our constituencies.

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In addition, to these proposed amendments, Mr. Speaker, legal aid will be extended over a wider range of citizens, and this means that more people will be able to benefit from the provisions under legal aid. This is good. We have no problem with that so far. Nonetheless, I would like to bring to the attention of this honourable House that there are citizens who fall outside these economic categories who may be struggling to make ends meet for a variety reasons. And I am very glad to know from the hon. Minister of Justice, that despite not fitting into any of the stipulated categories, these persons will be able to access legal aid. Indeed he said everyone would be able to access legal aid. Everyone who might find themselves in extenuating circumstances, because we have to recognize that people have many commitments and one can be earning a sizeable income, but yet have many commitments: a large family to feed; dependants to care for; mother; parents and grandparents; ill siblings; medical bills; et cetera.

Apart from that, the cost of living is skyrocketing and the cost of legal fees is indeed prohibitive. So I am glad to know that most people, if not all persons, can access legal aid. We have many persons in our constituencies on both sides of the House, and I am sure we can provide myriad examples of persons who are struggling and who will need legal aid.

Mr. Speaker, what I would like to deal with—I have to underscore again that we have no problem with everyone being able to access legal aid, but we have to look at the extenuating circumstances. And I would like to refer to clause 12 which says:

“Section 24 of the Act is repealed and the following section is substituted:

24(1) Where there are extenuating circumstances, the Director may approve an application for legal aid even though the applicant does not meet the necessary requirements.

(2): An approval given by the Director under subsection (1) shall be ratified by the Authority at its next meeting.”

Mr. Speaker, therein lies for me the major problem. The parent Act never spoke about extenuating circumstances and this Bill introduces this phrase “extenuating circumstances” which is good, but it brings serious concerns to the table, and I would hasten to elucidate, so that it would be clear and not be misinterpreted. Nowhere in this Bill is there a definition of the term “extenuating circumstances”. One would want to know exactly what are “extenuating circumstances” in respect of this Bill. Is this interpretation to be left to the whims and fancies of a director? Is there any guidance to the director, to adjudge properly what constitutes “extenuating circumstances”? Why is it the responsibility of the director alone to

approve the applicant? The authority who will ratify this approval, is it just a rubber stamp? Is it just signing off on this approval?

I would like to propose that a committee is needed to establish some sort of credibility, some sort of veracity, some sort of objectivity and transparency in these applications, or else the legality and the validity of the operations of the Legal Aid Authority could be called into question, Mr. Speaker.

The clause goes on to state that:

“Where there are extenuating circumstances, the Director may approve an application for legal aid even though the applicant does not meet the necessary requirements.”

I charge that this proposed clause is void of mandatory consultation with the authority. We are leaving it up to the director to make a determination whether the person will qualify for legal aid even if he does not meet the requirements, it is up to director to state whether the person can receive legal aid or not. This is very arbitrary. The clause smacks of a dictatorial disposition and arbitrariness, which would allow for loopholes and would create opportunities for nepotism and cronyism, which could in turn lead to major discrepancies, that could deprive a citizen of his or her constitutional rights, Mr. Speaker, a right to justice, to counsel and a fair trial.

3.55 p.m.

Mr. Speaker, in my opinion this Bill is full of contradictions just like the hon. Minister of Justice. [*Desk thumping*] On the one hand, it seeks to protect the constitutional rights of the citizen and, on the other hand, it takes away those rights. I am questioning whether this arbitrariness, whether this dictatorial disposition that is reposed, this confidence, it is reposed solely in the director, if this would not take away the right to justice, to counsel and a fair trial in the case of many citizens. I have a big, big problem with leaving all of these decisions in the hands of one single person.

Mr. Speaker, I harbour the same sentiments in respect of clause 20 of the Bill that seeks to amend section 37(4)(b) of the Act which requires a person to pay \$10 to seek legal aid. This Bill is purporting that a person now pays \$500. This is an increase of almost 5,000 per cent. Not 100 per cent, not 200 per cent, not 500 per cent, not, 1000 per cent, but four thousand and ninety-nine something—5,000 per cent, so to speak. [*Crosstalk*] Yes, but from 10 to 500; you cannot do maths, Sir. This Bill is supposed to assist poor people: people who are of certain means, and people who are under extenuating circumstances. I think this, requiring them to pay \$500 in some cases, is unfair.

Again we go back to the director, where the director is satisfied that the person is unable to make the payment, the person will be absolved from paying the \$500, probably somewhere between the \$10 and the \$500. Mr. Speaker, again we leave all of this, we repose all these decisions in the hand of one man. And I charge that this could be very arbitrary and could deprive people of their constitutional rights. Once more the poor citizen could be subjected to the whims and the fancies of the director.

Mr. Speaker, most people are coming to legal aid because their financial situation does not allow them to afford legal representation. Most of them would not be able to find the \$500 to present themselves to the legal aid authority. This amendment may very well operate to exclude the people that the parent Act initially came into force to include—poor people who cannot afford to pay for representation out of their own personal incomes.

Mr. Speaker, if indeed this Government is a caring one that it says it is, it is inconceivable that they would increase this fee for a poor person from \$10 to anywhere up to \$500.

The question of extenuating circumstances is a very serious consideration. And I would really like to see a committee is brought into play here in order to arrive at a more just and objective conclusion. As I said before, this one person, all of this confidence being reposed in one person, could bring the validity of the operations of the legal aid services into question. What this means is that many deserving persons may not be afforded an alienable right to counsel and a fair trial, and access to justice equally and equality before the law.

Mr. Speaker, this is every citizen's right under Part I section 4(b) and (d) of the Constitution of Trinidad and Tobago, and I should like to refer to this. You see this is the contradiction: on the one hand, the Minister is saying that these amendments would protect the citizen's constitutional rights. And on the other hand, I would like to point out that is it just defeating that very purpose. Mr. Speaker, I would like to quote from:

“The Recognition and Protection of Fundamental Human Rights and Freedoms.

Part I:

Rights Enshrined

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason

of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely—

- (b) the right of the individual to equality before the law and the protection of the law;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;”

Mr. Speaker, this reposing of all of these decisions in the hands of the director is in direct contravention to especially section (d). We cannot afford to let one person decide on a citizen’s—especially a poor man—fate, we need at least a committee to deliberate and consider the outcome of this situation.

Mr. Speaker, it is obvious to me that if this proposed legislation is passed as is, many deserving citizens who reside in every corner of this country will be swept under the carpet. It defeats the very intent of the parent Act which is to provide those who could ill-afford to hire the services of a competent lawyer, the opportunity for legal representation funded by the State. Again, I have to say, this Government prides itself on being a caring one and it cannot afford to be insensitive to the needs of the people.

I want to state clearly in this honourable House that it is not my intention to be intransigent against this legislation. I state this—and I hear the noises coming from the Minister of Justice, Member for St. Joseph. I say this because this Government complains that we are always against them, we are objecting for the sake of objecting. Mr. Speaker, I would like to let the hon. Members, through you, be advised that it is our duty to advocate in this hallowed Chamber for the needs of our constituents and indeed the needs of all the citizens of Trinidad and Tobago. [*Desk thumping*]

Hon. Member: And we shall continue.

Mrs. P. McIntosh: And it is our duty to ensure that any legislation passed in this honourable House, is in the best interest of all the people of Trinidad and Tobago and it is good legislation.

Mr. Speaker, the honourable Members cannot expect that we will just come here and say, “Yes Sir, yes Sir, three bags full, Sir.” We have to be the check and balance, and we have to give our point of view from our perspective to get the best, so that we can work together and get the best. Nonetheless, I wish to be constructive and therefore I want to respectfully suggest that a clear definition of extenuating circumstances be furnished in this Bill.

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Mr. Speaker, I would like to suggest that the socio-economic and other attendant factors be given due consideration by a committee and that the authority should at least be inserted for consultation in the Bill. Because if this is not done the director could make very arbitrary decisions much to the detriment of a citizen, and deprive him of his constitutional rights. I hope the hon. Member, is getting my point; it could happen, we are human beings, and repose all this authority in one person and we have people who are left—and I will show as I go along—with a deprivation of their rights. And what recourse would the citizens have? The reason that they came to the legal aid in the first instance is that he or she had no other option for legal representation. And I urge the Government to kindly consider this point.

Another of my concerns is the very criteria for eligibility to be selected as a candidate, not for your application to be approved, but selected as a candidate for legal aid. The first stage, the applicant is subjected to a means test which is scrutinized by a committee. You see the Legal Aid Authority has a committee but again it probably needs to tighten its operations, because I have to wonder, is this committee functioning very efficiently and in an objective manner? And I would say why.

I know that as is stated in the Bill the applicants have to satisfy a certain financial criteria. But all these financial considerations apart, I still have a sense of disquiet in respect of this question of eligibility. I feel that the process is not transparent, and I will explain why. On two occasions I have had deserving constituents come to me complaining about having been refused acceptance by the Legal Aid authority. I speak of very humble persons with very valid cases. In other words, what I am saying, they had failed the means test and I could not understand why, because after hearing their cases and seeing their document, I felt that they satisfied all the criteria to have passed a means test and to be candidates for legal aid.

This is an issue I brought to the Legal Aid Authority in this very House at a joint select committee sitting, and they promised to look into it. There is a particular situation which I should like to bring to the attention of this honourable House, through you, Mr. Speaker, concerning one of my constituents and this has given me cause for grave concern. Mr. Speaker, this constituent, a lady, unemployed, a single parent, mother of one son, was walking along Independence Square in front of one of our well-known fast food outlets when she slipped on a piece of chicken skin which was contained in a pail of very greasy water which was thrown out onto the pavement by one of the employees of the fast food outlet.

Her son was with her and he tried to alert her to the fact that the employee was throwing the pail out but she did not see what the employee was doing and she stepped into the greasy water, and stepped on a piece of chicken skin and she fell. When she fell, she hit her head on the pavement, and in addition a piece of steel that was protruding from the edge of the building pierced her just above her ear. Her son who was with her called an ambulance and the lady was rushed to the hospital where she spent two months.

Mr. Speaker, she suffered head injuries, permanent spinal damage, and memory loss. Her memory has come back a bit but there are certain things that are still very unclear to her to this day. And this happened three years ago. She suffered all of this and this was evident in her medical certificates. She is unable to work, because of the injuries she sustained, she cannot sit for too long, she cannot walk for too long, she cannot stand for too long, she cannot perform any manual labour, and she cannot even push a broom or a mop.

She approached the fast food outlet for some sort of compensation, she got no redress, she was shooed away. Mr. Speaker, had she been in the United States, she would be a millionaire today. She got no redress. She approached the Legal Aid Authority to no avail. Nobody is willing to take her case against the fast food outlet. According to regulation 3 of the Legal Aid and Advice Act, and I have it here, this is the form you fill out—at the end of the form you are supposed to give the dates where possible if personal injuries are involved give full details of the accident and enclose police report where applicable and available, et cetera.

4.10 p.m.

Mr. Speaker, the lady went and presented all the reports. I have them here from the medical doctor and so on. I would just like to read, very quickly, a part of it. This is from the Ministry of the People and Social Development to whom she turned and they are saying:

“Dear Sir”—I will not call her name.

“is an outpatient of a number of clinics at the POSG Hospital, attached are copies of the various clinic cards.”—the lady—“sustained injuries to her spine as a result of a fall. She now suffers from a spinal problem that prevents her from earning. She attends the physiotherapy clinic at the hospital for treatment”—she—“has no earnings and is unable to support her son and herself. At present she is being threatened with an eviction notice.”

She is being threatened with an eviction notice; she has permanent spinal damage; and she wants to have her case heard in court and legal aid has refused her.

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Mr. Speaker, this lady is currently on public assistance and she has received cheques for October 2011 to February 2012 inclusive, but she has been advised by the public assistance officials that she will no longer be paid after May 2012. She has come to me, because after May 2012, the little public assistance she got from last October has come to an end.

Actually, just yesterday, I could not go with her. I promised to go with her, but something came up and I could not go and I sent one of my able counsellors with her back to legal aid and, indeed, they did do the means test and they will let her know whether she is a candidate for legal aid. I am really waiting with bated breath on what they would say.

Mr. Speaker, as I said, she has her son and herself to take care of. How will she survive? What redress does she have if legal aid does not help her? I would like to know why in the first instance when she went to legal aid she was deemed ineligible. What about her constitutional rights to counsel, to a fair trial and to justice before the courts?

I should like to afford the Members on both sides of this honourable House a brief—I mean a glimpse into legal aid approaches in three countries so that we may learn from best practices as to how we treat our people. You see, there is a far cry from what is written in the legislation and the practice. There is a far cry between the theory and the practice and I just pointed it out, and this is what worries me. I should just like to look at best practice very briefly in England, Wales, India and the United States of America. In the interest of time, I will be brief.

Mr. Speaker, in England and Wales—I am speaking from a document from en.wikipedia.org/...Legal_aid. It says:

“Legal aid in England and Wales was originally established by the Legal Aid and Advice Act 1949. Today legal aid in England and Wales cost the taxpayers £2bn a year - a higher per capita spend than anywhere else in the world - and is available to around 29% of adults. Today, legal aid in England and Wales is administered by the Legal Services Commission, and is available for most criminal cases, and many types of civil cases with exceptions including libel, most personal injury cases...and cases associated with the running of a business. Family cases are also covered. Depending on the type of case, legal aid may or may not be means tested.”

So if it is judged that the person satisfies certain criteria or is eligible, there may be no means test conducted. It continues:

“Criminal legal aid is generally provided through private firms of solicitors and barristers in private practice. There are a limited number of public

defenders. Civil legal aid is provided through solicitors and barristers in private practice but also non-lawyers...”

This is what I have noted in many countries. Because of the heavy duty on lawyers—for want of a better word—the responsibility on lawyers, many non-lawyers—people with probably a law degree but not full-fledged lawyers—assist in all of these legal aid cases in law centres for non-profit advice agencies.

Mr. Speaker, in India—and I am very interested in what they had to say about India.

“Article 39A of the Constitution of India, provides for equal justice and free legal aid - The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. This Article also emphasises that free legal aid service is an inalienable element of reasonable, fair and just procedure for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of reasonable, fair and just, procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21 of the Constitution.”

Mr. Speaker, I just spoke about our constitutional rights to protection under the law.

“This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required...The Legal Services Authority Act, 1987 made drastic changes in the field of legal services. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize...system promotes justice on a basis of equal opportunity.”

Mr. Speaker, what I have to say in the United States of America is very short.

“A number of delivery models for legal aid have emerged. In a ‘staff attorney’ model”—I would like the Minister of Justice to listen, because I think these models are quite important for us to emulate as best practice—“lawyers are employed on salaries solely to provide legal assistance to qualifying low-

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income clients, similar to staff doctors in a public hospital. In a ‘judicare’ model, private lawyers and law firms are paid to handle cases from eligible clients alongside cases from fee-paying clients, much like doctors are paid to handle Medicare patients in the U.S. The ‘community legal clinic’ model comprises non-profit clinics serving a particular community through a broad range of legal services (...representation, education, law reform) and provided by both lawyers and non-lawyers, similar to community health clinics.”

Mr. Speaker, I should now like to gear my debate—hopefully, we could learn more from best practice in these countries and emulate some of them. I should now like to gear my debate to the attorney’s fees for aided persons and, in doing so, I should like to draw this honourable House’s attention to an article in the *Trinidad Express* dated December 09, 2010 entitled “Volney lays down law on legal aid” in which the hon. Minister of Justice and Member for St. Joseph was quoted as saying—He did not say anything bad. I am just drawing a point.

“‘Legal Aid is by no means a private practice. We have calculated the fees on the basis that ups the amount they (attorneys) get at present, which is quite significant. I am sure (if they) do not consider it enough, we will get other attorneys who will,’ Volney said.”

Mr. Speaker, I believe the hon. Minister was a little less than sensitive and a little less than tactful in his remarks; and a bit callous rather in his remarks. This Government must appreciate the fact that legal aid attorneys do assist the less fortunate, and we should neither take their assistance for granted nor take advantage of their good graces.

I acknowledge that the intent of this Bill is to increase—and it is a step in the right direction—the fees and compensate legal aid lawyers, particularly in cases germane to indictable matters and, especially, capital offences. I have all the increases here; from clause 23(b)(i) to 23(c)(iv). Magisterial jurisdiction increase from \$500—\$1,500, that is an increase of \$1,000; indictable offence of a grave and serious nature, from \$1,000—\$3,000, so that is \$2,000; any other indictable proceeding, from \$750—\$1,250; non-capital offences, from \$2,500—\$5,000, that is an increase of double; non-capital offences of an unusual length or difficulty, from \$5,000—\$10,000, an increase of \$5,000; capital offences, from \$7,500—\$15,000, which is double—an increase of \$7,500; and capital offences of an unusual length or difficulty, from \$10,000—\$20,000, an increase of \$10,000. So all these proposed increases are a step in the right direction.

I would like to argue that they are not good enough to compensate highly competent and experienced lawyers who are needed for very technical cases, especially the capital offences. We must consider that they have their own operating expenses and their own cases to consider, and they are very busy—time and effort at the expense of their private practice. They have to expend all this time and effort in legal aid. It is not that they do not want to do it, but sometimes it is very impractical for them to handle the legal aid cases when they have their own private practices.

Mr. Speaker, most legal aid attorneys are private practitioners. They have their overheads, as I just said, they have to pay rent and their rent is usually something in the vicinity of \$5,000 if they are renting from other legal luminaries, [*Interruption*] other chambers, thank you, and they have to pay \$5,000 a month. I am sure I am being conservative in this estimate.

