SENATE

Friday, May 31, 1996.

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence from today's sitting to Senators Diana Mahabir-Wyatt, Vernon Gilbert and Nafeesa Mohammed.

ORAL ANSWER TO QUESTION

Pride Airport Project

(Withdrawal of Partner)

4. Sen. Martin Daly asked the Hon. Minister of Works and Transport:

(a) Could the hon. Minister inform the Senate whether Hughes Aircraft Corporation, which is the preferred partner for the Pride Airport Project, has withdrawn from the consortium?

If the answer is in the affirmative, could the Minister state what the Government intends to do in response to the withdrawal?

(b) Could the Minister also state in what time-frame can the people of Trinidad and Tobago look forward to improved airport facilities at Piarco Airport?

The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh): Mr. President, the Minister of Works and Transport wishes to advise this honourable Senate that by mid-October, 1995, the Airports Authority of Trinidad and Tobago had reached agreement with all members of the Hughes Consortium that the construction of the new airport facilities would commence in 1996. To this end, financing had been arranged, including a commitment by CIBC, USA, to underwrite all the required debt funding of US $51.5.

By letter dated March 27, 1996, however, Hughes Aircraft Company, the parent company of Hughes Airport Systems, wrote the Airports Authority of Trinidad and Tobago advising that Hughes had withdrawn from the project, and by implication, from the consortium. A subsequent letter dated April 29, 1996 from Hughes had stated a willingness to review any new plan proposed by the Airports Authority of Trinidad and Tobago.

The Airports Authority of Trinidad and Tobago, in conjunction with personnel from the Ministry of Works and Transport is engaged in reviewing all the options available, with a view to determining the most beneficial and expeditious arrangement for commencement of a new enhanced airport facility.

Phase I of the airport expansion project consists of the construction of a new passenger terminal complex on the northern side of the runway. The construction of the complex was considered superior to an expansion of the existing passenger facility building which was constructed early in 1960 and is now exhibiting a number of problems related to age, size, general layout and location. The passenger terminal design will allow for completion of the facility within 24 months from commencement of construction. However, new acquisition and contracting procedures prior to construction start-up may take from six to 12 months.

I assure this honourable Senate that all attempts will be made to ensure that this project commences in the immediate future.

Sen. Daly: Mr. President, may I have an answer to part (b) of my question, please? Twenty-four months from the date of construction is not an answer. Mr. President, can you rule, please? I would like an answer before I ask my supplementary.

Hon. S. Baksh: To give a start-up date would be to mislead this Senate. As I stated earlier, the Airports Authority of Trinidad and Tobago and personnel from the Ministry of Works and Transport are presently engaged in reviewing all the options available, with a view to determining the most beneficial and expeditious arrangement for commencement of a new enhanced airport facility.

Sen. Daly: Is the Minister telling this Senate that the Government actually has absolutely no idea when we will get improved airport facilities?

Hon. S. Baksh: Mr. President, I will answer that supplemental question in the appropriate manner and it is based on the *[Inaudible]*

Sen. Daly: In the course of the discourse, reference was made to Hughes inviting the Government to submit a new plan. Is it the intention of the Government to submit a new plan to Hughes?

Hon. S. Baksh: The Airports Authority of Trinidad and Tobago and officers of the Ministry of Works and Transport are currently reviewing all options available before submitting any new proposal.

Sen. Daly: Mr. President, can I have an answer to my question? The Minister volunteered this. Is it the intention of the Government to accede to the invitation of Hughes and submit a new plan? Or will we have more obfuscation and worse over this airport project? The Minister said that there is an invitation from Hughes to submit a new plan. Is it the Government's intention to submit a new plan to Hughes?

Hon. S. Baksh: Mr. President, as I indicated before, all these options are now under review by the members of the Airports Authority of Trinidad and Tobago and the Ministry of Works and Transport.

LEGAL PROFESSION (AMD'T.) BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

That a Bill to amend the Legal Profession Act, be read a second time.

May I, before I commence my contribution on this Bill, apologize to Senators for having to bring them here today in respect of this matter.

I also apologize to some of the Senators—I understand that the hon. Sen. Martin Daly had not been supplied with a copy of the Bill until some time this morning. I consider that unsatisfactory. I understand that instructions were given. I do apologize to him, but knowing the competent lawyer that he is, I am sure that even that would not prevent him from participating. I feel sure that he would be able to assist us as much as he can in this particular measure.

1.40 p.m.

I hope that the other Independent Senators—I do not know if they got their Bills late—would be able to assist us. I will try to see how best I can explain these

provisions so that the Independent Senators may be able to follow what is happening with this particular measure. I understand that Members of the Opposition had the Bill since the last day the Senate met.

The purpose of this Bill is to give legal validity to a practice which has developed over the years in permitting overseas counsel, and in particular, English counsel, to appear for specified matters in our local courts. Although English counsels have, in the past, been admitted to practise in Trinidad and Tobago and have appeared in several matters, both on behalf of the state and private individuals, it has been drawn to my attention, that having regard to the provisions of the law under which they were purported to have been admitted, that they may not have been admitted with due authority. It is a serious matter which should be corrected, especially where it is the intention of the state to retain—and the state has retained—an English attorney to do a particular matter which would be heard in due course in Trinidad and Tobago.

There are instances where private individuals would also have to retain English attorneys from time to time. Mr. President, this may be one of the reasons for the urgency of the matter. This is a matter which, if attorneys are not properly admitted those entire proceedings could be ruled out. That, therefore, explains the urgency of the matter.

The Legal Profession Act of 1986 was passed to regulate the legal profession for the qualification, enrolment and discipline of its members and other matters relating thereto. Before the Legal Profession Act was passed a person who was called to the Bar of England was entitled to be admitted to practise as a barrister on application to the High Court. The person did not have to hold a legal education certificate if he was called to the Bar of England. By the 1986 Act, section 15, in particular, three conditions would qualify an attorney to be admitted to practise in Trinidad and Tobago, if he:

"(i) is a Commonwealth citizen,

(ii) is of good character, and

(iii) holds the qualifications prescribed by law"

The qualification prescribed by law means really, a person who has done the LLB Degree or an equivalent to the LLB Degree at the University of the West Indies, or a person who would have possessed the qualification which obtained prior to October 1, 1972, to practise as a barrister or solicitor in a particular territory to which he was admitted to practise; or if he holds the qualification

obtained in a Commonwealth jurisdiction for admission to practise law in that jurisdiction in which the qualification is approved by the Council of Legal Education. In addition to either one of those matters the person must have completed, to the satisfaction of the council, a six-month course of training organized by the council and awarded a Council of Legal Education Certificate.

The cumulative effect of sections 15 and 16 of the Act, in conjunction with the Council of Legal Education Act, would seem to be that an English barrister cannot be admitted to practise in Trinidad and Tobago unless he has also done—apart from receiving the necessary qualifications and being admitted—a six-month course at the Law School in order to get that certificate of legal education.

Mr. President, I must confess that although the purpose of this Bill seems to be simple, the drafting has not been very easy. As a matter of fact, there is a circulated amendment which tries to give effect to what is intended. Looking at the Bill, it would seem that what we really want to achieve in that particular circumstance, is that the Minister of Legal Affairs, after consultation with the Chief Justice, may provide that a Commonwealth citizen who is qualified to practise in his country, would be entitled to practise as an attorney-at-law in Trinidad and Tobago on such terms and conditions as the Minister may specify in the Order.

Mr. President, that is the intention of the amendment. I would concede that the drafting may have to be amended in order to make it quite clear, but the intention of the Bill is to try to legitimize a practice which has already been in existence. Since this practice has been in existence, the appropriate governments who were party to the agreement have been aware of this practice. As a matter of fact, in some of these countries, from information I got, this practice also obtained in other countries which are party to the agreement. Mr. President, steps are being taken by the Government of Trinidad and Tobago to inform the other countries of the intention to formalize this matter in this way.

I know that some Senators may be concerned that since the Legal Profession Act has been passed in 1986, that the Government should indicate whether it intends to amend the Act, in any event, or if it has looked at the Act in its entirety. I merely wish to announce here, so that Senators could feel at ease, that this Government has been having discussions and it has, in effect, received a memorandum from the Law Association for reform of the Legal Profession Act. The Government is considering those matters and we are trying to get a bill drafted after appropriate consultation and has asked the Law Association of Trinidad and

Tobago to assist in drafting a bill and has agreed to provide some assistance to the Law Association for the drafting of that Bill.

1.50 p.m.

Mr. President, this is a particular measure to deal with particular situations but it is not only to deal with situations where a government may want to retain a particular lawyer, but to deal with situations which have occurred in the past where private individuals have retained lawyers from time to time from England in particular, in order to appear in the courts of Trinidad and Tobago.

May I mention what happens in practice. If we take, for example, a matter in the Judicial Committee of the Privy Council from Trinidad and Tobago. The Judicial Committee of the Privy Council is regarded as a local court, only it is based in the United Kingdom because it is the final court of appeal from Trinidad and Tobago. There is the situation where, in a matter coming from Trinidad and Tobago, going to the Privy Council an English lawyer, without complying with any of these provisions, can appear in the local court which is the Judicial Committee of the Privy Council. An English Queen's Counsel can appear in the Privy Council in a matter from Trinidad and Tobago, without complying with any of these provisions. What this amendment is trying to do is to recognize that this practice exists where an English Queen's Counsel or a lawyer from any other Commonwealth country can, on a particular matter on certain terms and conditions, appear in the matter.

I would like to make it quite clear, that it is not intended by this measure to permit lawyers from Commonwealth countries to come at will to practise law in Trinidad and Tobago, and that is why it is done on a basis that the Minister of Legal Affairs, after consultation with the Chief Justice, would be able to make an Order in the particular matter.

Mr. President, I should mention that clause 2 of the Bill which is attempting to amend section 16, by repealing subsection (1) which reads:

> "The Minister may by Order provide that, subject to such exceptions, conditions and modifications as he may specify, a citizen or national of a country to which this section applies who has obtained the qualifications prescribed by law shall be eligible to be admitted by the High Court to practice law in Trinidad and Tobago."

One notes, therefore, that it is "qualifications prescribed by law" and this, as it stands, means that one must be the holder of a Council of Legal Education Certificate.

What the proposed amendment attempts to do is to repeal subsection (1) and substitute the following clause:

"16(1) The Minister may by Order provide that a citizen or a national of a country to which this section applies is eligible to be admitted to practise law in Trinidad and Tobago where he has obtained—

(a) the qualifications prescribed by law; or

(b) qualifications equivalent to the qualifications prescribed by law."

Mr. President, I must confess that may not have achieved the objective which we want to achieve, and that is why the proposed amendment to (b) refers to qualifications, which in the opinion of the Minister, are equivalent to the qualifications prescribed by law save that his admission under this paragraph is subject to such exceptions, conditions and limitations as may be specified in the Order.

