

**SENATE***Tuesday, June 18, 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 Danny Montano and Prof. Kenneth Ramchand.

**IMMIGRATION (CARIBBEAN COMMUNITY SKILLED NATIONALS) BILL**

Bill to remove the restrictions on entry into Trinidad and Tobago of skilled nationals of qualifying Caribbean Community countries, brought from the House of Representatives [*The Minister of Foreign Affairs*]; read the first time.

*Motion made,* That the next stage of the Bill be taken at the next sitting of the Senate. [*Sen. The Hon. W. Mark*].

*Question put and agreed to.*

**PAPERS LAID**

1. Report of the Auditor General on the Accounts of the Environmental Management Authority for the period July 01, 1995 to December 31, 1995 [*The Minister of Public Administration and Information (Sen. The Hon. Wade Mark)*].
2. Annual Report of the Trinidad and Tobago Management Development Centre for the year 1991. [*Hon. W. Mark*].

**ORAL ANSWERS TO QUESTIONS**

**Lead Slag Contamination  
(Squatter Settlement, Demerara Road)**

*The following questions stood on the Order Paper in the name of Sen. Prof. Julian Kenny:*

5. (a) Could the hon. Minister of Health inform the Senate whether the squatter settlement at Demerara Road, contaminated with lead slag has been de-contaminated?

- (b) If the answer is in the negative, could the Minister inform the Senate of the number of families and of the approximate total number of individuals still resident on the settlement?
- (c) Further, could the Minister state what Government's proposals are for re-settlement of these residents and the de-contamination of the site?

**International Trade Convention  
(Endangered Species)**

- 6. (a) Could the hon. Minister of Agriculture, Land and Marine Resources inform the Senate whether the Convention on International Trade in Endangered Species (CITES) has been ratified by the Government of Trinidad and Tobago?
- (b) If the answer is in the affirmative, could the Minister state whether legislation in support of CITES has been drafted, and the timetable for submission of legislation to Parliament?
- (c) If the answer is in the negative, could the Minister give an indication of the timetable for formal ratification and the nature of any proposed legislation required under CITES?

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. President, we would like, with the kind leave of the Senate, to have both questions deferred for a period of two weeks.

*Questions, by leave, deferred.*

**MARRIAGE (AMDT.) BILL**

Bill to amend the Marriage Act, Chap. 45:01 [*The Minister of Public Administration and Information*]; read the first time.

*Motion made*, That the next stage of the Bill be taken at the next sitting of the Senate. [*Sen. The Hon. W. Mark*].

*Question put and agreed to.*

**ADMINISTRATION OF JUSTICE (MISCELLANEOUS PROVISIONS) BILL**

Bill to make provision for the State to have the right of appeal in criminal proceedings; to amend the rules of evidence in criminal proceedings; to make provision for the giving of notice of an alibi; to extend the jurisdiction of the Petty Civil Court; to make provision for the awarding of interest by the Petty Civil

Court; to make certain offences triable summarily; to increase the quantum of compensation which could be awarded by the High Court in criminal matters, [*The Minister of Public Administration and Information*]; read the first time.

*Motion made*, That the next stage of the Bill be taken at the next sitting of the Senate. [*Sen. The Hon. W. Mark*].

*Question put and agreed to.*

#### ARRANGEMENT OF BUSINESS

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. President, I would like to suggest that Bill No. 2 on the Order Paper, be taken at this stage of the sitting.

*Agreed to.*

**1.40 p.m.**

#### CORONERS (AMDT.) BILL

[SECOND DAY]

*Order read for resuming adjourned debate on question* [June 11, 1996]:

*That the Bill be now read a second time.*

*Question again proposed.*

**Sen. Orville London:** Mr. President, I did not intend to intervene at this time, however, I have a few remarks to make on this particular Bill.

I am neither isolationist nor secessionist, but I am sometimes quite concerned when bills come to the Senate and data is not necessarily included, specifically on Tobago, and there is no evidence that there have been analyses to ensure that there are no peculiar circumstances which might justify a specific clause in the Tobago situation.

We have information on the number of outstanding inquests nationally, but, in his contribution the hon. Attorney General did not include information on the Tobago situation and whether, based on that information, there might not be need for variation of some of the clauses.

For example, one finds that officers are often reluctant to come to the island because of transportation problems, dislocation and so forth. According to the Attorney General's explanation—I get the impression that the coroner would be

placed on a lower level than a magistrate because when the backlog of cases is finished the coroner could then function as a magistrate.