The hon. Minister of Justice is well aware that indictable matters could run for months and months and months, sometimes, as is said, six months, especially capital offences. When the attorneys are constrained to work solely on these cases for the duration of that trial their earning power is heavily curtailed. Many attorneys are reluctant to accept legal aid briefs, because it is just not worth their while. So the Legal Aid Authority is only able, most times—I am not saying all the time—to attract the less experienced of competent lawyers who are sometimes unable to deliver the quality of representation necessary to ensure that the client receives just compensation before the courts.

I must admit that this is not only peculiar to our context, and I should like to draw on some international parallels to reinforce my point and, in doing so, I would like to refer again briefly to the experiences of two legal aid attorneys in the Canadian system. Mr. Speaker, I have this article from www.canadianlawyermag.com/legal-aid-a-system-in-peril. I quote:

“Jordan Weisz is the kind of lawyer who has kept Canada’s legal aid system afloat for the past two decades. About 80 per cent of the clients who come to his doors each year have a legal aid certificate in hand. Yet they represent less than half of his revenue.”

It is not only here, but the world is crying out.

“Weisz makes a go of it thanks to a stable of private clients built over 18 years in practise.” But—the time he—“puts in on the legal aid side, while viewed as a professional and ethical responsibility”—which the hon. Minister referred to—“wears on him—especially when he is doing it instead of spending time with his three young children.”

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And he says:

“When...you’re are losing money because you’ve got to continue covering your overhead—it breeds a huge amount of resentment toward those who are responsible for funding and don’t meet their responsibilities.”

So the Minister must not speak about the legal aid the lawyers working for free and giving back—yes, they give back but this is a real world and they need to be properly compensated.

I would just like to quote another lawyer, Mr. Sanjeev Anand, a Professor at the University of Alberta, Faculty of Law, and he speaks about what causes lawyers to abuse the system—very interesting. He says:

“There are undoubtedly instances of abuse, where clients are not being well served because lawyers are looking at the system and saying, “I’m not going to go and do a full interview with my client, because I only get paid a certain amount; I’ll do the interview right before we walk into the courtroom...”

Mr. Speaker: Hon. Members, the speaking time of the hon. Member for Port of Spain North/St. Ann’s West, has expired.

Motion made: That the hon. Member’s speaking time be extended by 30 minutes. [*Miss Mc Donald*]

Question put and agreed to.

Mr. Speaker: At this point in time I would like to suggest that we take the tea break. This sitting is now suspended until 5.00 p.m.

4.28 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Mr. Speaker: The hon. Member for Port of Spain North/St. Ann’s West.

Mrs. P. McIntosh: Thank you, Mr. Speaker. Before we adjourned, I was referring to the experiences of two legal aid attorneys in the Canadian system, because they draw parallels to their experiences—draw parallels to what is happening in Trinidad and Tobago in respect of our own lawyers. So I had referred to Mr. Jordan Weisz and I was just about to refer to the experiences of Professor Sanjeev Anand, from the University of Alberta, Faculty of Law, and he said:

“There are undoubtedly instances of abuse, where clients are not being well served because lawyers are looking at the system and saying, ‘I’m not going

to go and do a full interview with my client, because I only get paid a certain amount; I'll do the interview right before we walk into the courtroom. I'm not going to engage in a lot of negotiations with the Crown; prior to trial I will engage in those negotiations at the courthouse steps.' Anand continues, 'When you've got that pressure because legal aid doesn't properly compensate lawyers for their services, you're going to have lawyers who are going to feel a tremendous amount of pressure to cut corners.'"

And I am sure the hon. Minister of Justice could identify with that because in his contribution I remember him saying and I quote:

He was representing someone in a legal aid case and he said he wanted the trial to come to an end as quickly as possible, because he only got \$1,500 and the other lawyer kept asking questions and cross-examining because he was being paid more.

The parallel I am making I am sure he could identify with that. He also said lawyers must give back to the country by helping the poor, by giving back to society—which is right, I am not saying that he was wrong, but here he is contradicting himself saying that he wanted the trial to come to an end quickly, because he got only \$1,500.

The same thing that Sanjeev Anand and Jordan Weisz are saying, that sometimes it is not in their best interest because of the money, so do not doubt that there is that monetary factor. We cannot get away from that. Despite the hon. Minister's "grancharge" and I quote: "If lawyers do not consider the increase enough, they will get other attorneys who will."

Mr. Speaker, this very Minister of Justice in another incarnation raised the issue of increase in attorneys' fees for legal aid before his departure from the bench. Case in hand was in *The State v St. Louis, Gerald; Phillip, Allister; Seecharan, Moonilal; Ali, Navin*; when the hon. Minister mentioned that attorneys' work should be properly compensated. In addition, in respect to Vindra Naipaul murder the hon. Minister declared that in such cases that attracted such public interest, special fees should be afforded to attorneys.

I am not saying—he tried, he tried to give them an increase. Hon. Minister, you must admit that you yourself admitted that the attorneys do need to have sizable increases and special fees. Mr. Speaker, given the cost factors and the time that proper representation demands, I see little indication in this Bill that is reflective of that very strong, that very vehement sentiment expressed by the hon. Minister in his previous incarnation. And may I, respectfully, advise the hon.

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Minister of Justice to kindly adhere to his mantra for further increases in fees for lawyers to more attractive rates since I deemed these increases in the Bill to be a little more than nominal. There are increases but they are a little more than nominal. The lawyers deserve more because we want a good justice system. We want a good legal aid system.

As I say, what used to happen in the 19th Century and the early 20th Century, pro bono services, I think the time for that has gone and I think lawyers do need to be properly compensated especially the more competent and experienced lawyers, they need to be really properly compensated. Mr. Speaker, having said all this, I have to say that legal aid services are basically a function of the degree to which lawyers are willing to extend themselves, professionally, to represent the legal needs of those they consider to be poor, marginalized, or discriminated against.

In this regard, legal aid is more a question of supply than demand. The demand is there but if we do not have that supply to see to the needs of the clients then we just would not have any legal aid. With these nominal increases, the more seasoned practitioners, whose services are so badly needed, will not be attracted to serving on the panel. Legal aid should really be executed by practitioners who are compensated commensurate with their experience and expertise. There are always lawyers. As the hon. Minister said, you could also get lawyers but the good ones should be provided with adequate compensation so they would not return their legal aid briefs.

Mr. Speaker, in most progressive countries, legal aid clinics are established within law schools and our own Sir Hugh Wooding Law School is no exception. I understand there is a legal aid clinic there functioning, and second-year law students are mandated to participate in the legal aid process and this assists lawyers, because the lawyers need their help, they already have their heavy workload—all their private clients, they have a lot of work. They can help, and they do so, in searching cases and conducting interviews, liaising with medical practitioners, et cetera, and in turn they do receive some mentoring from the lawyers and they gain hands-on in respect of the clinical education, the clinical experience, because they are preparing the briefs and they are doing the groundwork so that the lawyers can devote more time to their other cases.

Mr. Speaker, it is my sincere hope that the proposed Law Faculty of the University of the West Indies, which the Prime Minister said she would establish in Penal, would follow best practice and integrate a legal aid clinic within its operations. In addition, may I suggest that legal aid clinics be established externally, external to universities, in various communities so that constituents or citizens could have access

to advice and expertise from lawyers or non-lawyers—people who have law background, law education, but are not lawyers—in these legal aid clinics.

Mr. Speaker, I accept that legal aid does present a challenge for governments, globally, and I would like to refer to Principle 3 of the United Nations Basic Principles on the Role of Lawyers. It mandates that:

“Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional association of lawyers shall cooperate in the organization and provision of services, facilities and other resources.”

I accept that it could be a rather difficult and challenging balancing act for governments since they have to ensure that the citizens receive the adequate legal representation, and at the same time they have to keep a close eye on the purse strings, especially in these times of economic hardship and uncertainty.

It is indeed incumbent on governments to find the most efficient and cost effective means of providing legal representation for all their citizens, especially those in need. In this regard, I should like to refer to a report by a Canadian lawyer, Melina Buckley, who recommends a holistic approach to the provision of legal aid and cites the Bronx Defenders in the United States.

5.10 p.m.

She is a Canadian lawyer, but she is citing the Bronx Defenders in the United States as an example, and I would like to quote:

“The program brings together social workers, youth and community outreach staff, criminal defence lawyers, and civil lawyers with expertise in child welfare, housing, and immigration matters. ‘Interdisciplinary working groups reflect the interconnectedness of the issues facing low-income clients and can best meet their overall needs,’...Instead of solving a legal problem and often seeing the client continue in the situation that gave rise to the problem, a holistic approach holds the promise of a more fundamental and permanent change in circumstances.’ One assumes that such a program would offer significant cost savings to the justice system and other social programs by cutting down on repeat offenders.”

It would do our citizens in particular good and it would do our country in general better, if this Government attempts to follow international best practice in respect of delivery of legal aid services to the deserving citizens of Trinidad and Tobago.

Mr. Speaker, I thank you.

The Minister of Education (Hon. Dr. Tim Gopeesingh): Mr. Speaker, it was nice to see that the last speaker, the Member for Port of Spain North/St. Ann's West, was able to make formidable use of Google and Yahoo [*Laughter*] and use her laptop computer to do so. In that context, the other side has been questioning us all the time about our giving out laptops and so on, but it is the same laptop computer that the Minister made fantastic use of, by going into Google and Yahoo for almost her entire contribution.

You know, Mr. Speaker, the mere fact that we are giving out laptops to our students, a Form I student will now be able to come to Parliament and give almost the same speech that the Member just gave by virtue of the ability to do their research.

Mrs. McIntosh: Not at all. Not at all. [*Laughter*]

Hon. Dr. T. Gopeesingh: And pretty shortly the primary school students will be able to do it as well.

Mr. Speaker, first of all, let me congratulate the hon. Minister of Justice for seeking to move swiftly to improve the criminal justice system in Trinidad and Tobago. By virtue of bringing a number of pieces of legislation, we can understand that Trinidad and Tobago is moving in a direction where justice will be swiftly delivered by virtue of the People's Partnership Government and the hon. Minister of Justice.

So this is one Bill that has been brought on, the Legal Aid and Advice (Amdt.) Bill 2011. We must not forget the DNA Bill; we must not forget the Electronic Monitoring Bill and the Indictable Offences (Preliminary Enquiry) Bill—if I get it right. All these Bills that have been brought forward by the hon. Minister of Justice are in keeping with our quest, as the People's Partnership Government, to improve the criminal justice system so that justice will be swift and safe for all citizens of Trinidad and Tobago.

In the context of what the Member for Port of Spain North/St. Ann's West did with her laptop, it is important for us to understand what goes on in other countries in the Commonwealth as well. New Zealand brought on a Minister of Justice a few years ago, and he sought to improve the criminal justice system. One of his most important pieces of work was improving the legal aid system.

There is an 85-page report, a comprehensive review from New Zealand, done by Dame Margaret Bazley, a Chair of the Legal Aid Review. What came out of that from New Zealand showed that an effective legal aid system had five major benefits:

1. Ensure the right people can access services;
2. Provide the right mix of information, advice and representation services;

3. Provide high quality legal aid services;
4. Support an effective and efficient court system; and.
5. Manage the taxpayers' funds effectively.

This Bill effectively seeks to advance these five issues, with an effective legal aid system that came out of New Zealand, written by Dame Margaret Bazley, an 85-page report.

Mr. Imbert: [*Inaudible*]

Hon. Dr. T. Gopeesingh: It does; swifter hearing. It will help the court system.

A number of major shortcomings were identified in the Legal Aid and Advice Act, Chap. 7:07. Mr. Speaker, may I be privileged to quote some of these shortcomings. They are as follows:

The fees paid to attorneys-at-law under the existing legislation were inadequate. Insufficient fees led to decreased willingness on the part of attorneys to participate in and make requests to form part of the panel of attorneys prepared and maintained by the Director of the Legal Aid and Advisory Authority, called the LAAA.

The second major shortcoming was that current provisions, as regards disposable capital and disposable income, excluded a significant number of persons who although genuinely unable to afford private legal representation were unable to qualify for legal aid on account of this requirement.

The third major shortcoming of the Legal Aid and Advice Act, Chap. 7:07, which really necessitated amendments, was the lack of regional representation on the LAAA.

The fourth was the lack of mandatory legal assistance to minors, arrested persons or accused charged with the commission of a capital offence.

The aim of the amendments to this Act was to make legal aid and advice in Trinidad and Tobago readily available for persons of small or moderate means. The benefits we are seeking to achieve by these amendments are as follows:

- To widen access to legal aid and advice, particularly for minors, thereby bolstering their protection under the law.
- To widen access to legal aid and advice for non-residents of Trinidad and Tobago.
- There are some residents here for six months and they might be detained and charged. This Legal Aid and Advice (Amdt.) Bill would give some protection to them.

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- To provide enhanced legal aid services through the establishment of a Duty Counsel Scheme to minors and persons accused of committing capital offences immediately upon detention and/or arrest.

Previously this Act did not take care of minors. So minors who could be charged and face penalties of up to 15 years in prison are now protected and being cared for under the amendments to the Legal Aid Act.

It has been the experience of the Legal Aid and Advisory Authority that litigants come for advice relatively late, that is, at a point where they might have already compromised their legal position or unnecessarily incriminated themselves. This amendment is affording them the opportunity to get legal aid advice at an early stage, where they would not have incriminated themselves in the situation.

A Duty Counsel Scheme already exists in Canada, the United Kingdom and regionally, in Jamaica. So now we are ensuring that this scheme is going to be in Trinidad and Tobago, a very progressive piece of legislation. [*Desk thumping*]

An additional benefit is to increase the quantum of fees paid to legal aid attorneys appearing in the Magistrates' Court, the High Court and the Court of Appeal. Remember that the legal aid attorneys even go to the Court of Appeal which is the domain generally for senior counsels; and you know what senior counsels' briefs are. Therefore when a client is able to seek legal aid to go to the Appeal Court, that itself is extremely significant.

Another benefit is to expand regional representation on the Legal Aid Authority. An additional benefit of this amendment is to widen access to legal aid for proceedings coming before the Environmental Management Commission. My distinguished Leader of Government Business, who is now championing the cause for the environment in Trinidad and Tobago, will obviously feel very heartened and gratified that this will take care of proceedings coming before the Environmental Management Commission.

One other benefit is to bolster the rights of citizens, specifically the right to counsel and the protection of the law as enshrined under the Constitution. Our colleague, the Member for St. Augustine, spoke about the rights of the citizens. Our People's Partnership Government's primary concern is the welfare of citizens. It must be remembered that the extension of legal aid is not only a fundamental constitutional right, but also a human right of every citizen of Trinidad and Tobago.

We mentioned that section 4(a) and (b) of our Constitution enshrined for each of us certain fundamental rights and freedoms, such as the right of the individual

to the due process of law, amongst other things: the right to life, liberty, security and enjoyment of property:

“The right of the individual to equality before the law and the protection of the law;”

Equality before the law relates to equal treatment of persons in the application and enforcement of law. By this right therefore a person’s financial resources must by no means prevent their access to and/or protection offered by the law of our land.

The Legal Aid and Advisory Authority is therefore a critical pillar in our democracy, and the amendments particularly so, to ensure equality before the law, the right to counsel and the right to a fair trial for those of small and moderate means.

Mr. Speaker, another benefit of the amendments to the Legal Aid Act is the enhancement of the proper administration of justice, through the establishment of proper procedures for the questioning of suspects. This is my understanding, I am not an attorney, but I have been advised that this will be another major benefit.

The amendments proposed in the Bill are seeking to ensure that these benefits are accrued and will mitigate against and remedy some of the weaknesses in the existing Legal Aid and Advice Act, Chap. 7:07, which I initially indicated in the shortcomings of that Act, which we are seeking to correct by the amendments before us in Parliament today.

Another important issue that I think we need to take into consideration in this amendment is Trinidad and Tobago’s compliance with its international obligations. The integration of international human rights based standards and norms into local policies and practices will ensure that Trinidad and Tobago complies with international conventions and treaties which it ascribes to.

Trinidad and Tobago has ascribed to the following principles, conventions and rules, which deal with the obligation of member States to provide mandatory legal assistance, where the interest of justice so requires, where the arrested person does not have sufficient means to pay for legal assistance, in circumstances where the arrested person is a juvenile or charged with a serious criminal offence that carries a potential penalty of 15 or more years imprisonment. This is what Trinidad and Tobago has to comply with, with our international obligations.

5.25 p.m.

The amendment to this Legal Aid Act seeks to ensure that we comply with these international obligations, as far as what we have prescribed in our amendments to the Act. [*Crosstalk*] Yes, they are there.

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The United Nations International Covenant on Civil and Political Rights, ICCPR, we acceded to that in 1978, and that covenant includes two overarching non-discrimination rights. Article 2 guarantees:

“...to all individuals within its”—state party—“territory and subject to its jurisdiction that the rights”—enshrined in the ICCPR will be respected and ensured—“without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

Article 3 guarantees:

“...the equal right of men and women to”—enjoy—“all the civil and political rights”—contained—“in the Covenant.”

By Article 14:

“All persons shall be equal before the courts and tribunals.”

And we want to ensure that all citizens, regardless of their financial capacity and ability, would be equal before the courts and tribunals because they will have adequate representation.

“In the determination of any criminal charge against him,”—which includes her—“or his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

The Legal Aid and Advice (Amdt.) Bill seeks to ensure that the competence that should be available for one accused, must be there provided for, and this amendment to the Act seeks to bring about that capability and capacity to ensure that there is a competent lawyer for the accused.

Mr. Speaker, there is another principle, (17), under that United Nations International Covenant on Civil and Political Rights. May I state what section 1 states:

“A detained person shall be entitled to have the assistance of a legal counsel.”

This is what the Legal Aid Authority gives.

“He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it.”