Mr. President, I must confess, however, that I have seen the proposed amendment and it seems to me that the amendment by the hon. Sen. Martin Daly will make it clearer. His amendment says that under section 15 there would be the addition of subclause "(d) is a person in respect of whom an Order has been made under section 15(A)" of this Act;" and to add to section 16(A) that:

"Notwithstanding the provisions of this Act, the Council of Legal Education Act and any other law to the contrary, the Minister may in exceptional circumstances after consultation with the Chief Justice, provide that a Commonwealth citizen who is qualified by the law of that Commonwealth country and who has been so qualified for at least ten years is eligible to be admitted to practise temporarily as an attorney at law in Trinidad and Tobago on such terms and conditions as the Minister may specify."

May I say that in relation to this particular amendment, subject to certain matters which I would obviously look at, it would seem to me that the Government would be prepared to look at this amendment very favourably as this would make it very clear as to what the intention of the Government is.

Mr. President, I beg to move.

Question proposed.

Sen. Danny Montano: Mr. President, I was very heartened by the apology of the Attorney General for the rather short notice of this Bill. Allow me to say that in our opinion, the apology is not sufficient. He mentioned that we on this side had notice of the Bill since the last meeting of this Senate which was on Tuesday, May 28; we had a scant two days, one of which was a public holiday.

We are the advocates of the people, whether or not we have been elected and we have a duty and a responsibility to review, reflect, research and consult with those in society whom this Bill will in fact touch. Two days, one of which was a public holiday, barely gives us such time to do the people's business efficiently and properly. It is not a question of hard work or dedication, nor one of commitment or long hours, we are quite prepared to do that. However, when the person to whom one wishes to speak is not available because he is at the beach or whatever, it makes the job almost impossible and it is therefore, improper for the Government to rush Bills like this through this Parliament.

Mr. President, if the Government can rush a Bill through because of a particular court deadline, then I am sure that it has the power to change the court date and to make it proper so this and the other House can address this matter properly and thoroughly.

I would address Members to some words in the opening prayer of the President when he says that we meet here and asks us to inspire the confidence of our fellow citizen. This kind of rushed approach hardly does that.

To get into the substance of my contribution, I note with some surprise what the Government is trying to do.

2.00 p.m.

I was aware that Mr. Theodore Guerra, S.C. had been passed the brief on a particular matter which is before the court and which apparently this Bill is intended to deal with. To the best of my knowledge, Mr. Guerra has not received any notice that he has been dismissed, withdrawn, suspended or whatever. It is in an article appearing in the press where we, the public at large, are informed that he has been replaced by a foreign attorney whose name has not been mentioned and would be released at a later date.

Mr. President, why insult one of our most senior and eminent attorneys in this way? What is the point? What is being accomplished?

Mr. Maharaj: Mr. President, on a point of order. It is highly improper and totally irrelevant in a matter which is pending before the court for comments to be made about matters which the Senator has no knowledge of and which are not correct. He should satisfy himself that these matters are correct because he would be doing great damage to the public interest. I object on the question of relevancy. What we are concerned with is the principle of the legislation and not in respect of any particular matter which is before the court or, in fact, the arrangement of any particular matter before the court.

Sen. D. Montano: Mr. President, if that is the case, what is the urgency? Why are we rushing through with this Bill? What is the big rush? In this or any other matter, is it that our lawyers do not have the competence to deal with any criminal matters that come before our courts? Is that what is being said? We on this side have some difficulty with that. We have had a Council of Legal Education and, to the best of my knowledge, the standard of education is very high indeed. There are eminent and experienced attorneys in our country and they are going to be by-passed just like that! There is a crowded Bar and we would import attorneys, willy-nilly!

In touching on the speed with which this Bill has come before the Senate, the Attorney General, by his own admission, has one amendment and then there is another, and we are supposed to deal with these amendments without any serious thought. We would sit here and do the people's business just like that.

Mr. President, we have to suspect that there may be some dark and ugly reasons for this kind of undue haste. We do not like that and we are highly suspicious of it. In a government that declares itself to be transparent and would consult with everybody, this is indeed less than transparent. As far as we can determine, there has been little or no consultation at all with anybody; and, certainly, because of the speed we have had no time to do any of that ourselves. This is not right. We have difficulty in supporting this Bill.

Thank you.

Sen. Prof. John Spence: Mr. President, I support the principle that is enunciated in this Bill. It is certainly my opinion that the provisions are too restrictive as they now stand, therefore, it is useful that we are able to make provisions for exceptions.

There are a number of points which occurred to me on reading the Bill, most of which are catered for in the amendment which was put forward by Sen. Daly,

but there are one or two others which are important for us to consider. I hope that Sen. Mark would take note as the Attorney General is occupied at the moment. The first issue which the Attorney General mentioned was the agreement with Caricom countries. It seems to me important that we now follow up this action with discussions with the other Caricom countries with a view to amending the agreement because, clearly, as he pointed out, a number of other countries are addressing this particular issue as well so it would seem clear that the agreement needs to be altered.

It is important that we do that because, in my opinion, this is the second issue that we have had over the last week or so which seems to be taking us in a different direction to the one we want to go with respect to Caricom.

The meeting is currently taking place in Barbados in which fine speeches are being made about Caricom integration but, at the same time, there is the situation where two Caricom countries have had to go to the Paris Club to settle their debt arrangements. This seems to be quite ridiculous and, really, instead of fine speeches, there should be action. That issue should have been settled between Guyana and Trinidad and Tobago.

I do not think that we have got the best of that deal by any means. Guyana is a vast country and we could have been given concessions of forests to exploit with our oil money to the benefit of both countries. I am unhappy about that agreement. This is another example in which we must address the situation with the Caricom countries if we are to give any credence to the fine speeches about Caricom integration. We need to follow up in that regard.

Another point that occurred to me is that if one reads the amendment as it now stands, it would seem, that if a Trinidad and Tobago national who qualified at Cambridge, had been called to the Bar and then practised in the United Kingdom for 10 years, he would not be able to practise in Trinidad and Tobago unless he went to the Hugh Wooding Law School for six months. This amendment is giving an advantage to non-nationals which nationals would not have. The wording that Sen. Daly has proposed in his amendment caters for that point because it refers to Commonwealth nationals and Trinidad and Tobago nationals would also be Commonwealth nationals.

I am glad to see in the amendment that it would be in consultation with the Chief Justice. That is not to say that there is anything wrong with the Attorney General or the Minister making a decision and, clearly, he would consult. But it is

important to put it into the Bill because, as the Attorney General pointed out, there are a number of cases in which private citizens would want to bring attorneys in and it may be that those cases are with the state. It would be inappropriate for the Attorney General on his own to be making the decision as to whether an attorney for a private citizen could be brought in, so it is important to word it in the way it is worded in Sen. Daly's amendment.

We still have to address the problem of reciprocity. We must keep on pressing. It is my understanding that citizens from here cannot practise in the United Kingdom, so we should keep on pressing for that because the standard of our legal training in the Caribbean is equivalent to the training in the United Kingdom. For example, in the case of the medical profession, graduates from our schools can register and practise in the United Kingdom, so we should strive to achieve the same situation with respect to law.

I have a bit of a problem myself in the need to bring in persons from outside at the same time we are saying that we should not take matters to the Privy Council. I support appeals to the Privy Council, so I have no difficulty with our drawing from the pool of attorneys in the United Kingdom in certain circumstances to address the court here.

It seems to me that one cannot at the same time argue that the gentlemen in the United Kingdom and the Privy Council are so remote from our activities here that they are not a good court to judge us; but the same gentlemen can come in and make a suitable contribution before our court of law.

2.10 p.m.

It seems to me the same problems will arise, that they would not know the local mores and local situations. So I would support this Bill, but I would oppose the abolition of the Privy Council for those reasons.

The Attorney General made the comment that the Privy Council is currently a court of Trinidad and Tobago, and his comments seem to imply that as such, the gentlemen who appear before that court—at the moment because of the way the law is worded—will not be properly appearing. Perhaps, he could clarify in his winding up whether this means that currently they are admitted to the Bar in Trinidad and Tobago before they appear before the Privy Council. If it is that they have to be admitted and they will now be admitted under this Bill, but were not properly admitted in the past, then should this Bill also validate actions that have occurred in the past? For example, are there any matters pending which

might eventually go to the Privy Council in which the attorneys appearing before the local courts were not properly admitted because of the way the law was worded? In which case this Bill must also validate those past admissions. So I would ask that that matter be referred to, in his winding up.

Finally, Mr. President, I was very glad to hear the hon. Attorney General say that he had representations from the Law Association with respect to amending the Act. It seems to me extremely important that anything we do by way of allowing others to practise here without reciprocity must be viewed in the sense of whether we are weakening the strength of the profession locally, or not. It is clear that when we are coming to review the Act to deal with the profession, we must be sure that we are in no way weakening the standard of our profession locally. I believe that one of the very big issues in Trinidad and Tobago is the fact that we do not have strong professional bodies; and anything we can do as a Parliament to strengthen those bodies will be for the good of the citizens of Trinidad and Tobago.

Thank you, Mr. President.

Sen. Orville London: Mr. President, we lay persons tend to be very reluctant to get involved in what we consider as, primarily, legal affairs; and we sometimes feel, as they say, "as cockroach in fowl party." However, I think that it is often necessary that we, the lay persons, represent the gut feelings and concerns on matters which may or may not be strictly legal.

In this situation where we are dealing with an amending Bill and amendments to the amendments, I am not certain whether the lawyers are any less confused than the lay persons are under these circumstances. In that way, maybe, the playing field has been levelled.

I want to share some concerns and ask some questions, bearing in mind of course, as I said, that I am not a lawyer. My first question: Why now? Why introduce this Bill at this particular point in time? I accept the fact that there might be certain sensitive matters which have to be dealt with, but I am suggesting that there must be a way by which this information can be passed on to us Senators and, by extension, the national community. Because if we do not get that kind of information we might tend to draw some very erroneous conclusions.

Why has it been introduced into the Senate first, and not into the Lower House? I think this is a question that has to be answered. Is it that there are individuals in the Senate who might be in a position to give assistance, and we do

not have that level of reciprocity in the Lower House? I do not know. Has the Law Association been consulted on this matter, and if it had, would it have been necessary for Sen. Daly to move that amendment?

I have here in my notes, as a lay person, before I heard anything about Sen. Daly's amendment or even the contribution by Sen. Spence: "Minister given the sole right?" So it struck me, as a lay person, that there had to be something a little problematic about a situation where the Minister was given the sole right, without consultation with the Chief Justice.

In other words, I have no problem with the Attorney General accepting recommendations for amendments in either House, but when the recommendations for amendments seem to me to be very obvious, I have a little problem. I respect the Attorney General's experience and knowledge; and I find it a little difficult that individuals like me, with no knowledge of law, could be examining a Bill which we only had 48 hours to study, and actually finding genuine concerns which escaped the Attorney General. I have a little problem with that.