Now, under those circumstances I am a little concerned as to whether it would not be quite difficult to encourage people of calibre to operate as coroners in Tobago. I am wondering whether it might not be feasible to give the Chief Justice the option, in special circumstances and in special districts, to assign magistrates to function exclusively as coroners. In other words, instead of having a situation where the Chief Justice may assign any number of coroners to one magisterial district or one coroner to any number of districts, I am suggesting that it might be possible for us to give the Chief Justice the option to appoint a magistrate to a particular district and instruct him to perform exclusively as a coroner. This might help to alleviate some of the problems.

I was a little concerned also about the fees for the pathologist. I know of more than one instance where pathologists have not come to Tobago because they did not want to view only one body at a time. I know of one very distressing situation where a mourner had to almost wait for someone else to die before the pathologist would arrive.

I am not suggesting that it is related to the fee; it might be, if one is to take a holistic approach to this particular piece of legislation, one must factor in the peculiar circumstances in Tobago.

Mr. President, one may think that I am over-reacting, but I want to draw reference to a situation which has made me extremely cautious about legislation, and statements made in this Senate without taking into consideration the peculiar situation in Tobago.

One might recall sometime ago that the Minister of Housing and Settlements very eloquently briefed us in this Senate about his intentions concerning the Squatters Regularization Bill. At that point in time I cautioned him, and my fears have been realized. Those of you who know Tobago would know of the village, Signal Hill, in which I live. At Signal Hill there is a land distribution programme where 200 lots have been made available. During periods ranging as far back as two years ago, a total of 600 people, the majority of whom are Tobagonians, have paid down a minimum of \$20,000 with the hope of acquiring one of those lots.

There is the situation, therefore, in which at least 400 of those individuals are going to be disappointed—they are going to be disappointed two or three years

later because that \$20,000 which they invested in 1994 would not be able to buy anything of a similar value in 1996 or 1997. That is not my major concern.

Almost immediately after the Minister of Housing and Settlements made the statement—just across the road from the settlement is more state land and this might be coincidence—to our great consternation, non-Tobago-based residents have now arrived and taken up residence on state lands.

Mr. President, Tobagonians are not squatters by nature—it is not in our psyche. One has to be very careful that in introducing legislation one takes into consideration the psyche of the Tobagonians otherwise one would find oneself—as the Minister of Housing and Settlements would somewhere down the road—being placed in a situation where one is going to be blamed for totally disrupting the social structure in Tobago.

So, I would like all the Ministers in the present Cabinet to recognize that when they are introducing legislation they must ensure that the specific needs and concerns of the Tobagonians are addressed.

Mr. President, as a layman, I have a little concern and I would like the Attorney General to explain why there is need for a Coroners Bill in the first place.

Let me explain what I mean. In his statement he said that the *Gurley Report's* recommendation was that at least some magistrates be appointed immediately to act as coroners to attack the backlog. Just on a point of information, I would be very happy if instead of a situation where we have a coroner who becomes a magistrate when the backlog is finalized, we could have magistrates specifically assigned to operate as coroners and then continue functioning as magistrates. I am a little concerned about that but maybe there is some legal explanation of which I am not aware.

Mr. President, we on this side, obviously, have very little problem with the principle behind the Bill. I just wish to state that we would give it our support on the condition that the concerns raised by my colleagues and I are addressed, and, of course, on condition that a holistic approach be taken of the particular problem. We also hope that when future legislation is brought to this Senate, the mistakes made by the Minister of Housing and Settlements would not be repeated.

Thank you, Mr. President.

**Sen. Dr. Eastlyn Mc Kenzie:** Mr. President, I have just a few questions for the Attorney General. From my limited legal knowledge, I get the impression that

*Tuesday, June 18, 1996*

if a venue is to be used as a court there has to be a special ruling or declaration to designate that place as a place to hold court.

Before the Attorney General spoke last week, I thought that these coroners would have been operating part-time. I say this because I know that most of the magistrates' courts do not sit until five or six o'clock in the afternoon. They probably close off at one or two o'clock in the afternoon and I thought that the coroners would go on from whatever time until the close of day. Then, he said that the posts would be full-time posts. I am wondering whether he has given consideration to the venues that would be used as these coroners' courts.

Has the Attorney General thought about staffing and the type of infrastructure and support system that would be needed for these coroners to perform well? I know this is something that he would have to think about very seriously, especially in Tobago.

**1.50 p.m.**

I would like to know what would be the method of selection for these people? Would they have to apply? Would they be appointed or nominated? I am not sure what type of procedure has been put in place, and I expect the Attorney General would enlighten me on that.