In the present circumstance where there is a deficit of attorneys who can be called out at any time during the night—and the name that is given to that system is the Duty Counsel Scheme or Duty Counsel System, where these attorneys are on call

for 24 hours. So when we make the amendment to this, and this Duty Counsel System comes into place, an accused who is arrested, and who is informed of his right by the competent authority, promptly after the arrest, shall be provided with reasonable facilities for exercising it, and would be provided with reasonable counsel immediately upon arrest. As I mentioned earlier, there will be less scope for an accused making a mess of his own situation, because he would be guided and advised by counsel at an early stage.

I could go on to the other areas of the standard minimum rules for the treatment of prisoners, but it is not necessary at this stage. It is important for me to indicate a number of other issues related to this Bill. There are a number of categories that the Legal Aid Counsel deals with, detainees, suspects, accused, and we must not deny the fact that all these persons have the right to legal representation by a qualified, competent and committed attorney.

In addition, defendants must be brought before the courts within a reasonable time, and the lack of counsel slows down the process of justice, and creates backlogs in the court system as is evident in the many cases presently before the courts. You would have heard the Minister of Justice speak recently, and the hon. Prime Minister—while we were in Opposition—had spoken, on many occasions, of the massive backlog of cases numbering over 400,000 in the Magistrates' Court. Now, this system will obviously help to prevent any increase in that backlog, and reduce some of the backlog in these Magistrates' Courts, and therefore, improvement in the criminal justice system.

Let it not be forgotten that the authority not only services criminal matters but also civil matters. So legal aid is not limited to persons accused of criminal activities, but also provides counsel to victims of domestic violence, divorce matters, maintenance matters, as well as property matters.

In that context, property matters—the Member for Port of Spain North/St. Ann's West, spoke about the fact that, you are there to bring about to the Parliament the issues that you are confronted with by your constituents that we have to address as a Government. The same issues that you have been speaking about which need to be addressed, which you have brought to the Parliament, this amendment to the Bill seeks to address those issues which you are demanding should be addressed.

We are in conformity with parliamentary practices, you seeking to have a redress for your constituents, who have complained to you, and this Bill is seeking to provide remedies for those complaints, and this is in fact what this Bill is doing.

Mr. Sharma: That is a very good point. [*Desk thumping*]

Hon. Dr. T. Gopeesingh: Thank you very much, Member for Fyzabad. [*Laughter*]

Mr. Speaker, it is not often that you get a beautiful compliment from the Member for Fyzabad, so I accept it wholeheartedly. [*Desk thumping*]

Hon. Member: “Stingy.”

Hon. Dr. T. Gopeesingh: Yes, he is very “stingy” on compliments.

So, in fact legal aid and advice in the area of family matters, for example, divorces, disputes involving matrimonial property, domestic violence, custody and maintenance, is the most sought after service offered by the authority.

Land matters constitute the second highest area in which applications are made. Those of us who represent thousands of constituents, all 41 of us here, and you would have had tremendous experience yourself, over a number of years, there are so many areas of land disputes that come before the Members of Parliament, that we are unable to deal with ourselves, because many of us are trained in other areas. The Leader of Government Business I am sure could help tremendously, yes; the Member for St. Augustine—

Hon. Member: Yes.

Hon. Dr. T. Gopeesingh:—the Member for St. Joseph, and Diego Martin North/East I am sure, yes, and of course, Port of Spain South; well, my colleague from Fyzabad, he is an example to many of us about running a constituency properly—yes, the party organizer, he has tremendous experience in running a constituency. In fact, when I became a Member of Parliament elected by the people, I sent my staff down to Fyzabad to have them trained, because he ran a very efficient and effective system, and we are very happy, on this side, we have that competence and ability of our colleagues.

Mr. Roberts: And we share.

Hon. Dr. T. Gopeesingh: And we are prepared to share it across. On that side as well, the Member for La Brea, the Member for Diego Martin North/East, and Member for Diego Martin West, your 21 years in Parliament, you have tremendous experience of serving your constituency. [*Crosstalk*]

Hon. Member: He has a legal aid service in his constituency too.

Mr. McLeod: You are going to help La Brea too?

Hon. Dr. T. Gopeesingh: Oh yes, La Brea!

Mr. McLeod: The Member complains, nothing for La Brea. [*Laughter*]

Hon. Dr. T. Gopeesingh: I have seen the Member for Point Fortin file a Motion on the question of not enough service to the south-western area in Trinidad, but we will be able to tell them what this People's Partnership Government is doing for them in the south-western area. [*Crosstalk*]

The land issues: you have a number of very wealthy people who own land, and sometimes the very poor people have to fight against the very wealthy ones to get redress for matters which should be fair—justice—and therefore, this amendment to the Act—[*Interruption*]

Dr. Khan: Is a Robin Hood amendment.

Hon. Dr. T. Gopeesingh: Yes, it is a Robin Hood amendment; very good Member for Barataria/San Juan. In fact, it is really a Robin Hood amendment, to be able to help the poor; we are not taking from the rich, but we are helping the poor, by ensuring that they get justice. When the very wealthy ones can get the best attorneys, we are providing enough equitable type of competence for these poorer ones to whom injustice might be given at some time or the other.

Hon. Member: Very good.

Hon. Dr. T. Gopeesingh: The Authority will continue to support families by offering superior legal aid and advisory services, and that is why one of the earlier pieces of legislation brought to the House by our People's Partnership Government seeks, among other things, to raise the threshold of eligibility to allow more members of the public to qualify for legal aid.

The Ministry of Justice will continue to advocate and introduce legislation in keeping with our aim at modernizing the criminal justice system, and we recognize that urgent amendment to the existing Legal Aid and Advice Act was needed for the purpose of widening access to legal aid, particularly with regard to minors, possibly the most vulnerable category of persons within our criminal justice system. It is expected that these proposed amendments, the amendments proffered by the Minister of Justice, will effectively treat with the issues that have come to bear on the efficient operations of the authority.

As I spoke about earlier, a critical amendment featured in this, is the Duty Counsel Scheme designed to so modernize our existing legislation. This protects juveniles under the law, and it is clearly recognized that the introduction of this

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Duty Counsel Scheme, and this initiative will, for the first time, bring our legislation in line with our international obligations, which necessitate the provision of free legal assistance for arrested or accused juveniles; very important point.

Mr. Imbert: What about duty counsel in the court?

Hon. Dr. T. Gopeesingh: No, the Duty Counsel Scheme—[*Interruption*]

Dr. Moonilal: Is a very brilliant idea.

Hon. Dr. T. Gopeesingh:—of course, a very brilliant idea. [*Crosstalk*] No, the Duty Counsel Scheme that has been proposed on this amendment here—[*Interruption*]

Mr. Imbert: That “half-pick duck”?

Hon. Dr. T. Gopeesingh:—satisfies the requirement that you have a number of competent attorneys on duty; the same way in our medical profession, when we have people on call in hospitals, 24 hours, they save lives.

Mr. Imbert: To do diagnosis.

Hon. Dr. T. Gopeesingh: No, they save lives, because they are right there on spot, and in the same way an analogous profession in law, you have the attorneys on call for 24 hours who will be able to come to the assistance of accused, immediately, and particularly juveniles.

Mr. Imbert: I thank the Minister for giving way. The point I had made, and I would like the Minister to address his mind to, is that there is need for a duty counsel not only when the person is detained on suspicion, but there is an equal need, some will say, an even greater need for a duty counsel in court when the person has been charged and is appearing before the magistrate or the judge. All the other progressive jurisdictions have both, they do not have half.

5.40 p.m.

Hon. Dr. T. Gopeesingh: That is a good suggestion. We accept it as a good suggestion; the duty counsel for the courts, and I am sure this is something that would be considered by the Minister of Justice to insert in some of the amendments to the amendments that we have at the moment.

So, Mr. Speaker, another important part of this proposed Bill is provision for non-residents to access these services. And you may say, why do we want non-residents to access service free from our taxpayers’ dollars? The current Act makes provision for non-residents to obtain legal advice after having been

resident in Trinidad and Tobago for a period of six months. So, it is in the Act already. This amendment Bill will remove such time limitations so as to mitigate the adverse impact on this particular group which may include, for example, persons accused of drug trafficking and the like. Remember, these are people accused and not found guilty. It is important for them to put up a proper defence.

Amendments are also being proposed which deal with fees to be paid to the attorneys. In fact, I have a number of friends—the Member for St. Augustine has been a colleague and a friend for a number of years and you hear your friends in the legal profession speak. You heard him this afternoon with the passion and the emotions of how he has had to defend people at minimal cost, minimal fees, as if it was almost free. In this context we have hundreds of lawyers in Trinidad who have been giving of their service almost voluntarily and free to the general public. We thank them and congratulate them from the People's Partnership Government and I am sure from the Opposition as well.

This afternoon we want to also make a plea for attorneys to come on board to help and to increase the number of attorneys who can be serving on the duty counsel scheme, both when there is an emergency situation when someone is accused and, in addition, what the Member for Diego Martin North/East has said, for the duty counsel attorneys to serve in the Magistrates' Court when it is necessary. So, the fees, Mr. Speaker—for a long time the attorneys have been working for little or nothing and it is time enough that they are compensated to some extent. But we are also asking for attorneys now who are young and who have benefited from the GATE programme and have done the law through the GATE programme almost without much cost to them, they have benefited and we seek their support, we seek their coming forward and giving more aid to the legal aid committee at the moment.

The Member for St. Augustine spoke about the number of attorneys volunteering their services and registered on the panel of attorneys of the authority. It is very noteworthy that we should take cognizance of that issue. I have with me almost the same thing that the Member for St. Augustine and Minister of Legal Affairs mentioned. In 2007 there were 1,220 registered attorneys; in 2008, 1,558 and 2009, 438 attorneys registered. So, from 1,558 in 2008 to 438 in 2009, attorneys registered for the legal aid and in 2010, 503. So, obviously, this is insufficient to deal with the situation that arises in the courts and people who are charged from day to day. So, fewer and fewer attorneys are reluctant to take on the high profile and lengthy cases because the stipend they receive does not compensate them for the time and expertise required to offer adequate representation to the accused persons.

Mr. Speaker, we are proud on this side to state that our People's Partnership Government, hand in hand with the authority, is steadfast in making justice more accessible. Moreover, we will continue to seek to ensure that everyone is afforded equality in the justice system, when no woman, man or child is discriminated against or left to suffer because they lack the means to access the rights for protection offered to them under our legal system. As the Ministry of Justice works to modernize and transform the administration of justice in Trinidad and Tobago, we call on more stakeholders and, particularly, the legal fraternity to join with us and continue to work with us in that quest and to continue to offer their services to the authority. We ask them to join with us in being part of the solution in our criminal justice situation at the moment in our country, and by virtue of the ratification of the amendments to this Bill, we would have satisfied a lot of the requirements needed to have a continuation of improvement of our justice system.

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

Miss Marlene Mc Donald (*Port of Spain South*): Mr. Speaker, thank you for this opportunity to join in this debate. I am just going to make a very brief intervention—[*Desk thumping*—and simply because I thought that a lot of points were made, but I feel that the points that I want to make are quite relevant to this debate, and certainly, I hope they would be able to help the Minister.

I also want to thank my colleague, the Member for Diego Martin North/East, who I thought did a wonderful job in this debate this afternoon. [*Desk thumping*] Also, to the Member for Port of Spain North/St. Ann's West, who would have given a historical perspective as to the genesis of the legal aid. As a matter of fact, they have assisted me in my contribution, so I really do not have to repeat what they have said.

Mr. Sharma: Oh, that is so nice. That is so nice.

Miss M. Mc Donald: This concept of legal aid is not new to Trinidad as the Member for Port of Spain North/St. Ann's West has said. It is a concept that has been—

Mr. Warner: I thought you said you were not repeating what she said.

Miss M. Mc Donald: She did not say this part. It has been introduced in Trinidad and Tobago—[*Laughter*] I was listening to her—by the Legal Aid and Advisory Authority Act, Chap. 7:07, Act No. 25 of 1976. It was introduced at a time when our country was a mere teenager. We were just 14 years old. Our legislators saw the need to recognize the fundamental rights of all our citizens, those rights to equality and access to the law, and those fundamental rights are enshrined in our Constitution, section 4(a) and (b).

Mr. Speaker, our young nation also, in 1978, became a signatory, as the Minister said, to the United Nations International Covenant on Civil and Political Rights. That was in 1967, and basically, this covenant promotes the ideal that all persons are equal before the law.

Hon. Member: 1978.

Miss M. Mc Donald: We signed on in 1978, but the whole covenant was from 1967. We signed on 11 years thereafter.

Mr. Speaker, as I said, I will be brief. The Government has come here this afternoon and has stated that the current legislative proposals are insufficient to deal with the number of persons who would like to access, to put very commonly, the legal aid services being offered by the advisory authority.

I want to share something: I went to the United Kingdom recently and whilst I was there during the course of that week they actually were debating in the House of Lords—because the Bill was submitted in the House of Lords—Legal Aid Reforms, and the Minister of Justice had introduced that Bill there. What he was seeking to do was to cut legal aid funding by the Government by some £350 million between the years 2012—2015. The law society, that is the society that would deal with the—just like we have here—solicitors, they claimed that the measures would limit the ability of many people to gain access to free legal advice. A group called “Sound off for Justice” warned that at least—and these are the statistics that they gave—650,000 persons would have nowhere to turn for legal advice as a result of the reforms; 210,000 families and women who previously would have qualified for the legal aid in divorce cases would lose out. This is the one that got to me—32,250 elderly people would no longer be able to access legal aid.

Of course, Mr. Speaker, this Bill took a beating in the House of Lords:

“Lord Bach”—one of the law lords—“said the country was rightly proud of its legal system”—he said—“What underpins and guarantees our system is access to justice for everyone.”

Mr. Speaker, I got to thinking, and I said back here, I know we were going to debate this Bill and I looked at the objectives of the Bill, and I have said in this Parliament, time and time again, that we will support any measure that would bring some assistance or be of benefit to the citizens of this country. This Bill the Government has bought has three basic objectives: widening access to services of the legal aid to persons who normally would not have been able to access it. For

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example, as the Member for Caroni East has said, targeting the minors at the time they are detainees; also for persons who are charged with a criminal offence that they would be able to get counsel at that point in time, also, too, increasing the disposable income and disposable capital requirements.

The second objective of the Government is the introduction of a duty counsel scheme and the third, to increase the level of remuneration for attorneys providing legal aid services.

Mr. Speaker, this Bench supports all of these objectives in principle. We support all of them, because we think that once they are put in place they would redound to the benefit of our citizens. However, it is the clauses, it is the interpretation of those clauses in the Bill that we seriously have problems with. I asked the Member for St. Joseph and Minister of Justice—I have said this before in this Parliament, that ego has no place in this Parliament—a short while ago, whether he would think about taking back the Bill, reviewing it, looking at the proposals and bringing a Bill, because we stand ready and waiting to support these measures. After all, the Minister has said to us this afternoon that most of these proposals were actually done by the former administration, by Mr. John Jeremie. [*Interruption*]

5.55 p.m.

Whether you like it or not, that is the case. So therefore we have absolutely no problem. However, if we as a group see that there are some flaws in the legislation, we will expect that the Minister will take it back, look at it and bring it back to us because we have no problems in approving this and voting along with it. But as it stands now, we would not be able to lend our support as we would have liked to do, because it is flawed.

Mr. Speaker, I want to look at each objective very briefly. The first one I want to look at is the eligibility provisions of persons seeking access to legal aid. How does a person apply for legal aid under the current legislation, that is Act No. 25 of 1976? The application for legal aid, for criminal proceedings are governed by sections 17 to 19, and for the civil proceedings we look at sections 23. Now in sections 23(2)(a) and (b)—and (a) is important and I read:

“The Director may thereupon grant to the applicant a certificate...that the applicant is entitled under this Act to legal aid in connection with any proceedings where—

- (a) the Authority is of the opinion that the applicant has reasonable grounds for taking, defending, continuing or being a party...”

The second part—this is where the means test would come in:

“(i) that the applicant is not possessed of or entitled to disposable capital of a total value of more than two thousand dollars.”

We find that grossly outdated. In the case of the disposable income, where:

“...the disposable income of the applicant does not exceed three thousand five hundred dollars a year.”

The Government, Mr. Speaker, now proposes an amendment in clause 23(2)(b), where they are now increasing a person’s disposable capital from \$2,000—\$20,000 and the disposable income from \$3,000—\$36,000. Again, we do not have a problem. But I do not want to repeat what my colleague from Diego Martin North/East had said. But you need to look at section 25, Sir, the definition of disposable income and more particularly the fact that your National Insurance—because you did say in your presentation, Sir, that this would take into consideration all the old age pensioners who are now receiving \$3,000 a month. And that is wrong. If you read this section properly you would see where the National Insurance Board pension is omitted. They do not even look at these things when they are computing the disposable income. The disposable income as we know what it is, is after all deductions, but they never considered the NIS, they never considered old age pension.

So therefore what we are doing here, you have already opened out the gate wide. In other words, I do not think that you are doing that deliberately. It is not deliberate, because I think that if you had understood what was happening here, when you changed section 23 without taking into consideration section 25(g) with the old age pension, you created a little monster inside of there. You created a monster. I hope you will look at it. That is why when you said to us at the beginning of your presentation, that, “An MP could apply for legal aid”, are you aware that you are quite correct? In my mind that says something to me, that the Minister was aware of what he was doing. So you are talking about people between \$9,000 and over. They are able; they are now able to apply for legal aid. Is this your intent, Sir? Sometimes you have to look at the intention of the law, and you have to look at the spirit of the law [*Interruption*]

Mr. Volney: [*Inaudible*]

Miss M. Mc Donald: Pardon me, pardon me—that people—\$9,000/\$10,000? Well according to the letter of this law, according to this here, how could that be possible? But in your wrapping up you can probably state.

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Now, I want to look at section 24 of the parent Act. You have repealed this particular section through your clause 12, and you have said where there are extenuating circumstances an approval is given. I want to look at the second part:

“An approval given by the director under subsection (1) shall be notified.”