What is the real reason for this Bill being introduced at this particular point in time? Mr. President, is it that the local lawyers are unwilling to deal with that matter which the Attorney General said we should not discuss in any great detail? If they are willing, is it that they are unavailable? If they are willing and available, is it that they are not competent? If it is that they are willing, available, but not competent, when he does make these decisions, would he give us the reasons why he considers the individuals chosen more competent than our local lawyers?

If it is that they are willing, able and competent, does the factor of the safety of the lawyers come into play? I think that is critical. If, at all, we are dealing with the safety of the lawyers who prosecute, maybe he should give us some idea of whether he is also concerned about the safety of the jurors, because in cases where individuals associated, especially, with the prosecution have an unfortunate tendency to disappear, I would suspect that one of our major concerns is not just the witnesses, it is not just the lawyers, but also the jurors and their families. I suspect that, if we do not deal with this factor at this point in time, we will have to do so at some point in the future. Mr. President, I feel that, as a lay person, I have a right to get some answers to the questions which concern me, and until such time, I will have serious problems about supporting this Bill.

Thank you very much.

Sen. Martin Daly: Mr. President, I think it is good from time to time, having regard to all of the events that have taken place in the Parliament Chamber today, to re-state why one is a parliamentarian. I do so, Mr. President, because in the short time that I have been able to look at this Bill, I did so with a great deal of enthusiasm, (a) because it concerns my own profession, and (b) I was fairly certain that I knew—in fact, I think anyone who reads the newspapers would know—why the Attorney General wants to pass this Bill now.

I also have some acquaintance with the particular litigation which I suspect is provoking this Bill, and let me answer one of Sen. London's questions at the outset, and I will explain in more detail later. I am absolutely satisfied that specialization and national security would constitute two good reasons why, in any particular piece of litigation, either the plaintiff or the defendant, either the state or the private individual might have to hire a lawyer from outside of our country; and I will expand on that in a little while. So I think Sen. London is very close to the mark when he starts talking about personal safety. This is not the time and place to digress as to why Trinidad has come to the position that it has, that we may now be forced to hire expertise from outside because the personal security of nationals like myself cannot be guaranteed. But now is not the time to go into that.

Of course, you see my enthusiasm has since been greatly affected by the non-answer I got on the PRIDE Project. But when I had time to recover from the complete obfuscation of the answer and the delight with which it was delivered, my enthusiasm for this Bill re-enkindled because I realize that if this Minister, like his predecessors, continues to protect the incompetence and worse that surrounds the PRIDE Project, that might be a case in which we will have to hire counsel from abroad to prosecute from Minister down.

2.20 p.m.

So out of evil cometh good. After the Minister's answer, I regained my enthusiasm for this, because I see all of those that he is protecting by that answer as a possible target for a prosecution that would be so sensitive that we will have to ask his colleague, the Attorney General, to hire a lawyer from abroad to prosecute all those involved in the PRIDE project.

So that with my re-enkindled enthusiasm, re-enkindled by the unhelpful answer that we were given, I now approach this Bill thinking, if I want to prosecute the PRIDE people and I want to hire a lawyer from abroad to do it, what safeguards do I need. I bear in mind that anyone—not this Minister, of course; he has just been misled—from an erring Minister of Works, down, connected with the PRIDE

project—and we know them; we see them around—might be the target of the prosecution. So that helps me in my consideration of the Bill, because now I see flesh and blood targets of a possible prosecution for which we might have to hire a lawyer from abroad. So I ask myself, using the PRIDE project as an example, what would justify hiring a lawyer from abroad to prosecute?

I am satisfied that this particular amendment is starting on a completely wrong premise. Section 16 of the Legal Profession Act deals with reciprocity, that is to say, admitting lawyers to practise in our country even though they do not hold a legal education certificate or otherwise qualify for admission, because our lawyers in turn who may not hold the qualifications for that country are permitted to practise there. So I do not think attacking section 16 or seeking to amend section 16 is going to solve the problem at all.

Indeed, it is perfectly obvious that the amendment is misconceived, because if one looks at section 16(2), it says:

> "This section applies to the country if the Minister after consultation with the Chief Justice is satisfied."

So that if section 16(1) is repealed and therefore removed from its original objective, one will then have a mishmash in one section where section 16(1) deals with one topic and 16(2) deals with a completely different topic and the two sections have to be read together and they have to be implemented together.

So I think it is a fundamental mistake and I am quite sure it is a result of the haste with which this legislation has had to be prepared. But I am not unsympathetic to the haste because I think that the Attorney General could have suffered considerable embarrassment in bringing this amendment here. Because what he has euphemistically called, the practice of persons coming, usually from the United Kingdom to appear in our courts, really it has turned out that we have had persons practising here illegally, or at any rate, on the basis of a breach of the provisions of the Legal Profession Act.

The Attorney General would be familiar with many of these cases. Indeed, in one of them his leader did not only come from the United Kingdom via Australia, but when he got here he had the discourtesy to insult several members of the legal profession, including the now Chief Justice. So the Attorney General who was led by this gentleman—well, I hesitate to call him a gentleman—in that particular case would be well aware of this problem. He has personal experience of an illegal leader, so he is very well qualified. It is not his fault, of course. If the system

permitted him to have the advantage of an illegal leader, that is to the benefit of himself and his 113—was it—clients. So I place no blame on the Attorney General.

It is amazing in this country how things like inappropriate answers on an airport project come back to haunt us. Because the last government played around the airport project, that is one of the reasons for this government being in power today. So it is amazing how things come full circle to haunt us, particularly when we have to present or defend them in Parliament.

So I think it is very important, if there is a need to regularize the practice of hiring lawyers from abroad, to do so. I believe it can be defended on the two grounds which I indicated, specialization and national security. For example, a very complicated patent case or a very complicated trade mark case, in which however competent my colleagues are, it is not something we do every day. Indeed, many of the tools of the trade, the law reports, the textbooks, and so on, are not to be found in our library, so there may be occasions where the highly specialized nature of litigation might require either the state or a private party to seek to apply to bring in a specialist from abroad and that would not represent any insult to the local profession.

Likewise, I am satisfied that national security might sometimes require both sides in a sensitive case to seek to bring in lawyers from abroad, and may I explain why. In various parts of the world—and it happened in Trinidad a few years ago—witnesses and lawyers who are involved in cases in one country do not even remain overnight in the country in whose courts they are appearing. So for example in Trinidad and Tobago, if the client or the state has the resources, on grounds of personal safety a lawyer who is hired from abroad or a witness might fly in here in the morning—make his submissions or give his evidence and fly back to Caracas in the evening, so that he does not rest his uneasy head on a pillow in our uneasy country. And that has actually happened in this country and many others. So let us not fool ourselves that there may not be circumstances in which that kind of situation may arise.

I would point out, and I do so with a certain amount of feeling, a practitioner who comes from abroad for any sensitive matter has no house that can be burnt down; he has no children who can be abducted; he has no roots here that can be cut, and I think it is very unrealistic for us not to recognize that there are situations outside of the criminal law, not only in the criminal law, where the stakes may be sufficiently high that anyone of these things can happen. Therefore, on the grounds

of national security, as well as a high degree of specialization, it would be possible to defend bringing an experienced practitioner from abroad. But as always, we must provide the appropriate safeguards and those safeguards are reflected in the amendment which I have respectfully put for the Attorney General's consideration.

First of all, I think the circumstances must not be mundane. I have used the word, 'exceptional'. The Attorney General has spoken to me and suggested another formula. I do not mind what formula is used. My first requirement is that the circumstances in which someone comes from abroad must not be ordinary. It must be something extraordinary, and whatever form of words is used to achieve that would be fine with me. I think consultation with a third party is important. First of all, it provides some check on the abuse of the power of the Minister—and as usual we are talking about the Minister with a capital "M", not any particular personality.

Then we have to consider with whom that consultation should be made. As a result of discussions with my colleagues who are far sharper draftspeople than I am, the question of the role of the Council of Legal Education as the dispenser of the Legal Education Certificate was discussed, that there may be practical problems in a particular case and having a consultation with the council and getting a quorum of the council together.

2.30 p.m.

In any event the reciprocity provisions in section 16 provide for consultation with the Chief Justice. There is some internal consistency in having the Chief Justice as the person whom the Attorney General consults. Moreover, the Chief Justice as the head of the judiciary and the person before whom lawyers appear would be the best person for the Attorney General to consult in the event that the Attorney General had an application for resources required from outside. The Chief Justice would be able to say when a lawyer is needed to do a trade mark case, who did one before him competently, who was on the other side and if the idea is good. That is precisely why the Chief Justice is the appropriate person to consult because he sees and knows everything that goes on in the courts. That is why I provided for consultation with the Chief Justice.

The next safeguard which I am respectfully suggesting for internal consistency is that the lawyer who is to be admitted should be a Commonwealth citizen. I say this not only for internal consistency but also because it is important that the person should have some knowledge of the common law system which we have

inherited and the common law traditions of the laws of evidence as we understand them.

There was a Member of the last government who had a penchant for a particularly expensive firm of New York lawyers, among whose claim to fame was not only the size of their bills but also the fact that three pages in a book about certain shenanigans on Wall Street were devoted to this firm of attorneys, who had at least two persons almost permanently resident in the Twin Towers. I think that while I can speak from personal experience that we gave them as good as we got, unfortunately, in a softer currency than theirs, the fact is that at the moment it would not be desirable at any rate to open up our profession to these huge law firms outside the Commonwealth. I think it is important that we provide that the person be a Commonwealth citizen for those reasons.

I think it is also important to specify that they must have experience and assume that they would be at the top of their profession in their home country. For this reason I have provided that they must have at least 10 years practice. I have provided that for three reasons. All our important legal appointments require a minimum of 10 years practice which is regarded as the appropriate length of experience, whether it is to the High Court, the Industrial Court or various commissions. It has happened, but it is highly unusual in the United Kingdom for people to become Queen's Counsel or Senior Counsel without 10 years experience. One can nearly always assume that if one is hiring a lawyer from England for a high degree of specialization or any other reason, one would be hiring a Queen's Counsel. No harm is done there. It also avoids the temptation to have a returning residents racket where people can start slipping in their relatives who have studied abroad, by-passing the local legal education system. We could have nearly as many returning resident lawyers as we had returning resident cars. It is a very important safeguard.

It is also important that the admission be temporary or in some way transient. I do not mind what form of words is used. I insist respectfully that this legislation must signal that the Minister can only make an admission of a foreign lawyer on a case by case basis. I was able to speak to two officials of the Law Association today, and I understand it for what it is worth. I frequently disagree with the Law Association. I understand their position to be that they have actually been agitating to hire a Queen's Counsel of a certain level to prosecute cases in our courts on a case by case basis.

It would be invidious to single out any particular examples. I think the Attorney General is aware of some. It is not only criminal matters arising out of 1990 which have attracted international attention, but also a great deal of insurance litigation that has repercussions in the reinsurance market in which advice has had to be sought from abroad. Some of these matters are either so colossal or so technical that they simply require the ability of that person to work the foreign market.