It is very mandatory. It has nothing to do with the board even considering and approving. It is fait accompli that by the time the director has approved a particular application it comes to the authority. All the authority has to do is to rubber-stamp that directors—[*Crosstalk*—well then, why not tell us what are those extenuating circumstances as both my colleagues have done? Can you give us some sort of guidelines?

Mr. Volney: Conyers dictionary.

Miss M. Mc Donald: Go there? Yes, Sir. Let me continue “eh”, Mr. Speaker. I wanted to give—Minister of Justice, I wanted to go back to section 24 of the Act. I looked at section 23 and 24 together, and I see section 24 as a discretionary ban in the event that you do not fall within section 23, you are outside, the director has the opportunity to look at disposable income of up to \$7,000 not just \$3,500, or disposable capital of up to \$5,000 instead of \$2,000.

Something struck me; when you repeal this, and you want to implement this new section with the extenuating circumstances, you left out this part of it that where:

“the Authority is of the opinion that the applicant...”

And this is the crux of it, you know. “...where—

the Authority is of the opinion that the applicant has reasonable grounds for taking, defending, continuing or being a party thereto;”

This is carte blanche. You have given this director unfettered discretion and power to do what he wants without even limiting him to say whether the authority is of the opinion that this matter that the person wants to pursue is to his advantage, nothing like that. Still, we are the legislators. You may find a director who would be a reasonable person. You may find a different character there in the next two, three, five years when you are long gone. So I am basically saying let us see it in the Act. Let us craft it inside of there. I did not see the reason why we need to repeal this. We could have put some limits inside there. If you wanted it to increase all these limits here, you could have done that. That is just my humble opinion, Sir.

Mr. Speaker, we looked at clause 20 of your Bill, that is the part with the residency. And if there is one thing that really stuck me, Sir, it was this particular

clause, because I could not understand why—and I read your notes from the other place, and I am really not in agreement. If you define extenuating circumstances all those people—you talk about, the traffickers and whatnot who come into the country, they could have been dealt with under that new section you created as you repeal section 24. The section reads, for those who are listening to us outside; as I always say I am not speaking to the people here, section 37 says:

“(1) Subject to this Part legal advice shall be available to persons resident in Trinidad and Tobago for a period of at least six months.”

Your new part will read in subsection (1), delete the words “for a period of six months”. So you are saying it shall be available to persons resident in Trinidad and Tobago.

The Representation of the People Act, gave a criterion for residency. You have to be here for at least two years before you can vote. Go to the Ministry of the People and Social Development. What happens there? Could somebody just come from the United States or wherever and jump in and get your grant? No, they cannot get that \$3,000. There must be a criteria for residency before you can access that \$3,000 grant from the Ministry of the People and Social Development. You are about 15 years or there about. And I am saying, as my friend said, “This is the taxpayers’ money paying for this”. It would lead to on and on, because I do not trust this Government. [*Desk thumping*] So I want to see it crafted in there. I want to be able to see it and to read it, because you say one thing and you do something else. [*Interruption*] Minister you would get your chance to talk, “doh” carry on a conversation with me when I am in full flight, please, please! [*Crosstalk*] I sat quietly and listened to his presentation.

Mr. Roberts: Go ahead you going good.

Miss M. Mc Donald: Mr. Speaker, I want to deal with increasing the fees, the second objective, increasing the fees to attorneys. I want to say yes, I agree with the increase in fees. I thought it would have been a little more.

Mr. Roberts: Remember to state that you are an attorney. [*Laughter*]

Miss M. Mc Donald: I want to say that it could have been a little more. Mr. Speaker, but I want to bring to your attention, you are increasing the fees and I want to tell you, I have some figures here I want to share—I think that the Member for St Augustine brought it to the attention of the House, but I think he stopped up to 2010. Why is it the number of attorneys registered—2007, 1220; 2008 it went up by 338, a 27 per cent increase. In 2009 that figure fell by 71 per

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cent down to 438. It went down by 1,120 attorneys. In 2010 the figure went up by 65 to 503 and in 2011 that figure stands at 463.

I could not help thinking when I looked at the fees in the schedule, that the attorneys are not being compensated properly, and therefore they do not see the need. We talk all about pro bono and pro bono, but the thing about it is that an attorney's time is his stock in trade, and therefore if he is going to sit for hours and hours and days and weeks up and down in court, he has to be compensated properly. So I could understand that.

6.10 p.m.

The other point I want to make has to do with the statistics now—the number of persons—because you have just opened up the floodgate with this disposable income. I just want to give you the sort of through traffic that you get at the legal aid offices across the country so you will have an appreciation of what happens, and as you open up this disposable income thing, anybody and everybody could now apply. This is what happens.

I am giving you a five-year period, from 2007—2011. Let me give you the figures:

Number of clients accessing the services of legal aid for the five-year period:

Port of Spain area, 26,604;

Arima, 8,050;

Sangre Grande, 2,016;

Chaguanas, 1,757—

Mr. Warner: “Ah, you see?”

Miss M. Mc Donald: Well, let me tell you. You think it is low? Do you know why? Because in Chaguanas the office was closed in April 2010 due to a lack of accommodation. That is what happened.

Mr. Warner: I was not there in April.

Hon. Member: You were there.

Miss M. Mc Donald: I was preparing for election.

Couva, 6,441;

San Fernando, 17,749;

Penal, Debe, 467;

Scarborough, Tobago, 4,542;

Siparia—this office, too, was closed in 2008. That is why it registered just 246 persons.

When I totalled the five years from 2007—2011, the number of persons coming through your offices was 67,872 persons. What am I trying to say here? I am trying to say, as you open the floodgates, you may reach—[*Interruption*] Exactly! Because of the qualification. And this is the point that my friend, the Member for Diego Martin North/East, was trying to make. So, Member for St. Joseph, I hope you are taking on board exactly what I am saying.

Let me look at the third objective—and I am doing it very briefly and straight to the point—the introduction of the duty counsel system. Under this Bill we are seeing under clause 6 a new section is going to be included. It introduces the concept of the panels of attorneys-at-law to be known as duty counsel. For those who are watching who may want to know what is this duty counsel, it is a new scheme that is being introduced. It is a solicitor and an attorney whose services are available free of charge to a person either suspected of, or charged with, a criminal offence if that person does not have access to his own attorney.

So the duty counsel is a two-pronged approach; the duty counsel for persons who have been detained under suspicion of the committing of some offence, or somebody who has been charged. I want to agree with the fact that for the minors, it is at that stage, because sometimes they come to the police station; they are detained; they are scared; they are frightened; sometimes they are not hardened criminals; sometimes it is their first offence and they will need someone to speak to.

I do not have to go through the entire scheme with you, but I could tell you that I have read what happens in England with the police station duty counsel and the court duty counsel. In some cases we call it “counsel”; some cases like in England, they call it “solicitor”; in Canada they call it “counsel”; Jamaica and the Caribbean we call it “counsel”.

It cannot be done on a piecemeal basis. If we are going to implement this, we need to see the proper provisions in the Bill. I have read the Bill; I have seen where you have done something on the minors at the police station. You have given a whole exposé, but what you have done is virtually left out the person who has been charged and he has to make an appearance in the court. That is no longer there. What we are saying is that the duty counsel system is two-pronged and it works in tandem with each other. In most cases that we read there, the research shows that some of these counsels are at the police station and in the court system for when persons come in.

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What are we doing? Because if I did not read and research this, when I looked at this Bill, on the first blush I would have said, yes, but when I blushed again, I said no way could I support this. [*Crosstalk*] No, you all do not make me blush; you all make me laugh.

Mr. Roberts: Laugh and blush are very close.

Miss M. Mc Donald: Mr. Speaker, what I am saying is that if we are going to introduce a system, let us do it properly. We are already there; we are already trying, but you cannot do it piecemeal and then ask us to go along with you. We cannot be willing partners to incompetence. We cannot do that. So what we are basically saying is that, take it back; look at it, and we are ready and willing to support you, Mr. Minister.

Mr. Speaker, I do not think I have anything else again to say. I have looked at the three major points and I hope that the Minister will take this on board.

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

The Minister of Justice (Hon. Herbert Volney): [*Desk thumping*] Mr. Speaker, I have listened to the contributions of my friends on the other side, as well as to the contributions of the hon. Member for St. Augustine and the Minister of Education, the hon. Member for Caroni East. I have listened to the contributions of the Member for Diego Martin North/East, as well as the Member for Port of Spain North/St. Ann's West and also, of course, the very spirited contribution of the Member for Port of Spain South. [*Desk thumping*]

The problem is that if I start at the end, the hon. Member for Port of Spain South has the distinct difficulty when she speaks, of speaking without reading the legislation closely. The hon. Member has been doing it time and time over, in order to justify making the statement—which is much like a stuck record—that the legislation is flawed.

This legislation, in its current form, having been dealt with and scrutinized in the other place, is not flawed. It is fine-tuned in order to be relevant and to be cost effective and to be affordable. What we are seeing again is the lack of cohesion, not only among the Front Bench of the Opposition in the House, but also contradicting positions between those opposite on either of the two Houses of this Legislature. While this is a measure that is engaging the attention of this honourable House, much time—in fact, in the other place we went late into the morning—

Mr. Imbert: It does not matter.

Hon. H. Volney: While my friend says it does not matter, of course it does not matter because this House is entitled to look at it in its own right, but at the same time, many of the amendments that came in the other place were at the request of the Opposition, and we sat and we agreed, and lo and behold when we come to the House, we get a contradictory position of their own points made in the other place.

Mr. Imbert: Mr. Speaker, on a point of order. Matters in the other place are irrelevant in this place.

Mr. Speaker: Point sustained. We are not in the other place. [*Desk thumping*] Forget the other place. Let us deal with our business.

Mr. Imbert: This is an elected House—our place.

Mr. Roberts: That is “all yuh” place for a long time.

Hon. H. Volney: Mr. Speaker, I have made the point that I wanted to make and I move on. Suffice it to say that some of the contributions made by the hon. Member for Port of Spain South showed a total lack of understanding of how the legal aid system works. The Member for Port of Spain North/St. Ann’s West is totally out of her depth. The hon. Member does not have a clue of the legal system of Trinidad and Tobago and how it pans out; how legal aid is granted; how it works, and I am trying to be very, very kind to her. So that while it sounded good, it really was quite a vacuous contribution. It really did not carry the Bill very far. So there is nothing that I really have to address in relation to the close to 75 minutes of her contribution.

Now, the hon. Member for Diego Martin North/East: I would have thought that if you enlarge the qualification for the legal aid, it would be those whose discretion it is to issue the legal aid certificate to consider the criteria in order to see whether the certificate should be issued, and the wider the qualification that is provided for by law, the more open the system would be to everyone.

Mr. Imbert: Would you give way?

Hon. H. Volney: No!

Mr. Imbert: You would not give way?

Hon. H. Volney: Definitely not.

Mr. Imbert: What kind of behaviour is that?

Hon. H. Volney: I am not a gentleman—

Mr. Roberts: “Ah beg for him; ah beg for him. We beg for yuh.” Come on.

Mr. Imbert: Mr. Speaker, I presume the hon. Minister is referring to the clause that deals with extenuating circumstances.

Hon. H. Volney: I have not reached there yet.

Mr. Imbert: Okay, fine. No problem.

Hon. H. Volney: Mr. Speaker, as it now obtains—

Mr. Roberts: He is premature, as usual.

Hon. H. Volney: I am told that you are premature, as usual. *[Laughter]* *[Desk thumping]* It is all about in the coming.

Mr. Imbert: Moving along.

Hon. H. Volney: But we are moving along. *[Laughter]*

To deal with the point, seeing that my friend on the other side has raised it, of extenuating circumstances, in the function of just about every functionary, there must be an element of discretion and it is in the exercise of the discretion that problems usually arise.

On a Saturday morning a young man is picked up; a minor is picked up. There is no opportunity, or hardly any opportunity, for the sitting of the board of the Legal Aid Authority in order to consider whether a certificate should be granted for there to be a lawyer made available to him at the police station. The officer in charge of the station has a roster. He can call the director of legal aid or whatever is available, whatever protocols are established, and the director has the discretion to say: “Given that this is Saturday morning and there is no board in place, this young man needs help. He is at the police station. I simply proceed to give the authority for Mr. whoever it be, who is on the panel, to go down to the Maraval Police Station in order to take out someone or to represent that person at the police station.” Those are extenuating circumstances and the clause says that the exercise of that discretion is to be ratified at the next meeting of the board.

6.25 p.m.

Mr. Speaker, what better facility, workable provision, protocol can you get? If we are to follow what is recommended by those on the other side, we would have a system that does not work. Now, Mr. Speaker—*[Interruption]*—when I am through you would get your chance. When it comes to the issue of extenuating circumstances one has to understand that this measure came about by this Minister and this Ministry of Justice in our Government, literally taking up a baton that had been left on the ground by the last Government because it was not a priority of theirs. We took it up,

we looked at what was good in what was there, including the provision for extenuating circumstances, and we developed it into what is before us today.

We have been mindful of the cost factor because we cannot simply adopt a perfect system if it is going to cost taxpayers too much. So, we have had to make cuts here and there, and what we have is a working system that I know works. Legal aid is the lifeline, it is the blood of the criminal justice system. When there is money in the system the panel would fly back up to 5,000 members on the panel. When there is no money it would dip to 400. That explains why over the years, although there is more work there are fewer attorneys on the panel, because lawyers do not like to work for peanuts, you know. That is why there is this pro bono element in the approach. But legal aid is in fact the lifeline of the criminal justice system. And, for many, many, years sitting on the bench—as I like to remind those who seem to want to diminish my expertise in this matter—sitting on the bench, I can tell you from a position of vantage, that judges have over the years had to appoint lawyers for just about anybody who comes before the court who is in custody. While that person may have means, he may not be able to pay legal fees for one reason or the other. If the judges do not appoint to be ratified by the legal aid system, the courts would just adjourn, adjourn, adjourn, because there would be no lawyers.

What has since happened, and this happened towards the end of the last administration, is that legal aid fees were not increased. And whereas before a judge could get an attorney to represent someone, as you got closer to the general elections lawyers were sending back briefs to the court because they refused to work for \$10,000 to do a murder trial. [*Interruption*]

Mr. Imbert: Thank you very much. Mr. Speaker, I wish to thank the Minister for giving way. Is the Minister saying that he sees no need—and, I do not mean any disrespect—to have qualifications criteria guidelines whatsoever to guide the director in the exercise of his discretion as to what is defined as extenuating circumstances? Because I do believe this is something you need to look at; just to leave it as extenuating circumstances is far too wide and would lead to judicial review. That is the first point. And, the second point is, you spoke about the cost—[*Interruption*]

Mr. Sharma: That is a second debate.

Mr. Imbert: No, it is a second question. You spoke about cost, Minister. If you are concerned about the cost of the new system then I urge you to take a look at the arithmetic in terms of the disposable income, because it could reach up to \$100,000 per annum when you do your calculations.

PROCEDURAL MOTION

The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal): Mr. Speaker, pursuant to Standing order 37(3), I beg to move that debate on this Bill be adjourned to a later date and we move to Bill No 2 on the Order Paper, the Regional Health Authorities (Amdt.) Bill.

Question put and agreed to.

REGIONAL HEALTH AUTHORITIES (AMDT.) BILL, 2011

Order for second reading read.

The Minister of Health (Hon. Dr. Fuad Khan): Thank you, Mr. Speaker, I beg to move:

That a Bill entitled an Act to amend the Regional Health Authorities Act, Chap.29:05, be now read a second time.

Mr. Speaker, I rise today after a bruising election campaign where the Minister of Justice and I successfully obtained almost 8,000 votes together.

This Bill is a very simple Bill. It is a Bill that is long overdue, and may I read the Explanatory Note where it indicates that this Bill would amend section 20 of the Regional Health Authorities (RHA) Act, Chap. 29:05, by inserting a new subsection (1)(a), which would enable the Regional Health Authorities to procure goods or services collectively where it is economically expedient to do so.

This means, Mr. Speaker, that the Regional Health Authorities together would be able as a collective unit to bulk buy goods and services where it allows them to be economically expedient to do the same. I just want to read the section that would be inserted:

“Section 20 of the Regional Health Authorities Act is amended by inserting after subsection (1) the following subsection:

‘(1A) Notwithstanding, subsection (1) and where it is economically expedient to do so, a Board may—

(a) pursuant to an agreement with any other Authority;

(b) in accordance with regulations made under this Act for the purposes of this subsection; and

(c) acting on behalf of its Authority and an Authority referred to in paragraph (a),

invite, consider, accept or reject offers, and enter into contracts for the supply of goods or the undertaking of works or services necessary for carrying out the objects of the respective Authorities.”

What occurs at present, each Regional Health Authority acts on its own accord independently. And, I would like to define just what is meant by goods and services. This is the subsidiary legislation of Chap. 29:05, Regional Health Authorities Act:

“‘goods’ means materials, products, implements, tools, devices, machinery, equipment, plant and articles of all kinds.”

“‘Services’ includes assistance in doing things or getting things done and includes professional or consultancy services.”

“I also want to read: “‘a business entity’ includes a sole proprietorship, company, firm and partnership.

Mr. Speaker, this Bill is what we may term a procurement Bill. The Regional Health Authorities at this point in time, work along the key strategic goals of the Ministry of Health. And, I will just enumerate a couple of them. One of the strategic goals is to achieve operational excellence within the health sector; health system operating to international standards; increase in the service utilization and intervention coverage; high quality affordable health care available to all levels of the population; effective management of health sector finances and high performing Regional Health Authorities effectively and efficiently meeting the needs of all clients and stakeholders.

Before I start on the procurement part of it, I just want to say what occurs at present is that each Regional Health Authority operates as its own entity. It could be considered the delivery part of the Ministry. And as a result of operating independently there are numerous geographical boundaries for each Regional Health Authority. As a result of these geographical boundaries, goods and services find difficulty in going from one Regional Health Authority to the other based on need or scarcity.

If one Regional Health Authority operates on a level of scarcity and the other Regional Health Authority operates on a surplus, it is impossible because of the legislation at present to allow transfer of movement around those Regional Health Authorities. This was conceptualized in the initial Regional Health Authorities Act in 1994. The legislation today is being done to allow the movement of goods and services in a procurement-type fashion, where one Regional Health Authority would be able to procure for all in goods and services that are necessary and economically expedient to do so.

First, let me say what brought up the problem. At present there is an inefficient use of resources among the Regional Health Authorities. There is also a delay in evaluating tenders because there are not enough people to be placed on four evaluating committees, four tender committees, at any one time for the similar type of good for each Regional Health Authority. There is an unequal distribution of the budgetary allocation, which determines—as I just indicated, one Regional Health Authority would have less money to spend than another Regional Health Authority, but they have the same needs although not the same volume of needs.

There is also differential costs in different Regional Health Authorities, because large purchasers would get at a cheaper price for the same goods and the small purchaser, such as Eastern Regional Health Authority, would pay more because it is not a volume buyer. The geographical boundary, I just mentioned, results in poor economies of scale. The Bill as we have it today, the amendment would allow bulk purchasing of goods and services. And, there is a need for the legislation to coerce these Regional Health Authorities in such a manner.

I just want to say a little about the procurement. I read from the Regional Health Authorities Financial Policy and Procedures Manual. When procuring in a Regional Health Authority, there is a planning stage and a project is identified or projects are identified. Let us take into consideration biomedical type of CT scan or MRI. Each Regional Health Authority would like to buy a CT scanner. They have identified that as a project in each one. What occurs at this time is that each Regional Health Authority, on its own, would sit and devise a tender process. The board of directors would sit at certain levels and I could read it out: deputy chairman, as the chairman of tenders committee, two other members of the board; the chief executive officer; two employees of the authority and any other person appointed by the board. You see that occurs at each of the Regional Health Authorities.

6.40 p.m.

The purchase of, let us say, a CT scanner, for want of a project—you would have Eastern Regional Health Authority, North Central Regional Health Authority, North West Regional Health Authority and South West Regional Health Authority. I stay away from Tobago because that is the prerogative of the Tobago House of Assembly and the Ministry of Tobago Development.

If you could imagine, these tender committees determine exactly that they want to buy the CT scanner, it is tendered out four times for the same item, and it goes out for tender like that, the suppliers respond to the tender in all levels. Each one determines that they would buy a CT scanner or some project, they have to now sit

and get people who are versed in biomedical technology—and we are a small country and we are a small region—each one has to get an appropriate evaluating committee which is named prior to the tender. So you have that evaluating committee in all four regions and sometimes these evaluating committees do not meet because they do not get any consideration, no money, and it delays the process. Sometimes it is a difficult thing because you cannot get the evaluation committee to get a quorum because there are not enough people on an evaluation committee.

So you have now, let us say, each one having five members, you get 25 members throughout this country buying, let us say, five CT scan machines, for want of a better project. As a result of that, the timeline for obtaining that project or that CT scanner or whatever you are going to do—goods and services in this case—takes a long time because a tender committee sits once a month. I have asked them to sit at shorter intervals. The evaluating committee determines exactly when you are going to get approval, when it goes back to the board. So right now I am outlining something to you here which could go on for three to six months or longer for immediate needs.

Suppose, let us say, North West has the money to buy the machine, South West buys the machine, but Eastern region does not have as much money as the others because of the annual services agreement. You will then have Eastern regional holding back because the cost of the machine is a lot for that region. However, if all the regions get together and do an agreement that they will purchase five machines from a supplier—and I will tell you that any supplier, and they will have one evaluating person from all regions so that the movement would be faster—they could now bargain for lower costs of buying five CT scan machines, and get the value and the price that is less than if you bought it separately.

So this is the function of this Bill, to allow uniformity in purchase—and when you buy that project, as the Member for St. Augustine says, you could buy a maintenance contract for everything, you could buy at a cheaper rate, you could buy the parts at a cheaper rate, and suppose it breaks down, which it tends to do at these onward movements, you could buy the parts at a cheaper rate. So, we are looking at cost efficiency, also, efficiency of movement and efficiency of action. This is what this Bill is trying to do, Mr. Speaker.

Now, in this process, we could also put pharmaceuticals. Most of the pharmaceuticals are centrally bought however by Nipdec and C40. The auditor has gone in and it has shown a wastage of movement and wastage of drugs; the poor administrative approaches to the C40 drugs, pharmaceuticals, and medical devices or whatever. As a result of—and I will run through the process a bit so that we understand it—each Regional Health Authority has health offices, hospitals, et cetera, on its own.

Each Regional Health Authority determines to the C40 what they want. As a result of lack of storage and lack of different things, each Regional Health Authority acts as its own individual, as they say, buyer. As a result of that, there is no control among the Regional Health Authorities to access proper bulk buying and storage facilities at that point in time. What is going to occur with this Act, they will be buying at a bulk, one Regional Health Authority will buy for all the Regional Health Authorities based on an agreement, storage and other aspects of pharmaceuticals, et cetera, will be bulk bought and kept in the Regional Health Authority at an efficient level. There will be no management fees paid to anyone to do that for the health authorities so it will be cheaper and more cost effective.

I just want to say another thing, Mr. Speaker. I want to start off by saying—I am going to read from the Ministry of Finance, State Enterprises Performance Monitoring Manual. It is a little preface on procurement. It indicates here:

“Procurement activities directly impact an entity’s profitability and operational success. Procurement has a key strategic role within organizations as it:

- Improves the profitability
- Acts as an information source
- Increases efficiency and productivity
- Improves competitive position and customer satisfaction
- Impacts on the organization’s image and social policy
- Assists...strategic objectives”—that I have just named.

“Procurement is an important element in the success of an organization therefore, it is imperative that adequate controls are in place to ensure that these benefits are fully realized.”

In a general procurement policy, the goods and services must be the best value, must be obtained in a timely manner, they must be abiding by applicable laws while maintaining fairness to vendors and of the highest ethical standards. This goal operates on the principle of value for money where the achievement of the best combination of price and quality to meet the particular needs of the authority will be done in an acceptable time frame. There must be transparency, there must be accountability and there must be ethical behaviour in procurement practices.

Section 9 indicates that it is important that employees conduct procurement on behalf of the authority and avoid improprieties as well as the appearance of such

improprieties. The integrity and credibility of the procurement system require that the employees be impartial, fair and free of any relationships that might cause them to be unduly partial to any vendor or product and they should not violate the spirit of procurement. There must be a legitimate business need; there must be no conflict of interest, and any director, officer or employee of the company is prohibited from directly establishing links and improper business relationships or obtaining gifts while doing the procurement process.

Mr. Speaker, the legislation indicates here, because of this procurement action, what occurs at present is that the board can establish a tenders committee for under \$50,000, and the tenders committee can do procurement for under \$50,000, and with the approval of the board and the Minister, \$1 million and above. It invites tenders for both sole selective tenders as well as normal public tendering relationships. The Regional Health Authorities regulations and subsidiary legislation indicate a whole range of procurement regulations which will be adhered to by this amendment. It goes into every single thing: evaluation committees, adequacy of the stocks, the tender processes, the penalties, the different systems, et cetera.

Mr. Speaker, as I mentioned before, this is a very simple piece of legislation but it has a far-reaching effect. I would like to say that when one does the evaluation, there is a checklist of questions that is obtained from the evaluation committee about the background, the request, the cost benefit analysis, the funds available, the maintenance and service agreement, training portfolios within the procurement packages, any stocks or spares that are held in Trinidad by said tenderer, and whether the business itself is a supplier of this specialist equipment or specialist goods and services, or whatever they may be required to do.

You see, Mr. Speaker, the Regional Health Authorities Act initially did not take into consideration the need for movement among the regions and Regional Health Authorities. Hence, each Regional Health Authority was so designed to be a separate entity, like a separate company. However, we have found that centralization of bulk buying and purchasing of bulk buying is necessary and the way to go.

Now, section 35 of the Act says:

“The Minister may make Regulations subject to negative resolution of Parliament...”

And this may be for contracting goods and services, and then they go into the procurement legislation and the procurement mechanism.

Mr. Speaker, the Regional Health Authorities are empowered to follow their own rules when purchasing goods and services. Although the Minister makes the regulations, the Regional Health Authorities (Contracting for Goods and Services) Regulations detail the entire procurement processes. Consequently, they provide the process which an authority must follow in inviting, considering, accepting or rejecting offers for the supply of goods and services or the undertaking of works necessary for carrying out the objects of the authority. Each authority is vested with the same power and functions as detailed in section 6 of the Act.

Accordingly, more often than not, the authorities require the same goods and services in executing the procurement process of goods and services. The authorities have determined that it will be more economical for some goods to be purchased in bulk and distributed among themselves according to their individual needs. They are of the view that it would be more cost effective if one authority could purchase specific goods on behalf of others such as large equipment, ambulances and so forth.

Mr. Speaker, the Ministry supports the request of the authorities, as it is our experience that it is not only cheaper to purchase in bulk, but it is also less time consuming and involves fewer personnel in this procurement process. It is noted that the evaluation process often involves highly specialized officers who do not always work in one authority. If the authorities are permitted to procure collectively, the evaluation team can be drawn from different authorities.

Mr. Speaker, clause 2 of the Regional Health Authorities (Amdt.) Bill, 2011 introduces a new section 20(1A) to the Regional Health Authorities Act and provides as follows:

“(1A) Notwithstanding subsection (1) and where it is economically expedient to do so, a Board may—

- (a) pursuant to an agreement with any other Authority;
- (b) in accordance with regulations made under this Act...
- (c) acting on behalf of its Authority and an Authority referred to in paragraph (a),

invite, consider, accept or reject offers, and enter into contracts for the supply of goods”—and services—“or the undertaking of works or services necessary for carrying out the objects of the respective Authorities.”

Mr. Speaker, I wish to remind this House that the Government’s vision for health is taking care of the people from conception to exit. To achieve this vision, the framework for sustainable development identifies seven key pillars, all of which

are interconnected. One of the key pillars identifies people-centred development. In this regard, the Ministry of Health has developed a five-year strategic plan to support this pillar and to achieve the Government's vision.

This five-year strategic plan is developed to respond to the following broad strategic lines of action outlined on the framework for development: first-class health care for the people; supporting patients' rights; improving the physical infrastructure of public health care; lifelong commitment to health and responding to chronic diseases such as cardiovascular, cancer, diabetes, HIV/AIDS, and also responding to the mental health crisis.

The Ministry's overall strategy is customer-based and focused on achieving operational excellence and effectiveness in its operations, while paying close attention to meeting the diverse needs of the customers from the Regional Health Authorities (RHAs) and other health sector providers to the general public. Mr. Speaker, we have entered the area of customer centric service in the health sector, and I wish to give an overview of some of the services currently being provided by the RHAs, as well as the immediate and medium-term plans for the expansion of such services and introduction of the services.

The Eastern Regional Health Authority currently provides primary and secondary health care services and is providing antenatal, postnatal, child health, integrated clinical, dental dressings, family planning, health wellness, immunization, blood investigations, health offices, pharmacies, home visits, school health, chronic disease, et cetera.

Mr. Speaker, what we have done is a study on the health offices and the volume of patients going to the hospitals in each of the regions. What we have found is that by upgrading each of the health offices with lab facilities, pharmaceutical facilities and X-ray facilities, we will be able to, as they say, transfer most of the volume of non-emergent emergencies which are not really high-level emergencies, to these health centres.

6.55 p.m.

The Ministry of Health has also, throughout the regions, started a programme of looking at dental care for both adults and children in specific health centres, as well as looking at extended hours in specific health centres, a 24-hour service in specific health centres, and at the same time, 8.00 a.m. to 10.00 p.m. in other health centres in rural districts.

To allow this progress to take place to bring the health care system closer to the patient and the people, the Regional Health Authorities must be able to

procure goods and services at a reasonable rate and a rate that will allow movement around the geographical system and break the geographical barriers which I mentioned, because each Regional Health Authority has a geographical boundary.

At present, there is a shortage of anaesthetists in the San Fernando General Hospital. However, there is a surplus of anaesthetists in the Eric Williams Medical Sciences Complex. Because of the contracts and contractual agreements and what is occurring at present, it is impossible to get the movement of the anaesthetists to go towards the South-West Regional Health Authority. Once this legislation is passed and put into effect, the contracts can be written in such a manner to allow that movement, because what we are purchasing are consultant services and also specialized medical services.

There is also a deficiency and I found that yesterday. There is one district health visitor in the Cedros area and she services the health offices in Icacos, Cedros and the different areas. That occurs around the whole country. However, they are confined to one or two health centres. Nurses are confined to the Regional Health Authorities. With respect to midwives, as I said, there is deficiency in certain parts of the country. With the passage of this legislation, the contractual agreements will be such that the geographical movement can take place.

The University of the West Indies is looking to train more sub-specialists and sub-specialty services. As a result of this, because of the geographical boundaries—I will keep indicating the geographical boundaries that are stymieing the development of the health sector. The University of the West Indies would like the trainee surgeons, trainee medical people and also nurses, if they are training, to be able to move into the districts at the different hospitals. This geographical arrangement disallows that. I would like to indicate that this amendment will take into consideration and allow, not only bulk purchase of goods but also the movement of services throughout the regions.

There is also, and you might have heard it on the radio and read it in the newspapers, et cetera, a deficiency of ambulance services throughout this country. There is a deficiency of ambulance services. You can name any region. There is a deficiency of ambulance services. We have two suppliers, the Ministry of Health, as well as the GMRTT. However, the National Ambulance Authority has not yet been formed. With a programme such as this, security services for the region, which are now bought specifically from each region, can now be bought at a bulk purchase of a security movement from let us say MTS or some other firm that

provides a proper price and efficiency. One Regional Health Authority can procure for the four regions. Ambulance services could operate in the same manner. One Regional Health Authority can purchase ambulance services for each one of the regions. In doing so, we will be able to bring health care and health services directly to the people at the ground level, with a greater degree of efficiency and cost.

The Member for Fyzabad, whenever he speaks, speaks about the value. Are we getting value for money? Are we paying too much for certain things? I find he is extremely quiet now and not saying anything. *[Interruption]*

Mr. Sharma: I think you are sounding very good for a change.

Hon. Dr. F. Khan: Value for money. *[Interruption]*

Mr. Sharma: Smile now.

Hon. Dr. F. Khan: If I do, I would throw myself off. We are looking at this amendment to allow for efficiency of services, cost benefit efficiency, as well as bringing the health sector in a way which is more sustainable and easier to operate.

In terms of equipment purchases, I have gone through that. In terms of goods and services, I have gone through that. As I said before, it is a simple amendment, based on an innovative approach where the Ministry of Health can allow the Regional Health Authorities to become more effective in doing projects, planning projects and operating projects; whether they be goods or services. Had this been done in the initial stages, Mr. Speaker, the problem of efficiency would not have occurred.

We do hope that this Bill would be accepted in the House and we would be able to start giving this country better and more cost-effective health services in the future.

Mr. Speaker, I beg to move.

Question proposed.

Dr. Keith Rowley (Diego Martin West): Thank you very much, Mr. Speaker. I rise to make some observations on the matter before us, the Act to amend the Regional Health Authorities Act, Chap. 29:05.

Once again, we are faced with suggestions from the Government, to take action on the current situation with the prospect of the future holding an improvement and we are told that it is relatively a simple matter and we should agree to its simplicity and all wonderful things should happen.

Mr. Speaker, as I listened to the Minister, it became clearer and clearer to me that what in effect, the gist of what the Minister is saying is that the very raison

d'être of the Regional Health Authority system needs to be re-examined, is being re-examined and as we do that, we appear to be coming full circle to the time when there was not a system of Regional Health Authority.

The reason this has caught my attention is because for my whatever, some might say my sins, some might say my skills, or some might say my longevity, I was at—

Dr. Moonilal: Karma

Dr. K. Rowley:—my karma, my friend from Oropouche East said, having just come back from Delhi, Jaipur and Agra, I now have a better understanding of karma and dharma, bukhara as well.

It was clear when former Minister John Eckstein brought to the Parliament this whole question of the need to create these Regional Health Authorities. And, the argument then was that we needed to break up the Ministry of Health's effort in delivering health services, because at that time, the total delivery of health service was centred in a Ministry and the public service, by way of the Ministry, was required to procure, to practise, to support and to sustain the service of health delivery in the country.

The argument was, that for a variety of good arguments, as presented by the Minister today in a similar, manner, if we break up the country into regions, we call them Regional Health Authorities, establish in each of those regions a management body, which is in effect the board of that respective RHA, and give that body the responsibility and the resources to manage, to procure and to deliver health care in that region, marrying responsibility with authority. That, basically, was the *raison d'être* of the regional health authority system.

There is a body of opinion in this country today, which says: have to examine how the Regional Health Authorities have functioned and have they delivered the promise as held out at the time of their coming into being? There is a view that it might very well be that we are spending more now on the health system in the RHA system and getting less health care, because this whole question of value for money may not be as good as it could have been. We do not know the answer, because I am not aware of any particular study done to show that we are better off now than we were when the Ministry was doing it. What I do know is that we are doing it quite differently and we have the THRA, TRHA, NWRHA, SWRHA and the Eastern Regional Health Authority. So, we have them operating.