I think I can share Sen. Montano's discernment for dark and sinister. I think in this case despite my considerable depression about the fact that repair of the cowshed airport is nowhere in sight and the Minister is happy about it, I do not think that it is dark and sinister as it first appears. I think by trying to amend section 16 we are barking up the wrong tree. I am suggesting that we introduce a clause 15 (1)(d). I would explain this for the benefit of my colleagues. This would qualify one for admission if it is an alternative to holding the qualifications prescribed by law for a person whom the Minister has declared eligible. This is meant to be an alternative to (c).

In order to satisfy the court that one should be admitted one would have to be a Commonwealth citizen, be of good character. As a third requirement, it would be either holding the qualifications or a person in respect of whom the Minister has made an order under my new proposed clause 16 (a). One must have either (a), (b) and (c) or (a), (b) and (d) to be admitted into practice in Trinidad and Tobago. For the reasons which I have indicated, I do not believe that the problem would be solved by seeking to amend section 16 (1). That would be a disaster. I think we must introduce a new section to take care of this particular problem. I have suggested what I think the safeguard should be.

Many of those who are involved in local or regional legal education are very concerned that we are making this amendment because the qualifications to practise are the subject of an agreement between the various Caricom countries. In some unilateral way we are making an amendment to that agreement. I am very pleased to see that the Attorney General is sensitive to the need to communicate with his colleagues in the other territories with whom we have signed this agreement to say why we are doing it and communicate our difficulties.

I think Sen. London spoke very well about the need to inform people about what we are doing and if we are doing it in a rush why we are doing it. I must confess but for the fact that I had some peculiar knowledge of the circumstances for this amendment, I might well have shared the sentiments of the Opposition. I

think the lesson to be drawn from it is that we are still politicizing very simple issues. My colleague Sen. St. Cyr, who sets me on the right track nearly every week, referred to the fact that we politicize very small things. If this matter has the background that we suspect it has, the Government and Opposition should have been in dialogue over it and we should have been able to go into Committee within 20 or 30 minutes to deal with this matter, after we had recovered from the shock that this Government is continuing the sin of PRIDE.

I cannot support this Bill in the form in which the amendment has been made. One of the things that is so refreshing is that another one of my colleagues got into terrible difficulty with a Minister through a lack of information. It only took two sessions of Parliament for the dialogue to begin again and for permissible smile and laughter to be shared between them. That is the advantage of the parliamentary system. If you *mamaguy* people you do not get goodwill. Incidentally, you do not get goodwill in the country.

Sen. Spence: I would like Sen. Daly to comment on whether this amendment would also need to validate previous actions with respect to admission to the practice here which were not in accordance with the law.

Sen. D. Daly SC: This is the second piece of homework that my colleague is giving me for the afternoon. I will do my best. If we assume that those persons should not have practised here, it is too late to attempt to go back to validate it. I see this as a step in the future. In the event that anyone here seeks to retain them in the future, we would be able to point them in the right direction. I do not think a validation is necessary.

2.40 p.m.

They have come here; they have insulted us and they have left. I think we can leave it at that. *[Interruption]* Oh, they got paid for it, yes. But they did not get paid for insulting us. They did that gratuitously.

I would also indicate that none of the Independent Senators who has spent time working on this Bill, including our absent colleague, would be asking for our work to be counted as part of the GDP. We think we have a very strong case for counting our work today as part of the GDP, but we are not asking for it on this occasion, Mr. President. I dare say if we continue to be irritated every time we pass through the airport our stance might change quite considerably.

With those few remarks, which I hope are relevant to the Bill as well as to the sorry state of our airport, I thank you.

Sen. Rev. Daniel Teelucksingh: Mr. President, I am heartened by the Attorney General's recent announcement that certain legislative matters will be out for public comment. Nevertheless, I still feel stifled and choked by the enthusiasm, speed and volume of Government's legislative programme. I am glad that Sen. London counted the number of lay persons in the Parliament. I have been saying this for the longest while and no one seems to be paying attention to the fact that there are several of us lay persons who are called upon, in a short space of time, to appreciate and to understand matters that are technical and sometimes out of our purview.

Ever so often legislation is introduced as simple. I want to advise the Government, respectfully, on behalf of all the lay persons in the Parliament, that no matter how simple legislation may appear, we need ample time to appreciate fully the implications and significance of any attempt whatsoever to amend the laws of this country. We need a more reasonable time-frame to get into the act of amending, and we have had to do so much of this over the last few years.

Mr. President, this is a most interesting piece of legislation addressing the question of the eligibility of non-nationals to practise law in Trinidad and Tobago. The concepts of liberalization and free market no longer belong to the realm of economics, for not only tariff barriers seem to be going down, but also legal and judicial barriers.

Notwithstanding that the work permit proviso enables non-nationals to practise in our law courts, and that legal personnel have been moving with some degree of freedom within the British Commonwealth, the Bill seeks more than to clarify—and I am looking at that word "clarify" in the explanation which accompanies the Bill. I am speaking on the Bill, but it was only a few minutes ago that I saw amendments. We all have to be forgiven because we were given no time at all to look at amendments; not even the Bill itself.

I feel that the Bill seeks more than to clarify the eligibility for a non-national to practise law in Trinidad and Tobago. The Bill certainly seeks to facilitate and to make the process easier. The barriers have been falling. We are liberalizing. I still question the wisdom of interfering with the parent Act. That is my problem as a layman. At the end of this debate, I hope to find good reasons for Government's

intention to amend the Legal Professions Act, 1986, thereby opening the door with greater determination.

I have detected at least three negative implications in the Bill, notwithstanding the proposed amendments which I received a few minutes ago. Firstly, the Bill, in considering the qualifications of a non-national to practise within our jurisdiction, ignores, I believe, the need for some kind of orientation. I think a person from New Zealand or even from the British Isles may be disadvantaged if he begins to practise in our courts in the morning, although his qualifications may be equivalent or superior to that of the provisions of the Legal Education Certificate.

Consider the matter of capital punishment. We have been talking about that for the longest while and regularly asking ourselves about members of the Judicial Committee of the Privy Council, who live in a country where capital punishment is abolished. They are distanced from us geographically, culturally and socially. How can they do justice in a situation which they do not understand and appreciate fully? Some of our laws are born within a particular milieu: against the back drop of a particular historical and cultural setting. Take the Domestic Violence Act or the recent discussions we had on our maxi-taxi problem and the legislation arising out of that. I think that non-nationals need to understand and appreciate some of these before they get involved in actual practice. Non-nationals need more than the equivalent of the Legal Education Certificate if justice is to be dispensed as it ought.

I want to weave the global village concept into my appreciation of the Bill which has several surprises for persons who think it is simply a common swimming pool where the only requirement is basic swimming skills.

The second of the negative implications of the Bill, as I see it, enquires as to how this legislation will impact on local legal personnel. The job market is saturated. In a population of approximately 1.25 million persons in Trinidad and Tobago, Mr. President, do you know that for 1995 there are 1,522 registered attorneys-at-law? I could not believe this. The fraternity of 1,522 attorneys in Trinidad is quite a lot—staggering.

In 1995, there were 52 Trinidadians and Tobagonians who graduated from the Hugh Wooding Law School, and the class of 1996 is expected to churn out a further 72. So, at the end of this year, what do you think the roll will be, Mr. President? About 1,594 attorneys. Will this Bill create some crisis of confidence within the legal fraternity? What about this job market, given the intention of the

Bill? What about the reciprocal facility? I am glad Sen. Daly's amendment seems to be addressing this. Are there reciprocal facilities and privileges for our attorneys to practise elsewhere—the kind of accommodation we are making through the force of this amendment?

Mr. President, a third negative factor may be noticed. Are we sending signals that we require the assistance of foreign legal luminaries because we need standards higher than our own?

2.50 p.m.

I know my colleague, Sen. Daly, made reference to this and I appreciate his point of view very much. I still ask the question, however, because that question is going to be asked somewhere among these 1,500-plus bright and experienced attorneys: Are we telling ourselves in Trinidad and Tobago that we still require the assistance of foreign expertise and that we need to depend on standards higher than ours? If that is so, then something must be wrong. Mr. President, I think our confidence will be further threatened.

There is another side to the Bill because in spite of the negative, I believe there is a positive component. I am glad that Sen. Daly correctly made reference to this, but I would like to say how I feel about the positive side because it is a terrifying thought and yet it might be remote. One remembers recently a judge—there might be one, two or even more—who was killed by the Mafia in Italy, and other judicial personnel in that country who had been regularly intimidated and terrorized by the Mafia. In Colombia, politicians, judges, police officers and their families have been targeted by the underworld. Several people have been assassinated, Sir, and one wonders whether Italy and Colombia are so far away. In Trinidad and Tobago we are beginning to recognize the far-reaching monstrous tentacles of the crime world. They operate with determination, viciousness and unparalleled brutality.

Is it not true that in 1995 certain magistrates and their families were threatened in Trinidad and Tobago? Sen. Daly is so correct. People like himself who prosecute in that very special fraternity, how safe are they? How safe are our judges, magistrates, police officers, political personnel and their families? They tell me I should not be talking about what happens in Colombia and Italy and so forth, but Mr. President, it is also happening here! They say that this has been a transshipment point for certain things but it is also a transshipment point for terror and violence.

Mr. President, I suspect that a Bill such as the one before us, in facilitating non-nationals to practise in our courts, in effect, affords a desirable measure of protection for the local keepers of the law, some of whom are so vulnerable in this land. Non-nationals, as Sen. Daly said, return to the safety of their country at the end of trials here in Trinidad and Tobago and thus escape the ripple effect—all of us know about them—of court matters which impact on us locals. *[Interruption]* Somebody is always listening and planning and they do say they know the schools where one's children attend. Mr. President, for this reason I believe that this Bill may serve a useful purpose. So even as a short-term measure I want to support it.

I thank you, Sir.

Sen. Prof. Julian Kenny: Mr. President, fortunately I am a retired person so that I have time to do things. I spent a bit of Wednesday surfing through that row of black books and discovered my lack of experience with that arcane law. It took me a long time but I discovered that the parent Act, which is absolutely essential for me to obtain an understanding of what was being done, was not available. I, therefore, did some frantic telephoning around and eventually found a friend who loaned me a copy of this Act.

I was actually reading this Act from one end to the other to see what it was all about when a fellow Senator from the Independent Benches telephoned me to enquire if I had the said Act so that I could read out a particular part. Subsequently, another Independent Senator—we do not have a conference telephone—called and we spent time talking about this. At the end, however, I made the startling discovery that there was something flawed in the Act. Section 16 dealt with reciprocity. In fact, I think that my fellow Senators will remember me saying; "reciprocity, I have learned something." When I went through the Act, Mr. President, I said I could not really support this Bill.

Mr. President, what struck me today with the hon. Attorney General, however, was his body language and the humility with which he admitted to the Senate that the Bill being proposed was defective and he showed his readiness to consider the amendment proposed by Sen. Daly. Clearly, Mr. President, I cannot support the Bill in its present form but I will support the spirit of the amendment proposed by Sen. Daly.

The final point I would like to make and this point was made by Sen. Daly—is that a matter of this kind could very easily have been settled by the Attorney

General's office consulting with competent authorities—both with lawyers from the Independent Benches and other lawyers—to bring a tidier Bill to the Senate where we could have had more meaningful debate on it, rather than have us spending a great deal of time worrying about the reasons for the Bill coming at this time. Clearly, if it has been the practice over the past decade for senior counsel to come from the United Kingdom and it is now being regularized, then this is perfectly in order.

Mr. President, for the first time I could appreciate the pressures under which the legal practitioners must operate, the threats of violence to their person, families and so forth, but surely something like this could have been done a little more cleanly. I think Sen. Daly suggested that it might have been considered in committee. I do not know exactly what this means, but surely a few senior people, realizing what has to be done, could have come together and agreed on a Bill which could come to Parliament for debate with unanimous support.

I thank you, Mr. President.

Sen. Prof. Kenneth Ramchand: Mr. President, I am only just seeing the new Bill and the 1986 legislation by courtesy of the unremunerated workings of Sen. Prof. Kenny. When I first read the Bill a few moments ago I was puzzled by the amendments. Before I go on, however, to speak about my puzzlement and the result of my reading of the original 1986 Act and the present Bill, let me say that I support both the spirit and the letter of Sen. Daly's amendment.

3.00 p.m.

Looking at the amendment, I asked myself what are the changes actually proposed? The first thing I noticed was that the marginal note was being slimmed down, and the second was a set of words in section 16(1) "subject to such exceptions, conditions and modifications as he may specify". These words were shifted from 16(1) to 16(4). Looking at those words, I formed the impression, as an ordinary citizen, that they had to do with a wish to prevent an invasion, to put some kind of limit on persons coming in here to practise generally. That is the only section in the original legislation that limits or lays conditions on persons coming in to practise generally if they have the appropriate qualifications. The shifting from 16(1) to 16(4) did not seem to me to strengthen that.

I go along with the spirit of Sen. Teelucksingh's contribution, that we do not wish to change the legislation more than necessary, but if anything, I felt that if this legislation needed changing, we needed to make it clear that this was not a "free

for all". We do not want persons just coming in here to practise as they like. I am tired, Mr. President, of persons coming in from foreign countries to do what nationals can do or ought to be able to do and these persons receive hefty remunerations and all kinds of perks for it while we dog along here on very thin salaries and in terrible conditions. I am tired of that kind of situation. I think my national and professional pride are offended by that. I am tired of seeing persons coming into this country to advise on education, literature and reading and neither I nor my colleagues at the University hear anything about it and are never consulted. I console myself that it is because it is a condition of the loan, or the gift or the aid that is given to us—they are lending us the money to do it therefore, we have to use their experts—I do not know. It is a very offensive thing, and therefore I felt that this legislation could perhaps benefit from being tightened up in that way.

At any rate, the shifting of clause 16(1) to 16(4) did not seem to me to be doing very much and when I checked the Explanatory Note it says: "...to clarify the eligibility for admission to practise law in Trinidad and Tobago of a citizen or national of any foreign country..." with the appropriate qualifications, and it sets out for us the two cases of practising generally, and practising for a limited purpose. It did not seem to me that the amendment had too much to do with practising generally because I feel that needed to be restricted, and if it had to do with preparing to allow persons to practise for a limited purpose, it needed to be a little more crisp, precise, controlled and directed; and a little more comforting to persons in the profession who are going to sit and see professionals from outside coming in to do the sort of work they could be doing. We needed a very precise specification about the limited purpose. Well, we are still waiting.

I listened to the Attorney General and appreciated his point that one of the reasons is that we have to clean up the existing practice where English Counsel have come in and practised without getting any kind of authorization. I am not sure I took fully the import of what he was saying about private citizens being able to have the right to hire counsel from abroad as well. I still did not feel that the amendment really addressed those purposes.

As I have suggested, Mr. President, I am not happy with the unlimited right to practise generally and I would like to see the limited purpose specified. It seems to me that in spite of what the Explanatory Note says, and in spite of how the Attorney General presented it, that the purpose of this Bill is to allow foreign professionals to come in here for a limited purpose, for a temporary period, to do a specific job, and that is why I am in total support of Sen. Daly's amendment.

It really is humiliating and frightening to have to say I agree with it. It is a comment on the state of the society and the lawlessness of the place in which we live that we have to be driven to this measure. We are living in a place where ordinary citizens can be senselessly murdered, where crucial personages like witnesses, juries, magistrates, judges, journalists, police, lawyers, attorneys general past and present all of them can be assassinated and therefore, I am agreeing that in this desperate situation, professionals from abroad or mercenaries can be brought in to carry out tasks which may be too difficult and dangerous for citizens.

I regret that the state of the country forces me to back down on my nationalist and professional pride and say okay, "Let them come". But if we are letting them come, we must let them come on the terms and conditions specified by Sen. Daly and I will like to repeat them.

"In exceptional circumstances;

After consultation with the Chief Justice;

Qualified for at least 10 years;

To practise temporarily;

On such terms and conditions as the Minister may specify."

Sen. Daly is in the habit of saying that his colleagues are good draftsmen but I have to say that he is a very good grammarian. *[Laughter]* It is a paragraph I wish I myself had written.

I intend to support this Bill especially since the Attorney General has graciously said that he is considering Sen. Daly's amendments seriously. I support it, but look forward to the tightening up of the right to general practice, and to a very tight specification of the terms and conditions on which foreigners may come in and take particular cases.

Thank you.

Sen. Pennelope Beckles: Mr. President, I am not sure whether I should make my contribution in terms of the Bill as presented by the Minister, or what I consider to be almost a totally new Bill presented by Sen. Daly.

The Minister indicated that notwithstanding the fact that Sen. Daly had only received it this morning, he was sure that based on his experience, that he would not have any difficulty to make an excellent contribution. I think in terms of the other Members of the Senate, that comment is a little unfortunate. I still

think—not speaking for Sen. Daly—it is a bit unfair because I do not think that one should simply capitalize on a person's intelligence and experience and simply say because you are so gifted, short notice is almost sufficient, because you would be able to comment almost immediately.

3.10 p.m.

When we have heard the contribution of all the other Independent Senators expressing their concern as it relates to the time which this particular Bill was sent to us, I must register as well my total dissatisfaction, particularly as an attorney-at-law, to have had such short notice to deal with this Bill.

Mr. President, as Prof. Kenny stated, would it not have been much better if the Attorney General were able to say to us, yes, this is an important piece of legislation; I have had consultation with the Council of Legal Education, the signatories to the treaties affecting this particular Bill and an opinion or something written from the Law Association that says that they are supporting this Bill?

I have a difficulty with what we might call subsequent consultation, information or sending a copy of documents to persons and giving the impression that some sort of consultation has taken place.

Sen. Daly indicated that he spoke with two members of the Law Association. The Attorney General mentioned that he would also be considering several other concerns which the Law Association has with respect to other aspects of the Act that they would want him to look at.

This morning I had the opportunity to speak with several members of the profession. Most of them expressed shock at the fact that this Bill is before the Senate and they do not know anything about it. There are other members of the Law Association who indicated that while, in principle, the Attorney General discussed this with them, they have not seen a copy of this Bill. I would like the hon. Attorney General to indicate whether or not he had sent a copy of this Bill to the Law Association. I am not taking the position that he has not; I would simply like to know whether he did and, having done so, whether or not they indicated their position on it.

It would be very helpful if when we, on this side, are debating Bills which obviously affect a large number of persons, that we are aware as to what the body which represents those persons feels about the Bills. It would make things easier in terms of how we take particular decisions.

Mr. President, I have a serious concern when we sign treaties to which other Caricom members are party and we do not consult but subsequently inform them that we have taken a particular decision. What that does very often is, create some of the confusion that has been created from time immemorial as it relates to Trinidad and Tobago and some of the other Caribbean countries.

Yesterday, I took the opportunity to call some of my colleagues in some of the other Caribbean territories. I spoke with colleagues in Jamaica, Barbados and some other territories, and they indicated that similar problems have been occurring, particularly in Jamaica quite recently when the government sought to bring in a Queen's Counsel to deal with a particular matter and the Bar Association objected based on the fact that this treaty exists. Their argument, of course, is that the Council of Legal Education and the Norman Manley and Hugh Wooding Law Schools having been set up for more than a decade, they feel that sufficient skills have been acquired to be able to deal with certain areas of specialization as Sen. Daly spoke of.

My only problem is that Sen. Daly seems to have given us much more reasons as to why he thought the Government brought this Bill before the Senate. Would it not have been better, regardless of whether they trust the Opposition or not, to say that this is a sensitive piece of legislation wanting to deal with, maybe, a sensitive matter and therefore co-operation is required. But that is not done. Sen. Daly indicated the whole issue of the security of certain lawyers and members of their families; and that may be the reason why this Bill is brought before this Senate.

I would like to think that that particular age of politics has long passed. If there are certain issues that are critical to the survival of our citizens of Trinidad and Tobago, we have to act responsibly. But I feel that one must not give us short notice and expect that without proper consultation, we simply vote "yes" because several persons would be affected. One does not want to create a wrong impression in terms of the attorneys in the country, those in the Caribbean, the Council of Legal Education and the various students that are graduating time after time. What is the real signal that is being sent?

I would like very briefly to comment on the Chief Justice's statement on March 25, 1996 in the *Trinidad Guardian*, headlined: "Too many lawyers says the Chief Justice". He stated:

"'It is my belief that the number of entrants into that (the legal) profession each year far exceeds the needs of the society, at least over the medium or long term.

There may even be a case for raising entrance qualifications in a situation where there is an element of overcrowding.

According to the Chief Justice, in England, entrance qualifications for barristers were raised some years ago. Anyone wishing to join an Inn to become a barrister was required to have at least an upper second class degree at university. It is something that is worth considering,' de La Bastide said."

I read this in the context of the Attorney General saying in reply to my colleague, Sen. Montano that this Bill is not to deal with any particular matter. Then, I considered what Sen. Daly said. If it is not to deal with any particular matter and it is really to, as he said, legitimize a practice that has already been in existence, then I am really wondering what is the urgency.

We have to be very cognizant of the fact that it is not just the attorney whose life would be endangered. If we are saying that we have to use an attorney from England because those in Trinidad would be well known to the persons who are likely to dispense with them, then what is the position of the clerks in the court, the various police officers, the various witnesses, the persons who are securing the documents, the jurors and the attendants? All those persons have to be seriously considered. Is it then that we would have to import everybody from abroad in order for a particular matter to take place? Or, maybe, very soon there would be a bill before this Senate that the court now be transferred to another jurisdiction in the Caribbean. To me, that is what it is almost sounding like.