Once that began to operate, we started getting issues as outlined by the Minister. And one of those issues was with the supply of medications for the health system, because each area was required to procure its own medication and

there were problems with that. There was an imbalance. Some were doing well, some were not doing well and there was the question of timeliness and there was also the concern as to whether they were getting goods at good prices. And, it was in that environment that the current arrangements of procuring medicine were put in place, through Nipdec, because it was raised and seen as an improvement to have a procuring agency for the medication, centralized and getting the kinds of benefits that the Minister described that we could have now, if we have a centralized purchasing: we get the benefit of economies of scale and we get the benefit of timeliness and maybe one procuring tenders body.

As it stands now, to best of the information available to me, we are doing that and have been doing that for quite some time, with respect to purchasing medicine and the rest of the requirements for the agencies are being procured in the various regions by the various boards.

We are being told now that—the Minister did not say that but I am interpreting it that way—what is being advanced now is another step in that direction, where we want to purchase, by way of a one stop shop, if I may call it that, but in this case it is a one stop shop centred in one of the agencies procuring for the others, as against what Nipdec is doing, being on the outside supplying the agencies in total.

Mr. Speaker, the Minister justifies this on the grounds that, if we do that we will get the benefit of a reduced number of people being involved in the purchasing and centralization of the tenders committee, the timeliness and so on. But there is something else that we have to pay attention to and that is the whole question of competition. Because when the RHAs came into being, one of the arguments was that these independently-managed bodies, which the Minister calls geographical units, could in fact impact upon the marketplace by competing for services and, in so far as contractual arrangements are entered into for services, because you have four or five agencies competing for it, suppliers would have had to give the best price to be able to get the business.

7.10 p.m.

Now, how many years later we are being told that the way we want to go is to centralize it so that we can make one bulk purchase. On one hand an argument is being made for the benefits of bulk purchase, as against an argument that was made for the role of competition. It sounds easy when one puts it across the way the Minister puts it that: “Listen, what is happening now is that all these guys are buying things, and maybe the thing to do is to have it all come together in one room, in one board, buy and distribute and so on.” But I will get back to that, Mr. Speaker.

What I want to touch on now is the whole question of what the Minister acknowledges that it is really a procurement Bill. This really is a procurement Bill, and this is where I have some difficulty, Mr. Speaker. [*Interruption*]

Hon. Member: That was not the first time.

Dr. K. Rowley: No, life is about difficulties, and I have some difficulty with this Government on the issue of procurement. Recently, the Opposition had to take an action of withdrawing from a Joint Select Committee put there to deal with the whole question of establishing what I hope will be an overarching procurement legislation for this country, this Parliament is engaged in that. For the last two years we had been engaged in it and we have come very close to completing the exercise. We anticipate that sometime in the not too distant future, if things go according to reason and plan, this Government will bring before this House this overarching legislation on public procurement in Trinidad and Tobago. Such legislation would be the backbone, the skeleton and the template for procurement across the public sector in Trinidad and Tobago.

So one has to ask, who knows what that is going to be? I do not know. I have not seen the Bill, it probably has not been drafted. It is not before the House. We in the Opposition who took part in this committee for two years, have been saying—like a stuck record according to somebody here this evening—where is the Government's policy with respect to procurement? What would this Government like to see as procurement? Is it going to be centralized procurement through an improved Central Tenders Board, or is it going to be defused procurement where you devolve authority to agencies like the RHAs? We do not have answers to those questions. These are the questions we have been asking at the level of the committee, and having not gotten them, what we observe the Government is doing, it was moving with great haste to do some serious procurement of items of service and distribution of state assets. We warned about it and we were ignored, the Government proceeded, and I may mention two of them: one was the whole question of the Invaders Bay land matter, and the other was the Rapid Rail from Port of Spain to Arima.

We thought, here it is the Government is about to embark on these two major initiatives, right on the cusp of receiving from its committee of the Parliament our overarching legislation on procurement, and we are asking, why? Why do you want to do this outside of what we are doing in preparing the proper template for procurement? Because many of the problems that we have faced, this Government and previous Governments, is the whole question of improper procurement, and we thought we were going to fix that, this Government, this Opposition, this time

now. But instead of doing that, we found ourselves having reluctantly to accuse the Government of trying to get contracts awarded and things put in place ahead of what they anticipate the law will be when it comes to Parliament as we expect it to come sometime soon.

Even before the Government has faced down those allegations, we are now being caught up in the Parliament this evening, being asked to approve an amendment which the Minister himself identifies as a procurement Bill outside of any knowledge or understanding of what this overarching, expected, anticipated legislation on procurement would be, and my question is, why now? Why do it now? Suppose we do this now and make this arrangement and it does not fit with what the committee recommends to the House, what are we going to say then? “Since it done dey leh it stay?” Or, we are going to use this as the template to make the legislation? What are we doing?

One gets the impression that either the Government does not know what it is doing or alternatively the Government very well knows what it is doing and is, in fact, playing games with this whole question of legislation by way of overarching legislation for procurement. Why do we now want, in the absence of an answer from the Government as to what exactly is their policy on procurement, to make an amendment to the RHA Act to bring about procurement by way of centralization, for bodies that are properly dispersed under boards and which I presume the Government accepts—that the RHAs is the way we are going to dispense health service in the country. If there is any Ministry which has a diffused operational arrangement, where its service is being presented by way of devolved authority, it is the Ministry of Health.

The Ministry of Health has these Regional Health Authorities existing by way of its structure—independent bodies based on their geography, the south has its health centre and Tobago has its own, central, north-west. You have that. Without the Government telling us which of the options it is going to follow by way of the Joint Select Committee of Parliament on procurement, whether it would be a centralized model, or a decentralized model, we are being asked to amend this model to allow for bulk purchasing in a centralized way.

Then, Mr. Speaker, one has to ask, what would be the guidelines which would govern this inherent authority of individual RHAs to do their procurement, but would be required to cooperate with some centralized purchasing? Well, I know the model where there is some agreement, and I think it might have been some stamp of the Cabinet which told the RHAs: “Listen, we are going to buy medicine by way of Nipdec.” I do not think that was an arrangement agreed upon by the

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RHAs that came together, and they said: “Look, let us use Nipdec to buy medicine for us.” No, it was the Cabinet. Cabinet said to the RHAs: “Since we are the buyer of medicine for you, we are going to buy the medicine through Nipdec; they will do all the tendering, sourcing and so on, and you will then get your supplies from the Nipdec stores,” and I think they accepted that and they went ahead. That does not prevent RHAs from buying medicine, because under the law RHAs have the authority to buy their own medicine, if they could find the money to do it, but the Cabinet’s money goes to Nipdec to buy medicine.

Now we are being told that this new arrangement is going to be that the RHAs among themselves will decide that they will buy in bulk, they will forego their individual right to buy on their own, and they will buy in bulk to get the benefit of bulk purchase.

Mr. Speaker, I have tremendous regard for my colleague, the MP for Barataria/San Juan. [*Interruption*]

Hon. Member: He got 5,000 votes.

Dr. K. Rowley: He was undermined by my colleague from Chaguanas West, [*Laughter*] successfully undermined, but I am glad that he was—[*Crosstalk and laughter*] because he will spend more time in the Ministry of Health than in Renzi Complex in a futile arrangement to have a longevity in Government.

Mr. Speaker, in all seriousness, I have tremendous regard for my colleague from Barataria/San Juan, but I wonder if he really believes what he said, when he said: “It is a simple matter and these various boards of these RHAs will come together and buy things in bulk.” Do you have any idea how the public service works? Do you have any idea? The very delay that you use as the basis for doing this—because five boards, each individual board is free to go off and buy its MRI or whatever it is. At least, if you have five boards and three are slow and two are fast, you will get two MRIs bought and three will come later on. But this arrangement you are talking about here—let me put the question to you: when the professional jealousies, the individual pettiness, and the empire-building expressions take place at the board, who decides what we are going to buy? Who is the arbiter in that? And who decides whom we are going to buy it from? And who decides when we are going to buy it? You made the point that it all depends on how much money is available in each agency. When I control my purse strings here and you decide you are going to buy in bulk and all five of us must get it now, and I say: “Mine is still working well, you mash up yours”; who is going to buy for all five of us?

It sounds good in Parliament but outside it is going to be a nightmare, and it is precisely for this reason when this kind of arrangement existed in the Ministry of Health, the intractability of the solution of that problem caused the creation of the RHAs. If what the Government is saying now is that we have reviewed the RHA system, we have found it to be wanting, we will now centralize the supply, because you cannot separate the delivery of health care from the procurement aspect, because health care is procurement and delivery. "This is procurement and this is big money." And given what is happening in the country today, where the greed and the grab rule supreme, you are creating an environment where the boards will become more and more impotent and there are to be more and more arguments, delays and cloud over the purchasing processes, because you have not told us about any overarching procurement guidelines, and procurement and contractual vehicles which will guide their behaviour. You have not told us about any decision making that will determine how you move forward expeditiously.

With my experience of the public service in Trinidad and Tobago, and of persons who have been appointed to boards, I would look out for prima donnas, I would look out for jealousies and I would look out for the corrupt in an environment like that. In the absence of proper arrangements, and I expect those proper arrangements to which I refer will come by way of the legislation that we are anticipating, which is not before the House, but we are talking about making these major amendments, because this, my good friend, Mr. Speaker, is not a simple matter. This is the expenditure of significant sums of money, millions of dollars.

To service the health sector is not a simple matter, it will never be, because once you are talking about procurement at all, procurement is where the Government spends money to provide service to the country. It is where all the bad habits and bad behaviour of those around the public trough exist. It will never be a simple matter, and if we are not careful, the second stage could be worse than the first.

The Minister might mean well and I suspect he means well in trying to get this through, but I wonder if he thought this thing through. Let us assume there is an item to be purchased and all five RHAs are called in, who is going to call them in? The PS, the Ministry, the Minister? And say: "Okay, you RHAs need to get nice soft black chairs". Two "fellas" agree. "One say no, brown chair is better." "One say "buy the German chair, one say the Canadian chair, and one say my tenders committee will do it for all of us, and the other one say no, no my tenders committee will do it for all of us."

Let us take Tobago, at what stage will the RHA fraternity allow the Tobago Regional Health Authority to be the purchasing body for them? At what stage? By virtue of being Tobago they will never get that opportunity. So the Tobago

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Regional Health Authority will always be a receiver of somebody else's tenders committee business. Then you come to the other aspect of things, which Tobagonians know very well, and that is, if you have the responsibility here to deliver, and somebody else has the responsibility there to make you deliver, you get a permanent excuse that it is somebody else's fault.

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So when you think you have solved this by saying that you buy in bulk and they will all be more efficient, you might very well be creating the opposite situation, where the unit you bought which you are not maintaining yourself, not servicing, you simply have to say, "So and so RHA buy de wrong unit, and if we had bought our unit, the one that we wanted, this wouldn't have happened". Procurement of items, especially equipment in health, requires extremely efficient maintenance systems.

If you have the jealousies starting upfront about what to buy and who to buy, and they do not all agree on what we should have bought, and you end up with a situation where we do not have in place proper support and maintenance systems, then you could end up with a situation where the equipment that was not particularly the choice of the RHA is not given the kind of acceptance it should have and then maintenance becomes an issue, and in short order it becomes unserviceable and out of service. And those will be the kinds of arguments that you would have to live with Minister.

So while it sounds good to buy in bulk for value, it might very well be a worse situation than the one where you have delays where five different groups are buying on their own. But let us examine it. Is it that we are saying that the proliferating of that bureaucratic level of the boards, we have too many of them at work? Is it five boards? [*Crosstalk*] Yes, Good. So we have five boards, we have five management units. Is it that we are saying that we have too many? Or should we be saying that in each area the Government has put in place a board of certain skills of people who should focus on their area of responsibility? That word must stay with us all the time, because I distinctly recall John Eckstein's argument at the time when these things were born that there was responsibility being given to people in the health sector without authority. That is why the RHAs were created.

The Minister's argument now in favour of this agglomeration calls that argument into question. We have not seen the analysis, we have not seen the review that this is so, that the management system of—let us take the SWRHA which manages the delivery of health care to a large section of the southern part

of Trinidad. Do you really want to say that the management system there cannot on their own, under a board properly appointed by the Cabinet—with a chairman and certain skills, they now determine the rate at which they bring things into the system, they determine the quality of audit and performance, so if they buy MRI equipment they have to make sure that it is maintained and so on under their responsibility, with their authority.

Is that what we are trying to say is not working? And what should work is for them to come together all in one and try to do one thing and they all have the same blanket arrangement? We have to be careful that we do not replace a system where we put management in place to deliver because we believe that good management was the solution, because the argument at the beginning of the RHAs' birth was that it was management that was lacking, not money management. And that is why we have five boards delivering or purporting to deliver health care in the country. This arrangement is calling that into question, without a proper review and analysis.

We come to the Parliament and *vaille-que-vaille*, we approve this, I do not think we know what we are approving, because it is being approved for a purpose and the purpose is for greater efficiency. I am saying, Mr. Speaker, I am not comfortable with this because we might very well be creating a climate where oversight and personalities replace management. Should we not be improving the management arrangement in the SWRHA? [*Desk thumping*] Because if we improve the management arrangements in the RHAs then, we may not then see the problem that has generated the need for this.

We know that there are management issues in the RHAs. We saw the scandalous arrangement recently, where Miss Cumberbatch, an outstanding manager—[*Crosstalk*]

Dr. Moonilal: You know her well?

Dr. K. Rowley: I do not know her at all.

Dr. Moonilal: How do you know that she is an outstanding manager?

Dr. K. Rowley: I saw her record. [*Crosstalk*]—She was in charge at the SWRHA. Could you recall that story, Mr. Speaker? And they had a problem with a patient and the doctor, something like that, and the next thing we knew the public saw the spectacle of the CEO being accused of poor performance by the management, I think even Government personnel threw in their 10 cents, and within 24 hours the manager was fired, and it was a whole fracas, total public relations disaster. My friend, the Member for Oropouche East, will know what that means.

The next thing I know—[*Interruption*] [*Crosstalk*] I am not talking about the issue, I am talking about human resources disaster. Right? [*Crosstalk*] No, no, you would know the industrial relations disaster that played out at the SWRHA with Miss Cumberbatch. The next thing you know, it turned out that there were management shortcomings from the level of the board down. You had some of the innate statements coming from the board, you had egg on a lot of faces. The lady was on the way to court; we understand that it has been settled amicably. I hope that she was well compensated and I think she is now in Tobago. The same lady who was drummed out of SWRHA—[*Interruption*]

Dr. Moonilal: Because she was fired.

Dr. K. Rowley:—the same lady that was drummed out of San Fernando and probably paid off—I hope she was, has now gone on to be—[*Crosstalk*]

Miss Cox: And they killed her father.

Dr. K. Rowley:—in Tobago. There were all kinds of side consequences but the point I want to make here, is that that was a microcosmic expression of the poor managements that are passing for health care delivery in the country from the level of the board down, and it did in fact stop with the Minister of Health. I think a Minister of Health made some very inappropriate remarks to kick this thing off. But the bottom line is, I do not know that it is very different in other RHAs because we had a similar problem in Tobago where there was a whole question of a particular manager who was in place. There was “rah rah and jhanjat” for his entire term until one day he walked away. And of course, I do not have time for that tonight to talk about the NWRHA and its manager because I got up one morning and heard that the CEO had gone to India with the Prime Minister, the Minister did not know; the Chief Executive Officer of the NWRHA which serves the city of Port of Spain and its environs, a public official.

Miss Cox: “Who pay for that?”

Dr. K. Rowley: Public servants are under regulations that require certain kinds of approval to do certain things. The next thing I know, I read in the papers, and if it is not true the Minister could correct the record here tonight, the Prime Minister is going to India on a junket and he decides, I am going too.

Mr. Warner: Mischief.

Dr. K. Rowley: It is a tune like that, “I coming too”. [*Laughter*] “Yuh know that tune, ‘I coming too’?” The CEO of—and I think he took somebody with him too, he did not go alone. And the next thing I know—[*Interruption*]

Dr. Khan: I cannot let you go down that road. It was not the CEO. It was not the CEO.

Miss Cox: The Chief Medical Officer.

Dr. K. Rowley: All right. Thank you, thank you. He is right. Thanks for correcting the record “The Chief Medical Officer”.

Dr. Moonilal: The CMO.

Miss Cox: The same thing.

Dr. K. Rowley: That fine-tunes it, Mr. Speaker. It is not the chief grass cutter of the lawn, not the chief ambulance mechanic, not the chief pharmacist, the Chief Medical Officer who in fact is a major manger, and that you cannot dispute. The Chief Medical Officer who is jefe number one in the NWRHA—[*Interruption*]

Dr. Khan: Member, I have to stand again. The Chief Medical Officer is a position in the Ministry of Health under the Minister. I think what you are speaking about is the Medical Chief of Staff which I think the Member for Diego Martin North/East—the Medical Chief of Staff. [*Laughter*]

Mr. Imbert: “I know yuh eh going down that road.”

Dr. K. Rowley: The titles are all confusing. [*Crosstalk*] Mr. Speaker, maybe if I call his name to clarify. The bottom line is, the head doctor—will the Member for Barataria/San Juan, the Minister of Health, accept head doctor?

Mr. Imbert: Beg for a chief doctor.

Dr. K. Rowley: No he is head doctor in his surgery, and if he is still there he will get fired. The bottom line, Mr. Speaker, the management structure in the NWRHA saw a major manager—whatever his title—“just gone out the country”.

Hon. Member: Just so?

Dr. K. Rowley: “He gone to India just so”. And I am not even sure if anybody was in a position to ask him where you come from or where you are going. If there was a proper management arrangement where people were held accountable and there were consequences, this ought not to happen. So that tells me that like in the case of SWRHA, probably in the case of the Tobago Regional Health Authority and the NWRHA, we have serious management issues which go unattended. And if that is the case—[*Crosstalk and Laughter*]

Hon. Member: He say he going to buy bulk India.