I would have great difficulty if no sort of explanation is given by the Attorney General as to why this Bill is so urgent. Is it that he would maintain that it is not to deal with any particular matter and simply to legitimize a practice? I have a real serious problem with that and I feel that we have to move away from some of the situations where we do things and then inform some of our Caricom partners.

3.20 p.m.

We cannot, as Professor Spence indicated, have a parliamentary session taking place in Barbados where we were all taking about Caricom and all the different things we need to do in order to integrate and ensure that we take a position that is united; and then we come here and do something and subsequently inform our

Caricom sisters and brothers. It may very well be that if they were informed that this is a position which is unique to Trinidad; one with which the entire society is concerned and by taking this course we want to ensure particular things; if that situation were properly explained we may have a different response.

But from my experience today and certainly on Wednesday, speaking to the majority of my colleagues about this issue, I must say that they were not happy about it at all. I would like the Attorney General also to indicate whether he is familiar with the fact that there is actually an opinion on this matter dated June 23, 1992 and there is also correspondence from the Council of Legal Education dated April 3, 1992 in which they expressed reservations relating to precisely what we are doing here today.

Therefore, Mr. President, since strong reservations have been expressed by the Council of Legal Education, which is the body that all the Caribbean countries would have agreed to in terms of determining what sort of legislation and amendments there should be regarding the Council of Legal Education and the Legal Profession Act, and the treaty that was signed, it would be very difficult for me to support the legislation, particularly as is. Unfortunately, I have only been able to look at Sen. Daly's amendment during the actual sitting of the Senate and, therefore, I cannot say that I have totally examined it to the extent that I would have wanted to adopt a position today. Bearing in mind all the contributions, it would have been very helpful if we were able to get these amendments before and, at least, be able to sleep on them and come and make the kind of contributions which I think would be beneficial to the country.

Mr. President, I am really hoping that when the Attorney General is winding up he would say:

(1) Whether he has consulted at all with the Council of Legal Education and with the Bar Association and got their opinion on this particular matter; and

(2) Whether or not this Bill is to deal with some issue that is of great urgency which is likely to take place within the very immediate future which requires that particular steps are taken.

That element of consultation and transparency which they have been talking about constantly every day, should, at least, be brought to bear on something that they suggest appears to be a crisis situation.

If there was this element of transparency and consultation then I think we would not have had many of the problems we are having today in terms of discussing this Bill. Mr. President, as my colleagues have indicated, I would have some difficulty in supporting this Bill as it is. As I said, the amendments tabled by Sen. Daly would put some restrictions in terms of some of the concerns that several of the lawyers expressed today, but I would, of course, like to hear what comments the Attorney General has further, whether it is just consideration, or that he has seriously considered and would be adopting Sen. Daly's amendment.

Thank you.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, as a lay person I would like to ask just two questions to clarify my thoughts. I know some of our Hugh Wooding Law School graduate lawyers not only from Trinidad and Tobago but from the other Caricom countries. Would lawyers from the other members of Caricom be considered and given preferential treatment over lawyers who come from a different type of society? That is my first question, because I have only been hearing about England, so I am a bit puzzled about that.

My second question, Mr. President, is this. Does this foreign lawyer whoever he/she may be, have the authority to apply for permission or consideration to work here, or must he/she be given a brief? Because you see, Mr. President, my layman understanding is that the barrier was that this person did not have the six months' experience and so forth. Now we are saying we are lifting that, so there is no barrier, hence as long as one has all these things that the Senator spoke about, one is free. So I would like to know: Does one have that permission to apply to come and work here because the barrier has been lifted? Or is it that I have to say a citizen of this country, whether it be the state or a private citizen, has to give this foreign lawyer a brief to do a case for him? I would like to be clear on that.

Thank you very much, Sir.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, may I say how indebted the Government is for the contributions made by Members on the other side. But I think that it is important, in relation to some of the matters, to put in perspective what happens in legislation. Every piece of legislation has a policy which can be discerned from the reading of the legislation or from what the Minister, in opening, would say about that particular piece of legislation. Apart from the policy there would be the actual drafting to ensure that the policy is reflected by the appropriate words.

In this matter when the Bill is read, or even if it is not read, and when the Bill was presented, it would have been quite clear that the policy of the legislation was that there was a practice. It was not something new. There was a practice where lawyers who were called to the Bar in the United Kingdom and Commonwealth countries were admitted to practise in Trinidad and Tobago on behalf of the state and sometimes on behalf of individuals. It seems to me that it is more so on behalf of individuals, and from the record I have it is more private individuals who retain lawyers from abroad. There was a case which attracted much public attention in Trinidad recently. It is referred to as the Jamaat matter in which there were English and Australian counsel on behalf of members of the Jamaat and the state retained English counsel. The fact that the state retained English counsel did not mean that the lawyers in Trinidad and Tobago were not competent, as the hon. Sen. Danny Montano is trying to say. It is because of the particular matter that either the state or the accused persons or private individuals determine that they would like to have a lawyer from outside with a particular skill or having regard to special circumstances. Over the years several lawyers from abroad have been retained by individuals and the procedure is that they would apply to practise, and would be admitted to practise on the basis that it was construed during that period of time that this could have been lawfully done.

This legislation, therefore, is to continue that practice, that is to say, to restrict it to circumstances where it is not an open gate. It is a case where the Minister responsible, as hon. Sen. Martin Daly mentioned, in consultation with the Chief Justice who is head of the administration of justice and subject to the conditions mentioned in the Order, determines whether the particular attorney would be able to practise.

3.30 p.m.

Now that has been happening. As a matter of fact, under the PNM administration, it happened. The PNM administration knew that there were problems with that piece of legislation. As a matter of fact, the Law Association of Trinidad and Tobago since March 15, 1993, was advocating to the then Attorney General that the legislation gave the government that power, to be able to permit lawyers to do that. Therefore, the government must do that and there must be no barriers. So since 1993 this situation was raised. The Law Association was in support of lawyers from abroad from time to time, since then, being able to practise in Trinidad and Tobago.

Now the then Attorney General did not take any steps to amend the law. As the Attorney General of Trinidad and Tobago, if I am aware that in respect of any given set of circumstances, public officials may act unlawfully, it is my duty, notwithstanding what may have occurred in the past, to protect the public interest; to take whatever action necessary, whether it is quick action, whatever action, in order to redress the situation.

I came here this afternoon and I indicated that this is the purpose of this piece of legislation. I do not understand my role as an Attorney General to be not to implement a policy which may not be as clear and which may be ambiguous; it is my duty to go ahead with it regardless of what has come about. I understand the Parliament to be a place where one will introduce policy in legislation—and this is how it is done—and one would be receptive to whatever is said about that piece of legislation; and if it appears that the bill which has been presented could be clearer, could be more certain, it is the Attorney General's duty to have it amended in the particular form. This is not unusual. This happens in all Parliaments in civilized countries.

As a matter of fact, when one picks up *Hansard* and one sees what happens with pieces of legislation; one sees how many amendments are done, not only on the floor of the House, but in committee stages. Therefore a government has a duty to do that. A government must not close its eyes to what people say, and regardless of what Members say, go along with the legislation. As a matter of fact, I want to say here this afternoon that we are very fortunate in Trinidad and Tobago that we have people who have consented to serve on the Independent Bench who are experts in various fields and who can make great inputs, assist the national community, in matters like these.

Therefore, if this afternoon, the honourable Senator, Martin Daly has presented to the Government and to this House, an amendment which, in effect, would assist, not the Government, but the people of Trinidad and Tobago in dealing with a problem which the Government has inherited and which, if not redressed, can violate the public interest in respect of matters in which the state and private individuals are involved, it is the duty of the Government to accept it.

I am not going to be an Attorney General who would come here and close my eyes and my ears; I would listen to what Members have to say but I am sticking to whatever the situation is. That is not the function of an Attorney General, as I see it. The function of an Attorney General is that he must be able to be receptive to

whatever is said in the Parliament. He must consider it, and if what he has put forward does not reflect accurately what the policy is, it is his duty to have it corrected. That is how I see it. *[Desk thumping]*.

We must not look at this as a game because when we are in the Parliament of Trinidad and Tobago we are serving the national interest. It must not be a game, that because a Bill has to be amended the government is no good. I will ask the Opposition not to treat pieces of legislation like that. Legislation is a serious matter and there are times in the life of a Parliament when legislation has to come very quickly and there are times when it need not come very quickly.

When one really looks at this piece of legislation one wants to be as objective as possible. Can one really say that the policy of this legislation is difficult to digest when this has been happening all the time? Therefore, what is the purpose of the Members of the Opposition saying that, dealing with the facts of a particular case, whether a particular lawyer is retained or not? May I say for the records, I am not aware of the accuracy of the statements made by the honourable Senator, Danny Montano. I am not aware of those facts at all. I think it is very irresponsible, if I may say so, with the greatest respect, to have dealt with this matter in that way. I do not think that I would use this Parliament to deal with the particular facts and circumstances of any particular matter.

So to say that this legislation is to deal specifically with a particular matter, is really not correct. It is legislation to deal with matters in which persons, including the state, would want to have recourse of retaining a lawyer from a Commonwealth country. The amendment refers to a lawyer from a Commonwealth country who has been admitted to practise and who has, at least, 10 years standing. It is not ready-made. What has to happen, an application will be made; the Minister responsible will consult with the Chief Justice; it will have to be in respect of matters which are necessary and expedient, and the Parliament must be able to trust the Chief Justice. Then the Order has to be made subject to terms and conditions specified in the Order which would limit it to, obviously, a particular case or cases.

So, what is the difficulty? That has been happening all the time.

Sen. London: Is the hon. Attorney General saying that the timing of this particular Bill is not related to any specific case?

Hon. R. Maharaj: Mr. President, I think I mentioned that in my opening and I do not want to get into that. I think I have answered the question. The point is that

it deals with a class of cases. It is not legislation for a particular case. As a matter of fact, if this legislation is passed it would be used for the same people who have applied all the years. I have a list here where over the last two years over five private individuals in Trinidad and Tobago have asked for English lawyers.

So that if we do not pass this Bill and for some reason admission takes place, then the point can be taken at a proceeding that the particular proceeding is illegal. So that I do not think, really, that this piece of legislation should pose any great difficulty as to policy matters.

In respect of the drafting, I wish to say that the life of an Attorney General sometimes is very difficult. An Attorney General is advised by many people, many departments and the position taken in the Bill is that section 16 was to be amended in a way in which it would permit the Minister, after consultation—because section 16(1) was going to be amended in order to substitute a new clause. But section 16 is subject to the Minister consulting with the Chief Justice. So the position was taken, rightly or wrongly, that section 16 could be amended in order to facilitate that kind of situation, where, subject to the terms and conditions specified in the Order, the Minister, after consulting with the Chief Justice can make such an order.

3.40 p.m.

Sen. Daly raised the point—I saw his amendment and he has a point. It can be construed that one is interfering with the reciprocity section and there is no need to interfere with it. If I see that there can be difficulties with section 16—and we want to have legislation which cannot be challenged in a court or any points raised about it because it is not in the interest of the public. If by amending section 15 it will remove any argument that section 16 should not be interfered with, no one would be taking the point in court because everybody who brings a lawyer, whether it is the state or an individual would then be able to take the argument that section 16 does not give the power; that the drafting was bad and it is not a proper amendment. That could be an embarrassment to the Parliament. If that point could be raised and there are merits in the points which have been raised, then it is my duty as the guardian of the public interest to go along with that.

I am indebted to Sen. Daly for drawing that to the attention of the House. I am saying that I am accepting in substance what Sen. Daly has stated. We are going to amend section 15 accordingly to give effect to a policy which has been executed in

Trinidad and Tobago all these years. I do not see how the Opposition can be critical of the Government for that.

I would have thought that the Opposition would have agreed that it was wrong; that although they knew about it since March 1993 and did nothing to correct it, they were very sorry for the inconvenience caused to the Independent Senators, for the Government to come through this, and they would like to apologize to the House, the Government and the people. They have tried to make politics out of a simple matter which is in the public interest. There is consolation in this country because there are Independent Senators who are entitled to make their criticisms of the Government and that is very healthy. We must encourage that. They have made constructive criticism; not criticism like the Members of the Opposition. Constructive criticisms are always very healthy for the promotion of a democracy.

When Sen. Spence asked questions about the Bill and the issue of reciprocity, section 16 would give the reciprocity because we are not interfering with it. In respect of the legality of matters which occurred before, I agree that no useful purpose can be served by looking at those matters. I agree with the views of Sen. Daly. If at any time the point is raised by anyone, one would be able to deal with that. There is a principle of law with matters like that which have occurred and after a period of time one cannot raise those matters. We are concerned with the fact that if it is not corrected, in a proceeding which may come before the court, whether civil or criminal, the point can be taken. It can pose problems in respect of litigants, the judiciary and the interest of the public.

With respect to Sen. Rev. Teelucksingh, I take his point that he is very concerned about all these pieces of legislation which are coming very fast. It seems to me now that we are acting too quickly in respect of some of these matters. It may be that if the last government had done some of its work, we would not have had to come so quickly. In respect of the two matters he talked about, I think he was referring to the Freedom of Information Bill and the two pieces of legislation dealing with capital punishment and capital and non-capital murder, they are out for public comment and, it is after members of the public have expressed their comments, then, the Government would consider them and either redraft the Bill or come with it as it is.

There are many ways in which a government can consult with the population. The Government can present a green paper on the particular matter, then it is not a policy document and the matter is discussed with the public. Then there is a white

paper which then becomes a policy document and then a piece of legislation is drafted. Depending on the matters in question, the government can deal with it by publishing draft legislation for public comment.

I think I should respond by saying that with regard to the whole issue of capital punishment and the delays in the administration of criminal justice, the last administration decided that legislation was necessary to deal with it. They actually introduced a piece of legislation but they did not introduce the right kind of legislation and it received objections from all sections of the community. They used that incident to try to abolish appeals to the Privy Council not only in criminal matters or murder cases, but in all cases.

In respect of orientation of lawyers, I do not know if I can answer that. All I can say is that it has been recognized that although the law can be very different in countries and may be administered in different ways, in countries of the Commonwealth where basically there are the same kinds of traditions, lawyers can appear in matters without much difficulty. They may be at certain disadvantages but one must understand that there are lawyers—Sen. Daly made this point—who specialize in particular areas. There is intellectual property—and in Trinidad and Tobago we are committed to passing all these pieces of legislation dealing with patent trade marks. We do not have persons in this country who are very experienced in this and we would want, from time to time, to have experts who would be able to do these kinds of matters.

In certain aspects of civil law there may be specialized areas. There may be particular lawyers in Trinidad and Tobago who may be unable to do these matters at that particular time and one would need to bring in lawyers with that kind of knowledge. In respect of criminal matters there may be lawyers who all their lives have been able and would be recognized to do particular kinds of criminal matters. They would be experts in particular fields. They might be experts in doing capital matters or drug related matters, white collar crimes and may have a specialty or particular knowledge in these matters.

So one has to understand that there would be times, quite apart from the question of national security, in which the state or a private individual would have to resort to a lawyer from outside.

3.50 p.m.

There are many instances where individuals feel that they would want to have, in a particular matter, a particular lawyer from outside. If we do not have that kind

of provision, it would mean that a lawyer would not be able to come. The ironical thing about the situation would be that the lawyer would not be able to argue the matter in the local courts, but when it reaches the Privy Council, the same lawyer would be able to argue it. It is these kinds of matters with which this amendment is really seeking to deal.

I think I have answered all questions, although I have not done them individually. I think I have answered the questions raised by the hon. Senators Dr. Eastlyn Mc Kenzie, Prof. Julian Kenny and Prof. Kenneth Ramchand, although I have not dealt with them on an individual basis.

There is one other aspect to which I think I should respond. I do not think the impression should be given that this Government arbitrarily is trying to change a measure which is the subject of an agreement among Caribbean governments. That is not the position at all. The position is that Caribbean governments are aware that Trinidad and Tobago and other countries have been doing this. They have in effect consented to it. Several lawyers have been admitted in several other countries based on this practice.

We have informed the other Caribbean governments. As a matter of fact, the hon. Prime Minister of Trinidad and Tobago is at present in Barbados and this is one of the issues which they are being informed about to legalize what has been happening. There has been no objection over the years from Caribbean governments about these matters. So I do not think it is right to try to make politics out of a matter about which the Law Association is aware. There is a practice that the Law Association be informed of any proposed measure. The Law Association of Trinidad and Tobago, since 1993, communicated its position to the then Attorney General and stated that if the law was uncertain, then the necessary amendments should be made.

I am at a loss to understand why the Opposition would not support this measure. I am still hoping that it would consider the function of parliamentarians—

Sen. Beckles: Mr. President, may I just enquire of the Minister whether he is going with Sen. Daly's amendment? He has not indicated.

Hon. R. L. Maharaj: I thought I made it quite clear. *[Interruption]* I understand that the Senator was outside at the time.

Sen. London: May I just correct an impression being given consistently by the hon. Attorney General. We indicated that we had certain concerns with the original Act and we also indicated that if certain of our concerns were addressed, we would be prepared to look at the *[Inaudible]* That is what we indicated throughout our contributions.

Hon. R. L. Maharaj: Well, Mr. President, may I be the first to apologize if I misconstrued what the Opposition said. I do apologize to you, Sir. I am happy that I have been able to persuade him to go along with *[Laughter]*

There are certain matters on which Sen. Daly has agreed and the drafting is being done. There are just one or two words which have to be changed, but we are going along with the substance of the amendment.

I hope I have been able to allay the fears of all and have been able to respond to whatever queries the hon. Senators had.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

Question proposed, That clause 2 stand part of the Bill.

Mr. R. L. Maharaj: I propose an amendment to clause 2 as follows:

Delete and substitute the following:

2. Section 15(1) of the Act is amended:
   (a) by adding after the word 'and' at the end of paragraph (b) the word 'either' and adding after paragraph (c) the word 'or';
   (b) by adding after paragraph (c) the following new paragraph (d):
      '(d) is a person in respect of whom an Order has been made under section 15(A)'.

4.00 p.m.

Sen. Dr. Mc Kenzie: Mr. Chairman, I would like to have inserted under the amendment 15(A), after Trinidad and Tobago—

Mr. Chairman: Under 15A?

Sen. Dr. Mc Kenzie: Are you with me, Mr. Chairman? "...is eligible...to practise law in Trinidad and Tobago...". I am very skeptical about foreigners

coming here and imposing their services on people without anybody hiring them. That is my fear, Mr. Chairman. I am on the second page of the amendments.

Mr. Chairman: Sen. Mc Kenzie we are presently dealing with clause 2 on the first page.

Sen. Dr. Mc Kenzie: I was on the second page, the new clause 3 15(A). I am sorry, Sir.

Mr. Chairman: I will deal with the new clause 3 separately. Are there any comments on clause 2?

Question put and agreed to

Clause 2, as amended, ordered to stand part of the Bill.

New Clause 3

Mr. Maharaj: Mr. Chairman, a new clause 3 is being sought to amend the Act by inserting after section 15 the following new section. This amendment is in conformity with the substance of Sen. Daly's proposed amendment:

"New Clause 3 Add the following new clause:

3. The Act is amended by inserting after section 15 the following new section:

'Special case of admission 15A. Notwithstanding any law to the contrary the Minister, where he considers it necessary or expedient, may after consultation with the Chief Justice, by Order provide that a Commonwealth citizen who has been admitted to practise in a Commonwealth country for at least ten years, is eligible to be admitted to practise law in Trinidad and Tobago on such terms and conditions, including but not limited to the duration of the admission, as the Minister may specify in the Order.'"

New clause 3 read the first time.

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

Mr. Maharaj: Mr. Chairman, what has happened here is that the words "considers it necessary or expedient" would, in effect, limit the Minister in matters where it is necessary or expedient and he would have to consult with the Chief Justice, who would need to be satisfied that these matters are necessary or expedient.

The Order would provide for the Commonwealth citizen who has been admitted to practise in a Commonwealth country for at least 10 years, which would, in effect, show that a person, with some sort of experience, would be eligible to practise law in Trinidad and Tobago, but not unlimited: "...on such terms and conditions, including but not limited to the duration of the admission, as the Minister may specify in the Order." What would happen in practice, Mr. President, is that the Order would specify the terms and conditions and the limitations.

If I may anticipate the question of Sen. Dr. Mc Kenzie, I think that it is not necessary to include "for a client," having regard to what is stated, "considers it necessary or expedient." I do not know whether the Senator would consider that because the lawyer would appear for a client and can only do so if it is necessary or expedient, he would have to apply to the Minister and the Minister would then make the Order after consultation with the Chief Justice.

Sen. Dr. Mc Kenzie: Mr. Chairman, it is just that I would like to know that if Mr. Maharaj is no longer the Attorney General the person replacing him must understand this too. I would like to know that this is documented so that whoever is the Minister would know that this person must have a brief before he comes. If it is implied in it, fine—as I said I have no legal expertise—but if it is not, I would like to see it included.

Mr. Maharaj: Sen. Mc Kenzie, whoever is the Attorney General, in order for the particular attorney to get admitted he would have to satisfy the Minister that it is for a case, and that the case is necessary or expedient to have a foreign lawyer. The Chief Justice will then have to be consulted, it takes in that process.

Sen. Dr. Mc Kenzie: Very well , Sir.