Dr. K. Rowley: He went to England to buy bulk. But it might be humorous here in the Parliament Chamber now, but this is no laughing matter, it is a matter of life and death. The delivery of health care in a country is a very serious matter and if we are to accept what is in the *Hansard* record already that the problem with the delivery of health care and our failure to advance it even though we are injecting more and more money into it, it is because of a failure of the management in the system, then when we come before the Parliament and say we want to do what we have been asked to do now, we have to ask ourselves, is this a contributory factor to better management? I dare say I am not convinced. I would not be convinced by this because there are certain things that are absent.

Simply saying to the RHAs you all are free to get together and purchase across boundaries, that might very well be creating a new kind of problem.

Mr. Speaker, the level of corruption that currently pervades contracting in Trinidad and Tobago now is nothing to be taking comfort in. I take no comfort in that. What is happening in the country now with respect to contracting and procuring goods and services in the RHAs which will be a major contracting phenomenon, is that there seems to be some people who think because they are friendly with the Government and some people in the Government who feel that because some people are their friends that they are entitled to first place with respect to the award of contracts. And contracts are being awarded in the most opaque and questionable way; big contracts, medium contracts, petty contracts, micro contracts. There is a general misbehaviour with respect to the award of contracts in Trinidad and Tobago today. [*Interruption*]

7.40 p.m.

It was bad before and it is worse now. [*Desk thumping*] This is because we acknowledge that there is need to pay attention to this whole question of procurement why this Parliament and this Government in its early days—in fact, this Government, unlike any other Government, acknowledged this on its way into office, and gave a commitment that it will be addressed early in its term, and that is why that joint select committee of Parliament was appointed so early, and has been now meeting for two years.

Hon. Member: Why you left?

Dr. K. Rowley: I left in protest of the Government advancing procurement items without this overarching arrangement that we anticipated. [*Desk thumping*] We protested it. [*Desk thumping*] Having made our point in the protest, drawing the country's attention to it, we said to you and the country, we stand ready to work with

the Government to get it done, and that is our position, but now we come to the Parliament and see a whole policy, accidentally being reviewed without the appropriate information as to what we are doing, because that is what this is.

We are reviewing the independence of the RHAs, and if we review it sufficiently it might very well be that we can come to a point where it can be said that they are not required, because if we are going to buy services in bulk like this, crossing the borders in RHAs, and we are going to allow staff to run from one point to another—it is only 40 miles away—then what do we need five bureaucracies for in there? Why do we just not cancel all the boards and just have one health delivery board?

There is a point of view by some experts in this country that these boards are simply costing money and not giving us an improvement in delivery. Who in here is prepared to stand and say that is not so, and not just say so, but demonstrate it by showing how our health delivery has improved with the coming of the RHAs? That is what this argument is. That is what this is; a review of how far we have come and how well we are doing.

We would be irresponsible as parliamentarians to make this adjustment and say, okay it will give us the benefit of bulk purchasing when, in fact, we do not understand what we are doing. This should come out of a proper review against the background of why we have the RHAs at all. I am sure if Members look outside the legislation and look at the operations of the items out there now, one may want to ask oneself, is the RHA in my district functioning to my satisfaction? Do we have the quality, the level of management and the potential to keep advancing or is it stuck where it was and just costing us more and more money?

There was a time when many doctors in the Ministry were earning salary X, and there was a point of view that the contract doctors in the RHAs were earning X-plus. Over time, that has whittled down to the point now, and I think there are very few doctors, if any at all, in the Ministry of Health. The contract prices are there; the contract arrangements are there; the conflict of interest arrangements are still there now more than ever, because as the private hospitals grow in the country, the conflict of interest between the public sector and the private sector and the Government paying for one and getting the other is still there.

How has the RHA arrangement changed that? Nobody cannot answer yet. Have we reviewed that? So we are just leaping in the dark coming to Parliament and praising ourselves and saying that we are doing all these wonderful changes. These amendments by themselves or in their very nature alone will not give us an improvement in health care. We are acting in a leap of faith. That is what this is. I defy anybody in the

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Government this evening to stand and contradict me and tell me that he or she is confident that this is not going to do that, and what it will do is to give us measurable improvement in the health care delivery in Trinidad and Tobago. I will not believe you if you try that.

It might very well be that this is the catalyst to spur us to review the RHA system, and make measurable evaluations of how health care has moved from where it was to where it is now and see if, in fact, we are getting that famous phrase of “value for money”, and identify where the pitfalls are; where the hurdles are and where the potential for improvement is. The potential is not by saying let us buy in bulk, because we are buying in bulk already. We are buying medicine in bulk. Is that working well? Is it the best way to get medicine for the hospital? If the answer is yes, is that the only thing that can do that? Or, has the need to buy in bulk go up before us the possibility that we can have an independent procuring, and not just NIPDEC doing it for the RHAs, but an external procuring unit which they all can access, and that procuring unit functions in the context of the procurement policy that we are anticipating?

We do not know what the policy is going to be as yet, because the Government is not talking; the Government is not saying, and we have this thing in the document. I do not know what the legislation is going to be before the final effort in putting procurement legislation in the Parliament. I do not know. I am pretty sure it will be something good in the end, but why do this now?

Mr. Speaker, I want to say to the Minister that it will be difficult for us on this side to support this as it is for two reasons: one is its timing, just before we bring to the Parliament legislation on procurement is not appropriate, and I do not think the Government is sufficiently informed as to the effect that is going to have on procurement for the RHAs.

In fact, it might well be that we will create a climate in which confusion between the agencies would prevail and corruption could grow in the absence of clear guidelines as to what the contracting and procurement vehicles are. In that way, while the Minister’s intention might be good, we cannot lend our support without the necessary information on this. Thank you, Mr. Speaker. [*Desk thumping*]

The Minister of Education (Hon. Dr. Tim Gopeesingh): Mr. Speaker, thank you for allowing me the opportunity to contribute to this amendment to the RHA Act, Chap. 29:05. My contribution will be in the context of a response to the Member for Diego Martin West. He raised three issues: the question of the *raison d’être* for the formation of the Regional Health Authorities; the question of procurement—[*Crosstalk*]—Mr. Speaker, can we have—

Mr. Speaker: The hon. Member is appealing to hon. Members to allow him to speak in silence, but before you continue, there is a Procedural Motion, and I will call on the Leader of the House to move the Procedural Motion.

PROCEDURAL MOTION

The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal): Mr. Speaker, in accordance with Standing Order 10(11), I beg to move that the House continue to sit for the debate on this Bill.

Mr. Speaker: Until the conclusion?

Hon. Dr. R. Moonilal: We are just continuing the debate.

Question put and agreed to.

REGIONAL HEALTH AUTHORITIES (AMDT.) BILL, 2011

Hon. Dr. T. Gopeesingh: Thank you, Mr. Speaker. Well, the three areas the Member touched on was the question of the *raison d'être* for the formation of the RHAs; the second was the question of procurement in the context of this Bill; and the third was the management link with this procurement issue. I want to go into each one by itself.

We all know that the Member for Diego Martin West has been in Parliament for a very long time. I believe he was in Parliament when the RHAs were formed in 1994 by the then PNM administration under which the then Minister of Health, John Eckstein, supervised the entire breaking up of the Ministry of Health into the different RHAs.

I remember at that time taking part in the discussion in 1992, 1993, and 1994 on the question of the formation of the RHAs, and it was the Public Services Association, under Jennifer Baptiste, at that time, who began to criticize Minister Eckstein in his pursuit of the formation of these RHAs in 1994. The country was embroiled in discussions on that issue for, at least, two to three years.

The Minister of Health then, John Eckstein, indicated that the Ministry of Health was not providing the type of health that the population demanded, and they wanted to bring health care closer to the people and, therefore, there was the necessity to break the country up in four different Regional Health Authorities and one in Tobago. He was not able to justify what was the rationale behind it then—if you break up the country into Regional Health Authorities, what would you, in fact, effect? Would you get better management? Would you be able to get better health care? And those are the questions that emanated then in 1991—1994.

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Minister Sharma was here in 1991, because he first began in Parliament in 1991 as the Member for Fyzabad. It was the first time the PNM was defeated in Fyzabad. He was the Member who defeated PNM for the first time in Fyzabad, and he remembers that, but I remember that as of yesterday, because I remember taking part in those discussions.

We said that if we wanted to bring Regional Health Authorities into Trinidad, why can we not divide them into two and one in Tobago? A lot of discussions took place on that issue as to whether we should have a North Regional Health Authority and a south. There was also discussion that we must have an Eastern Regional Health Authority, because the expanse was so large—it has a large population and it is difficult to get good medical treatment—and we had to see whether we could have carried the health care management to that area, in particular. In north-west Trinidad we had most of the hospitals, and then we had the central region, because of the advent of the Eric Williams Medical Sciences Complex, and then south from the San Fernando General Hospital and then Tobago.

So the PNM administration, at that time, went ahead and formed these four RHAs in Trinidad despite the protests and one in Tobago, and then they lost the election in 1995. A UNC administration had to come in and make a decision whether to continue the four RHAs in Trinidad and the one in Tobago or not to go along with them. The UNC administration said let us make a try with it, and the then UNC administration was saddled with the responsibility of having to effect a new type of structure in the health care system which was effected by the PNM administration.

Even their *raison de'tre* for bringing this out was not carefully thought out and well defined. So the UNC administration was saddled with the responsibility of trying to manage a health care system with four regional health authorities in Trinidad and one in Tobago. Minister Hamza Rafeeq was the Minister at that time, and Minister Dr. Khan was the Minister in the Ministry of Health between 1995—2001.

There was the IDB loan of US \$200 million that they had to work with to see whether they could fit in what the PNM administration gave them to fit in and work with that US \$200 million loan for improvement in the health sector. And then what happened? You had the RHAs having to form the same type of system in all four in Trinidad and one in Tobago. You had to have a human resource management department, a financial management department, an administration department, an operations management and a legal regulatory framework unit. So you had four Regional Health Authorities.

7.55 p.m.

Mr. Speaker: Member for Diego Martin North/East, if you want to talk to the Leader of the House I would suggest that you go behind the Chair, but please do not disturb the House. The Member is being disturbed and I am giving him full protection. Continue, hon. Member.

Hon. Dr. T. Gopeesingh: Thank you, Mr. Speaker. I would expect better from the Member of Diego Martin North/East because he is the first one who asked for protection from you, but here he is making unnecessary type of “kuchur” inside the Parliament this afternoon.

Hon. Member: What word is that?

Hon. Dr. T. Gopeesingh: “Kuchur”.

Mr. Imbert: Mr. Speaker, 36(5).

Mr. Speaker: Yes. I do not want us to go there, please. I have ruled already on the matter and we do not want to get there. Okay? So, do not go there. [*Crosstalk*]

Mr. Imbert: No! No! No! No!

Hon. Member: A compliment.

Mr. Speaker: Forget the “kuchur”, just continue, please.

Hon. Dr. T. Gopeesingh: Withdrawn! “Kuchur is comess.”

Mr. Imbert: Withdraw that [*Inaudible*]

Hon. Dr. T. Gopeesingh: Mr. Speaker, so here it was a successive administration saddled with the possibility of having duplication and triplication and—four times; what you call it? Quadruple?

Hon. Member: Yes.

Hon. Dr. T. Gopeesingh: Quadruplication of the same thing that the Ministry of Health had. So the Ministry of Health had a finance thing; they had HR, operations management, administration, legal and regulatory that was moved from the Ministry of Health to the four Regional Health Authorities. So that in itself began to create increased costs. So each Regional Health Authority has to have managers at different levels: CEO, Finance Manager, HR Manager, legal and regulatory person. So you have four regions now with the same type of people; you have 20 top honchos in each region multiplied by four in Trinidad and one in Tobago. So 100 honchos, whereas the Ministry of Health had 20, you make it five times the number. Obviously, there would be increased expenditure. But how do you justify this?

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So we had to work with it to see whether it would work. The question is, were you able then to effect better health care for the population? And the question of management comes in and it is just not management alone—resources. You have to split your budget into five different regions in Trinidad and Tobago and allocate a certain amount for each region. You know that health care is a bottomless pit: the more you pour into it, the more it falls out through the bottom, you can keep on pouring more and more money and you get less and less at any time.

You all would remember the 1991 situation with President Clinton in the United States, when he was saddled with the responsibility—I do not think it was President Clinton, but Hillary Clinton was given the responsibility of looking at the American system of health care because they found that there were too many specialists in the United States and few general practitioners, and the health care was falling apart. In fact, what Hillary Clinton recommended was that there should be a move towards having more general practitioners throughout the United States, and they moved with that. At the same time Trinidad took example. John Eckstein, Minister then, took example from what was happening in Britain.

Britain began to look at breaking up the entire British system in Regional Health Authorities, and they had over 40-plus Regional Health Authorities and they began to fail. They began to fail in the '90s, and they began condensing them and they brought them down to about 15. After a while they brought them down to about eight Regional Health Authorities and then began to give different nomenclatures, they called them “Regional Trusts”. So each part of Britain was broken down into a trust with the responsibility of trying to make it work.

So the whole question of whether they thought out this properly; it was quite clear it was not thought out properly. Everything had to be multiplied five times with scarce resources. [*Interruption*] He went to the back to make noise now. [*Crosstalk*]

Mr. Speaker: I am appealing to Members again. You are disturbing the hon. Member on his legs. I appeal to the Member for Diego Martin North/East, you have disappeared from your seat and you have gone into a new area. I appeal to the Member for Port of Spain South that if you all want to discuss, whatever, could you really retire to the lounge or something like that and really discuss. I think dinner is being served at this time, as well. So you all retire to the lounge and allow the hon. Member to speak in peace. Hon. Member, you may continue.

Hon. Dr. T. Gopeesingh: Thank you very much, Mr. Speaker. Am I detecting a matter of hyperactivity and attention deficit disorder? [*Desk thumping*] There might be some attention deficit disorder somewhere. Anyway, we come back to

the seriousness of it. So it was a situation across the world, the United States having problems with their health care, Canada having problems spending 35 per cent of their budget on health care; Ontario particularly; England trying to mash up the system and break it up into Regional Health Authorities finding that it was failing and then they eventually began to come around to what it was originally—up to now they have not settled the issue. The UNC administration having been saddled with the responsibilities had to carry them on.

We met a situation where the health care was almost in total decay: decayed infrastructure, no equipment and instruments, short of personnel in the region. The whole question of management, which the Member for Diego Martin West brought up, cannot hold in that context because there are a number of other variable factors that will impinge upon the provision of health care. It is not just management; it is financial resource, human resource, it is a matter of infrastructure, equipment, and a number of contending factors which would assist you to provide proper health care.

Therefore, when we look at just management alone that is one aspect of it, management must be in the context of health care: how many doctors you have, how many nurses you have, how many nursing assistants, how many wards maids, how many auxiliary medical staff you have, how many paramedical staff you have, what systems you have in the hospital. Mr. Speaker, one hospital has 31 different silos. If you do an analysis of a hospital system you would find that they have so many different departments; you have Medicine, Surgery, Operating Theatre, Accident and Emergency, Mortuary, Orthopaedics, Ears, Nose and Throat Surgery, Internal Medicine, Paediatrics—a whole gamut of areas and to manage that is a nightmare. And anybody who thinks that he really could manage, effectively, a health care system, he would find it extremely difficult. It is a nightmare around the world.

To take one patient from Accident and Emergency into Operating Theatre you have to have about 15 intermediary steps before you could even reach the Operating Theatre. You have to do blood analysis, CT scan, ultrasound, you have to get an attendant, you have to get a porter and you have to get the nurse to transfer. It is a whole gamut of things. [*Interruption*]

Hon. Member: “You cyah even get ah ambulance.”

Hon. Dr. T. Gopeesingh: Yes. The point I want to make on this, is that the Member for Diego Martin West speaking about the amendment brought by this side, which is really designed to bring about some efficiency in the purchase, cost

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effectiveness, economies of scale and economies of scope, you must have the flexibility in a number of areas to buy different things. He puts it across as though we have not examined it and we must try to examine it.

When the UNC administration took over and we began to really drive the health care process forward—I was there and I could tell you when I took over in 1997, the place was a mess; there was massive decay in the health care system and we had to transform that health care system very quickly. Everyone knows that the health care system began to improve under the UNC administration at that time and in 2001; the Government was taken away from the UNC administration, so we had a short period.

We had to manage with a board that was appointed by the PNM between 1994—1997, and so the UNC had to work with a board that was a PNM board. The UNC began to actually do its own work from 1997—2001. The work that was done with Regional Health Authorities that was thrust upon them by the PNM Government, we had to make it work and we did make it work. We built an Intensive Care Unit at the Port of Spain Hospital which still stands today. In three months' time we built it with less than \$3 million, saving hundreds of lives.

Now, what has happened between 2001—2010; they had a nine-year crack at it. If the Member for Diego Martin West comes now and asks us to do an analysis, just with 21 months we are in Government—[*Interruption*]

Mr. Imbert: Twenty-one [*Inaudible*]

Hon. Dr. T. Gopeesingh: Mr. Speaker, 21 months or 22 months. [*Interruption*]

Hon. Member: “You can't count?”

Hon. Dr. T. Gopeesingh: They were there between 1994—1995, that is two years, they had a crack at it, and then from 2001—2010, nine years, did they do an analysis? Did they try to find out what was the real problem within the medical care system? Are the RHAs working or not working? Is management working or not working? What we on this side have brought out through the Minister of Health and are seeking to do by this amendment, is really to bring the ability to get prices down in a very systematic manner by bringing all the authorities together and saying, “Look, we have to purchase this and economies of scale will allow us the opportunity to have the prices reduced”, and so he gave the example.

The Member for Diego Martin West, I believe, has confused his own argument and I will tell you why. He said that Nipdec was procuring medicine for all five Regional Health Authorities; not so? Nipdec buys the medicine,

pharmaceuticals, and stores them at C40, and, therefore, they buy in bulk. Is that not working better? You could imagine each one of the Regional Health Authorities having to buy its own medicine, the prices must be higher. So when you are able to bring all five Regional Health Authorities and say we are making a purchase of X amount, you must get it cheaper and C40 distributes it.

In that context, if we have to purchase any other items outside of medicine; orthopaedic equipment, neurosurgical equipment, CT scanner, MRI, ultrasound machine, X-ray machines, buying them in bulk must be cheaper than buying them individually, because you have a stronger negotiating mechanism to deal with it. It is a well-established fact that the cost of ten items together, when you break it down to cost per item it must be less than just buying one and one; and that is the simple arithmetic about it.

So medicine is bought in bulk by Nipdec for five Regional Health Authorities and it is working, why we cannot go into a system where we buy the other items in bulk and distribute to the other Regional Health Authorities? It is not one authority that is buying it, it is going to be bought for the benefit of all four in Trinidad—Tobago has its own system—so the cost must be less, and this is simply what this Bill is trying to do. It says:

“invite, consider, accept or reject offers, and enter into contracts for the supply of goods or the undertaking of works or services necessary for carrying out the objects of the respective Authorities.”

Therefore, it is quite clear that buying many items—and you buy them by bulk volume—it must be cheaper. This is what in effect we are trying to do and a good example of it is the purchase of pharmaceuticals by Nipdec for the four or five regional authorities. So that defeats the point the Member for Diego Martin West raised.

8.10 p.m.

In terms of an analysis of the Regional Health Authorities, whether they have been functioning or not, let me go back to the 1995—2001 period. We were functioning so well in the North-West Regional Health Authority that the stakeholders indicated, at that time, it would be good to bring the Central Regional Health Authority to the North-West and reduce the cost and expenditure for having two of these authorities. So the UNC merged the North-West and the Central Regional Health Authority, by bringing all the stakeholders together, and they made that determination.

The PNM came back in 2002 and decided that they were going to split the Regional Health Authorities again. So they split the North-West and the Central which were together, and brought them back separately. So they brought in the

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North-West, and called the new one North-Central. No time in the determination of that issue, which was brought to Parliament for debate, did the PNM administration at any time proffer any sound argument for splitting these Regional Health Authorities. They did not; so they just did it by “vaps”. They could have done an analysis and proffer the results, and come to Parliament to speak about it, but they did not. They just broke it up again and left Trinidad with four Regional Health Authorities, when we had three and the one in Tobago.

So at first the PNM did not take the advice to just have two in Trinidad, we had four. Then when we were in Government we brought them back down to three in Trinidad, and they took them back to four. Therefore no analysis was done over the last nine years to show whether it was working or not working properly, so this is on their hands. The Minister of Health has only been there for 21 months. We have been here for 21 months, and we take note that we may have to look at these Regional Health Authorities in a little more detail.

The second issue which the Member for Diego Martin West raised was the question of procurement. He predicated this amendment on the rationale that it was a procurement Bill. This is a major difference from what he has been speaking about, in terms of large procurement issues. Mr. Speaker, I do not think that the Member for Diego Martin West could stand with any degree of fortitude to talk about procurement, and label accusations against this Government.

The hon. Prime Minister in the lead up to the general election indicated that she was going to bring a procurement Bill to Parliament, and the manifesto states that. Within 30 days the hon. Prime Minister and the People’s Partnership Government was able to bring a procurement Bill to deal with the whole legislative framework and the Central Tenders Board, in terms of procurement.

We had a Joint Select Committee of Parliament and work continued. The Member for Diego Martin West keeps on saying that we did not have a policy on procurement. He knows that when we sat in that committee at all times we indicated that it was the committee which would bring about the policy. The People’s Partnership Government was going to await what emanated from the Joint Select Committee of Parliament to come up with a policy to present for its consideration. We did not want to force a policy on the Joint Select Committee, because we wanted to have that resolved, and therefore it was important for us to get the ideas coming out from the committee and come up with a policy that both sides would have accepted. Not so, Member for St. Augustine? It was absolutely so.

Mr. Imbert: Was it?

Hon. Dr. T. Gopeesingh: Yes; you were there. The Member for Diego Martin West was there. For almost a year—and it is not a simple piece of legislation. The Member said, “We did not know whether we wanted to have a centralized procurement or a decentralized procurement.” We generally came up with the idea that we needed a hybrid system to take care of the procurement. It could not have been a centralized or not fully decentralized system. It must be a mix between a centralized and decentralized system. We had voluminous documents to study from what was happening in New Zealand; what was happening in the UNCITRAL model; what was happening with e-procurement; what was happening in Jamaica with the contractor general.

There were multiple issues hanging over this whole procurement piece of legislation, but we reached a stage where we were able to get a Bill ready to be discussed after about a year. They participated in it. Unfortunately, they decided they were not going ahead with it anymore, because he said they were waiting for a policy from the Government. I want to re-emphasize that that policy was to emanate from the Joint Select Committee of Parliament and not from the Government.

They then made the excuse that he was jumping out of the whole procurement issue of the Joint Select Committee, because he was not satisfied with what we were doing about Invaders Bay and the rapid rail or some rail that he was speaking about.

There was no time that there was any question about procurement on Invaders Bay. It went out for expressions of interest and very sound principles were adopted there. We went out for expressions of interest on a commuter system, a rail system between the west and the east, not involving central Trinidad and going to south at all. So that was an excuse that the Member for Diego Martin West made and the Member for Diego Martin North/East.

When the newspapers began to hit them in the editorials very hard, and told them that they had a responsibility and should not be abdicating their responsibility, then some way or the other, there was a massive *Express* editorial which gave the hon. Member for Diego Martin West a lot of licks, and the Member for Diego Martin North/East. They were very strong on the fact that—if they are talking about procurement and we have a Joint Select Committee of Parliament to work with, why were they jumping out? Even up to today the Member for Diego Martin West said that he jumped out because of these two things that were coming up for procurement.

So he wants the People’s Partnership Government not to do any procurement whatsoever until this piece of legislation is completed. And while we try to complete

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the piece of legislation, he is frustrating it. So he is frustrating the efforts of the People's Partnership Government to do any procurement whatsoever, and that is totally unsatisfactory. We cannot go along with that. His whole premise that we should wait until procurement legislation comes on board, before we put this amended Bill together and get Parliament's consent, it is of no merit whatsoever.

So the question of the *raison d'être* for the RHAs rests on their shoulders. The question of procurement rests on their shoulders, and the question of management rests on their shoulders as well. Do you know why? How could you have a health sector, when you have hundreds of doctors missing, hundreds of nurses missing? The core ability for a health sector to move forward are nurses and doctors. Your previous administration stopped the training of nurses in the early 1990s. You stopped the training of nurses. When we took over we had to start back training nurses. We started back with 300 every year, and we began to build the cadre of nursing personnel again.

There was a policy to train only 40 doctors at Mount Hope. We began to open it up to 80 and 100, because we know the scarcity of doctors in the region. Therefore we started to build the cadre of personnel, and began training paramedicals. We introduced a system for moving nursing assistants to senior nurses by just one year of training, and we were beginning to increase the number of nursing staff. So the PNM has to take responsibility for not being able to provide nursing staff throughout the country.

We met a situation when we came into Government where there were almost 1,500 nurses missing from the establishment of Trinidad and Tobago—1,500 nurses, and over 267 senior doctors missing from the hospital system. Mr. Speaker, they decided to give a VSEP to the doctors. Do you know why? [*Interruption*]

Hon. Member: The procurement of nurses and doctors?

Hon. Dr. T. Gopeesingh: It is the procurement of services that we are talking about. [*Crosstalk*]

They gave a VSEP. Do you know what caused that? The doctors began to say, "We are working in institutions belonging to RHA. We are Ministry of Health doctors working in RHA institutions. Who is going to take the responsibility for that?" And they decided that they would down tools and they would not work in these establishments. There were a few legal cases that emanated. [*Interruption*]

Mr. Speaker: There are too many conversations while the Member is on his feet. I just ask Members to allow the Member to speak in silence, please.

Hon. Dr. T. Gopeesingh: Thank you, Mr. Speaker.

So they gave a VSEP because the doctors decided that they were not working as Ministry of Health doctors in RHA hospitals, and these matters went to court. All the senior doctors in the hospital decided to take the VSEP, and so they moved out of the hospital system. The senior doctors from the hospital just left the system completely, so only junior doctors were working basically with a degree of competence in the hospitals. This is one of the things that we have inherited from them.

To lift the bar for medical care again, we have to reintroduce the senior doctors back into the hospitals. We have to train more nurses and fill the gaps in the system. Mr. Speaker, I do not want to go into the other areas of infrastructure. They are the ones who said that they were going to build the Point Fortin Hospital from 2001, they were going to build the Oncology Centre. [*Desk thumping*] They said that they were going to restructure the Port of Spain Hospital; they would do Sangre Grande Hospital, they would build the Arima Health Centre into a hospital and build the Scarborough Hospital. Mr. Speaker, none of these things were done. The Scarborough Hospital was supposed to cost \$120 million. Today it is costing about \$1.4 billion. [*Crosstalk*]

They started an Oncology Centre; they spent about \$100 million on it, and not even the foundation is done, but grass is growing all over the place. Where has been the improvement of the Port of Spain Hospital? Since 2001 they have been talking about the Point Fortin Hospital. [*Interruption*]

ADJOURNMENT

The Minister of Housing and the Environment (Hon. Dr. Roodal Moonilal): Mr. Speaker, I beg to move that this House do now adjourn to—[*Desk thumping and laughter*] when the Member will continue his attack—next Wednesday, April 04 at 1.30 p.m. It is proposed that we continue debate on the Regional Health Authorities (Amdt.) Bill and, time permitting, we will begin debate on Bill No. 08 on the Order Paper, an Act to amend the Equal Opportunity Act, Chap. 22:03.

Mr. Speaker: Hon. Members, before putting the question for the adjournment, we all are aware that Friday, March 30, is Spiritual Shouter Baptist Liberation Day. It is a public holiday in the Republic of Trinidad and Tobago. I therefore call on the hon. Prime Minister at this time to bring greetings on the occasion.

Spiritual Baptists Shouter Liberation Day

8.25 p.m.

The Prime Minister (Hon. Kamla Persad-Bissessar): Thank you, Mr. Speaker. I am very privileged to be able, on this occasion, to bring greetings on

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behalf of the House, the people and the Government of our Republic to the Shouter Baptists on their very special occasion on Friday, and we have worked with the Shouter Baptists for a long time. Indeed, it was our Government, when we were in Government on the last occasion, that legislated for the holiday that will be celebrated on Friday.

Thereafter, we gave lands to the Shouter Baptists at Maloney Park, and we promised to build a school. As fate would have it, and history would have it, we went out of Government, and the school was never built. Last year when they celebrated the holiday, they had invited me to attend, and I did give them the undertaking that the school that had been promised, over 12 years ago, would be built. Keys will be handed over this year on the holiday. [*Desk thumping*] We have kept that promise, and so on Friday, as we celebrate with them, we shall be handing over the keys to the Shouter Baptists at Maloney Park.

I want to thank the hon. Minister of Education and his staff at his Ministry for pulling all the stops out to ensure—and of course, we also have the Minister in the Ministry of Education, Minister De Coteau, [*Desk thumping*] Minister Gopeesingh and their team, and all those who worked to ensure that the long-awaited school would be ready for handing over on this very special occasion.

As we join with the Shouter Baptists, we remember and reflect on the struggles they have had, from trying to have the Ordinance repealed, so that they could practise their faith in the way that they best believe. We worked with them to ensure that they got their holiday, and we worked with them to ensure that they now have a school where their children can attend, and learn their faith, in a different way.

Now, whilst we understand, and the Ministry of Education would be promoting comparative religion in schools, so that we learn about each other's religion, it is important for those of a particular faith to have further knowledge and education in their own faith, and this is what the children of the Shouter Baptists would be able to have access to when the school is formally opened in September. But the good news for the holiday is that the keys would be handed over because the school is complete. [*Desk thumping*]

Mr. Volney: Delivered.

Hon. K. Persad-Bissessar: So, this will be the first Shouter Baptists School in Trinidad and Tobago, and again, I would like us to remember that it is very important for schools in this regard; we had the first Pentecostal High School in Trinidad and Tobago here, the Miracle Ministries School—[*Interruption*]

Hon. Member: Under the UNC.

Hon. K. Persad-Bissessar:—yes, when we were in Government on the last occasion. The first Pentecostal school in Tobago as well, we assisted there, and many other schools were opened up, and this is an area where we see education as being very vital, going alongside, hand in hand, with religion, and again, we join with the Shouter Baptists on Friday in celebrating their very special day. As you know, and I have said it and I am not ashamed to say it, I was baptized in the Baptist faith, [*Desk thumping*] so I will be joining my brothers and sisters on Shouter Baptists Day on Friday.

So, enjoy your day, have a very peaceful, very religious and holy Shouter Baptists Day to the community from all of us on this side, and indeed, on behalf of the Government and people of Trinidad and Tobago. I thank you, Mr. Speaker. [*Desk thumping*]

Dr. Keith Rowley (*Diego Martin West*): Mr. Speaker, once again, at this time of year the privilege is mine to rise in support of recognition of the Spiritual Shouter Baptists Liberation Day celebrations that would take place in the next few days. Normally I would begin my commendation and acknowledgment by saying that I associate myself with all that the Prime Minister has said on the occasion; today, I simply would say that I associate myself with most of what she has said, because I suspect that there is some rectification required there. I am glad to hear that the new school is complete; another school in the country is something that is a good thing, to have another school, but I am not sure it was the first Baptists school in this country—[*Interruption*] Shouter Baptist—

But the bottom line is, [*Crosstalk*] Mr. Speaker, this group of our citizens is recognizing this landmark occasion where we pay attention to where we have come from, and where we are at, and I am sure that sometime in the future the members of the Spiritual Baptists community will look forward to more than what they have achieved today.

So as we celebrate, I would have been in a much happier mood, not only for the school that is going to be opened, but against a background that, the development with respect to demolition of that Spiritual Baptists church in central Trinidad, a church built on State land occupied for 25 years, Demolished—[*Crosstalk*] [*Interruption*]

Mrs. Persad-Bissessar: I would like to say that the members of that church did visit us, and we are in the process of rectifying that wrong that took place with those Baptists that were there.

Dr. K. Rowley: I am glad to hear that, because you see it was coming across as though the struggle for the Spiritual Baptists, notwithstanding the many celebrations and the niceties that we say about them at the time of their holiday, that in 2012, we could still be talking about, church being broken down and people being disrespected, because that is what has happened.

These folks—and am I glad to hear that the Prime Minister has taken steps to ensure that this oppression that was brought to bear on this small community in central Trinidad, has now been rectified, and we hope and that we do not see this again, ever in Trinidad and Tobago, because I am not sure that is something that ought to have been allowed to get this far as it got. Because my understanding is like many other citizens, they were occupying lands to which they in fact had a proper claim, of over 25 years, and therefore, it should never have happened, especially since it was State land.

I think the Baptist community has many reasons to celebrate this year, and can look forward to the support from the people of Trinidad and Tobago as we practise the words of our National Anthem, “Where every creed and race find an equal place”. I wish the community a happy, healthy, holy and productive future in the tolerance of Trinidad and Tobago, where we all respect each other and support each other as we progress as a people. Thank you, Mr. Speaker.

Mr. Speaker: Hon. Members, may I take this opportunity along with the hon. Prime Minister and the Leader of the Opposition in bringing greetings to Trinidad and Tobago on the significant observance of Spiritual Baptists Shouter Liberation Day. Today is a time for reflection on the values of the Spiritual Shouter Baptists faith, worship of the Almighty, respect for family and commitment to our society.

Many may recall the part played by Archbishop Elton Griffith who, was labelled “champion for the cause”. The late Archbishop Griffith must be credited as the person who led the campaign for the repeal of the Shouter Prohibition Ordinance, and on March 30, 1951, members of the Spiritual Baptists Shouter community were allowed to practise their religion freely.

It was in 1996 the Government of Trinidad and Tobago granted a public holiday to the Spiritual Baptists faith to be celebrated on March 30, called Spiritual Baptists Shouter Liberation Day in memory of the struggle and in recognition of the repeal of the prohibition laws.

Our nation of Trinidad and Tobago may boast of being the only country, globally, to celebrate a public holiday for the Spiritual Shouter Baptists faith. Locations like Belmont and Morvant, to name a few, were popular for hosting

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feasts and thanksgiving as expressions of gratitude to God for his blessings, and after special occasions in members' lives, such as success in an undertaking or recovery from illness.

I know the pride of the members of the Spiritual Shouter Baptists community is overwhelming with the proposed opening of the St. Barbara's Spiritual Shouter Baptists Primary School, on the approaching public holiday, as identified by the hon. Prime Minister.

On behalf of this honourable House, it is indeed an honour and a pleasure to extend to all members of the Spiritual Baptists Shouter community blessings of peace and love on this the 16th anniversary of the celebration of Spiritual Baptists Shouter liberation Day.

Parliament Channel 11
(Off the Air)

Mr. Speaker: Hon. Members, I wish to bring to your attention the following: regrettably, as you may have been aware by now, the Parliament Channel 11 has been off the air for most of the day. I have been informed that a break in the fibre optics, external to the building, originating in the FLOW network, is the cause of the breakdown; that is FLOW. Technicians from Flow have been working on the problem, and it is hoped that they will be able to resolve this problem soon. Meanwhile, our live Internet stream, and our radio broadcast remain unaffected.

I thought that I should bring to the attention of the hon. Members, that there is a problem with FLOW, it is affecting CNC3, and also TV6, along with our Channel 11.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 8.37 p.m.