Sen. Montano: Mr. President, I understand what the Attorney General is trying to say, however the private citizen who makes an application to the

Minister—it would seem from the wording here, that there is a discretion on the part of the Minister whether he talks with the Chief Justice at all. In other words, the Minister could decide at that point that it is not expedient, not speak to anybody and end it right there. Is that what would happen here? There does not seem to be any requirement for the Minister to actually consult with the Chief Justice on any particular application.

Mr. Maharaj: Mr. Chairman, "...where he considers it necessary or expedient, may after consultation with the Chief Justice,". If a Minister gets an application then he would have to consider it and if he does not do so there are steps that can be taken like in any other matter. I think, however, that a responsible Minister—a Minister properly directed in law—must act in accordance with law. If he does not act in accordance with law like any other discretion, it is liable to be reviewed. One cannot really legislate for all those matters. If one is bringing a lawyer from abroad one would know that if the Minister does not consider or give a reason—even with respect to this matter—the exercise of a discretion can be challenged.

Sen. Montano: I appreciate what the Attorney General is saying, however, speaking as a layman, one certainly attempts to avoid litigation. It seems to me that a matter that may involve a private citizen going against the State, one might feel that the matter would not be dealt with in such an arbitrary manner, because then it would be another legal issue that would have to be dealt with before this one.

Mr. Maharaj: The way the legislation is drafted it means that he must consult with the Chief Justice; he has no discretion, he must consult.

Sen. Montano: It does not seem to say that.

Mr. Maharaj: All right. In order to make it clearer it would read as follows:

> "Notwithstanding any law to the contrary the Minister, where he considers it necessary or expedient, after consultation with the Chief Justice, may by Order...,"

Will that suffice?

Sen. Montano: Yes.

Sen. Prof. Spence: Mr. Chairman, may I address two other points? The changes which the hon. Attorney General has made with respect to the draft made by Sen. Daly seem to be going into the direction of liberalizing the system a little more and removing some of the restrictiveness which Sen. Daly had in his draft.

4.10 p.m.

I would venture to propose, for consideration, a combination of the two, where it says: "Notwithstanding any law to the contrary the Minister, where he considers it necessary or expedient, may after consultation with the Attorney General." I would like to put after the word "expedient" "and normally only in exceptional circumstances." I think it is the wording of Sen. Daly's original draft. So that one allows him some discretion, but guides him.

In other words, I think we should give a bit more guidance as to the circumstances under which the approval will be given. Similarly, I would suggest that Sen. Daly's draft emphasizes the temporary nature of the admission whereas, the new amendment does not give that guidance. Again, I would say that what one could have where it says: "...including but not limited to the duration of the admission..." one could say: "which would normally". I am using "normally" in both cases to give the Attorney General some leeway—which I think he needs to have—but given some guidance as to how one should expect him to act. So if one would say: "normally be temporary," it does not pin him down, he can act outside of that, but it guides him as to how he should use his discretion and similarly in the case of necessary experience it is guiding along the line that normally one would expect the circumstances to be exceptional, but he has some discretion to veer away from that if it is expedient to do so.

Mr. Maharaj: Mr. Chairman, I appreciate the hon. Senator's comments. This has been studied in detail by the department and the drafting experts, and I have been advised that where there is "...it necessary or expedient", it is really limiting it because one will have to show it is necessary or expedient. So it really means exceptional circumstances, but in drafting, that is how it has to be. I am also advised that because of some difficulties in using the word "temporary" the way to guard it and make it conditional and to restrict it, is that on such terms and conditions including but not limited to the duration of the admission so that in drafting the Order, one can have "limited to certain matters or a duration of a visit."

One has to understand that sometimes a case may not be completed on a particular date and, therefore, if one puts a period of time— It depends on the circumstances but it is trying to make it as limited as possible.

Sen. Prof. Spence: Could one say: "for a particular case"? We are talking about admission for a particular case which may take a long time.

Mr. Maharaj: One of the difficulties with that, I am told, is that if you put a particular case and the case is adjourned afterwards you may have to come again to get the person to be admitted to practise.

Sen. Prof. Spence: Why would he have to be re-admitted? Even if it is adjourned, he is already admitted for that case.

Mr. Maharaj: Well he is admitted only for a particular duration or a particular set of circumstances.

Sen. Prof. Spence: I am suggesting you use "case" instead of "duration". It may not be appropriate, but I am a layman trying to give as much guidance as possible to the person who eventually has to interpret the law.

Mr. Maharaj: You may want to admit a particular lawyer, for example, who has three or four consolidated cases all connected so that if you put it too limited, it will, in effect, frustrate the intention of it.

Sen. Prof. Spence: Yes. That is why I like to use the word "normally" because I am afraid that just what you say may happen. To take Sen. Dr. Mc. Kenzie's point. It may be that he is coming for one case and he says it really is not worth his while to come for this one case, and he then goes around looking for other cases.

Mr. Maharaj: No, no. Mr. Chairman, it is not that way. There may be, for example, a case which is connected with the particular matter. It may not be that he comes and looks around for another case. Before he comes, he will obviously apply to be admitted to practise in respect of that particular case, or class of case, or whatever.

Sen. Prof. Spence: I still have a little problem. I think that perhaps our discussion since it goes in the *Hansard* will serve to guide subsequent decision making.

There is one final point, Mr. Chairman, and I think it is connected to the point which Sen. Montano made in a way and that is, there seems to be no appeal process. If the matter goes to the High Court for admission and it is rejected, then is there a process for appeal?

Mr. Maharaj: Yes, there is an appeal to the Court of Appeal.

Sen. Prof. Spence: Yes. That is if you are being presented, but if you are being rejected by the Attorney General in consultation with the Chief Justice, there is no mechanism for appeal.

Mr. Maharaj: That is why the amendment was redrafted to say that in respect of an application there would have to be the consultation with the Chief Justice and then by an Order.

Sen. Prof. Spence: I understand that, but it means there is no appeal against that, whereas in the other process there was an appeal.

Mr. Maharaj: There is no appeal but there are other remedies which can possibly be taken. There is no appeal process for that because then we would have sent an appeal to the Court of Appeal in respect of an administrative matter.

Sen. Prof. Spence: In the case of 15(4), if one has been rejected by the High Court, one could appeal to the Court of Appeal.

Mr. Maharaj: Yes. In other words, if there is a refusal by the High Court to admit a lawyer, one may appeal.

Sen. Prof. Spence: If the refusal occurs before that, one has no form of appeal.

Mr. Maharaj: There is always the possibility of judicial review for the lawyers in any event. To put an appeal process in these matters would just make it very cumbersome.

Sen. Beckles: Mr. Chairman, I suggest to the Attorney General that the situation spoken of by Sen. Prof. Spence is very much like a fiat, in that if the case which the person has come to deal with is specifically stated, it makes the situation much easier. The issue of the reciprocity that was raised by a couple of the speakers and my suggestion on that is where the words "Commonwealth country" occur, we could have an amendment that would state "where there are reciprocal arrangements". The other suggestion would be "after consultation with the Chief Justice and the Law Association".

Mr. Maharaj: In respect of reciprocity generally, we are doing an overhaul of the whole Act and we cannot deal with it in this amendment, obviously because in some of the Commonwealth countries like England, a lawyer cannot go to practise there unless he passes the external bar examination and is a citizen of that country. So we cannot really deal with it.

Sen. Beckles: Are you saying that you are going to deal with reciprocity on another occasion?

Mr. Maharaj: On a general...*[Inaudible]*

Sen. Beckles: What is your view on the suggestion with respect to consultation with the Chief Justice and the Law Association?

Mr. Maharaj: In legislation like these, there is not really a private body although the body is the Law Association, because there will be a frustration of the Act. In the Bahamas for example, where there is similar legislation, we do not have this done and in section 16 it says: "the Minister in consultation with the Chief Justice." I think that is sufficient safeguard.

Sen. Beckles: The thing about the Bahamas is that it has specifically put into the agreement an exemption that would allow them to do, by amending the agreement, exactly what we are doing here. That is the only difference. They amended the agreement so that they would not have the problem that we have here. All the other countries already have notice of the—

Mr. Maharaj: The amending of the agreement is that the Minister on an *ad hoc* basis can, on consultation with the Chief Justice, provide the admission.

Sen. Prof. Ramchand: I would like to have another go at reinstating the word "temporarily". Could we say: "Eligible to be admitted to practise temporarily as an attorney-at-law in Trinidad and Tobago on such terms and conditions and for a period including, but not limited to the duration of the admission,..."? Would the phrase "admitted to practise temporarily" upset the Attorney General?

4.20 p.m.

Mr. Maharaj: It is not a matter whether it upsets me, it is whether it is acceptable or it would change the meaning.

> "To practise law temporarily in Trinidad and Tobago on such terms and conditions and for a period including but not limited ..."

Mr. Ramchand: You still have "including but not limited ...".

Mr. Maharaj: One has to understand that all these things done would have to be reflected in an Order and there would be difficulties in drafting the Order to comply with the Act. I am told that what we have here is exactly what it means.

Mr. Ramchand: It is one little word.

Mr. Maharaj: Do you know that sometimes one little word can create all the difficulties. As a matter of fact, if one wants to stretch it, temporarily can mean 10/15 years.

Mr. Ramchand: That is why "...temporarily and for a period including but not limited ..." When radicals say that foreigners are allowed to come in, you could say that it is temporarily.

Mr. Maharaj: If you look at it in this way:

" ...on such terms and conditions, including ...."

No Minister or Attorney General in the exercise of proper powers would want to deal with this kind of matter without proper consideration of the matters. In any event, an application has to go to the courts.

Sen. Marshall: Would such practitioner be subject to the normal laws of income tax as any other citizen?

Mr. Maharaj: Yes. I am informed that such a lawyer has to pay his income tax and it has to be paid before he leaves the country.

Sen. Marshall: Thank you.

Sen. Montano: You are moving the word " may" after the word "expedient" and putting it after the words "Chief Justice"?

Mr. Maharaj: The word "may" should be placed after the words "Chief Justice".

Sen. Montano: Then you have to move the word "may" after "expedient".

Mr. Maharaj: Yes, thank you very much.

Mr. Chairman: It should now read**:**

"The Act is amended by inserting after section 15 the following new section

'Special case of admission	15A.	Notwithstanding any law to the contrary the Minister, where he considers it necessary or expedient after consultation with the Chief Justice, may by Order provide that a Commonwealth citizen who has been admitted to practise in a Commonwealth country for at least 10 years, is eligible to be admitted to practise law in Trinidad and Tobago on such terms and conditions, including but not limited to the duration of the admission, as the Minister may specify in the Order."

Question put and agreed to

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

Question put and agreed to.

New clause 3, as amended, added to the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, before I move the adjournment, may I give definite notice to all Senators that the next sitting of the Senate takes place on Tuesday June 11, 1996. We would be focusing on two Bills; "An Act to afford certain privileges and immunities on the Commonwealth Development Corporation and also "An Act to amend the Coroners Act, Chap. 6:04".

I beg to move that the Senate do now adjourn to Tuesday, June 11, 1996 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.26 p.m.