I heard of the sort of situation where, for example, in a preliminary investigation one need not have a venue. I believe that the coroner could actually perform that duty in his home. He could sit and get the information and say there is no need to go any further and he does his report.

Then, I thought of the areas. In some locations in Trinidad and Tobago there is more need for preliminary investigations and inquests than in others. Would the coroners be in a pool, as is done with the judges, and afterwards assigned according to the number of cases or would they be placed in specific locations? If that were the case and they are all full time—and one only has to do five cases in six months and another has to do five cases in one day for six months, would there be a retainer's fee and a difference for every preliminary investigation or inquest? What sort of fee structure would there be? Those are the types of concerns that I have.

I support Sen. London in his quest for the increase or special remunerations for the pathologist who has to operate in Tobago. We have had many instances where families could not dispose of dead bodies, bury, cremate or whatever, because they have to wait for five or six days for someone to come to do the autopsy. I believe

that there must be some sort of special consideration in handling this. I do not think raising the fee alone would do it. The availability of the pathologist is indeed, very important.

Mr. President, those are just my concerns.

**Sen. Diana Mahabir-Wyatt:** Mr. President, in looking at the Bill before us to amend the Coroners Act, I was grateful when I read that the intent of the Bill is to cut short delays which, at the present time, can intervene between the date of death and the date in which a coroner's inquest can be performed and a matter settled can be long and very painful. I was pleased, as I believe this Bill will go a certain way towards alleviating some of the grief and suffering that relatives experience in cases of violent death, particularly involving children, which can be emotionally tearing on people where the passage of time, such as nature's way of healing, can be made a mockery of when one or two years have passed since the death of the person involved, and one is called back into a coroner's court to live through the whole tearing experience again.

I was very pleased that this Bill has come before us and I think that the reasons for its coming before us are good. I believe that they are valid and worthy of being supported by this Senate.

I had a few questions. One has to do with preliminary investigations, where in the Bill it is said that examination of a report by the DMO or any relevant documents would be submitted to the coroners court. I wondered about the question of specialized reports. For example, in forensic science where there are specialized forensic reports dealing particularly with difficult murders, who is going to read and interpret these reports? I mention this because the question of the training of the coroners is one which has been raised. While those coroners no longer have to be magistrates, one wonders what sort of training the coroners will have in order to deal with some of the reports which come before them.

I ask the question in a specific context—unfortunately I do not have the newspaper report which prompted this particular concern, but a few weeks ago I read in one of the newspapers a report which was made—and I am not quoting verbatim, I am just talking from memory—where it was said in the Selwyn Richardson case that the Commissioner of Police or the relevant persons within the police service had not in fact received the forensic science report until a few months ago.

My recollection is—and perhaps those Members of Parliament who were here at the time can assist me—that there was a statement made to us at that time that the people in the forensic laboratory had worked round the clock so that within a very short period of time—an admirably short period of time (I think it was two or three weeks)—a report was made. Apparently, this report did not get to the relevant bodies so that it was not considered. This worried me somewhat. I am wondering what happens to these reports? Where do they go? If they are specialist reports, do we need special knowledge to understand them? I thought the procedure itself was worrying. I realized that it is improper to plead one's own case, but my own interest in this is just that of a normal householder.

In that particular neighbourhood because the crime has been unsolved, people still look over their shoulders when they are driving up the road and they very warily watch any stranger entering the area. The fact that nothing further happened in this case, I think, is relevant because if it is a delay within the length of time with which reports are made and dealt with, perhaps, this has had something to do with it.

The other point which I am concerned about has to do with the independence of coroners. I was pleased that this Bill would be able to deal with it so that there would be no question of prior arrangements being made with the police or anyone else. I think this will help considerably.

The one objection I have to this Bill which I have had with respect to a number of other Bills over the years, is why does one put fixed amounts into a Bill rather than say that the fees will be fixed by the order of the Minister? Once a Bill like this goes into legislation, chances are it would be another 50 years before it is brought back to Parliament, in which time a \$50.00 fee for viewing the body of a deceased person will be equivalent to \$.50 and the autopsy performed by a pathologist would be \$3.00 as compared to \$300.00. Monetary values change over time.

When we fix a monetary value in an Act it stays that way. It does not get amended. Over a period of time the people who are the professionals no longer wish to work for that small sum of money. We have seen this happen over and over again. It would be so much easier just to say that the fees would be fixed by order of the Minister; it does not have to be enacted in this piece of legislation.

**2.00 p.m.**

Having said that, I repeat that I am glad to see this Bill come before us; we are getting so many pieces of legislation which are cleaning up aspects of the judicial system.



I am saying this but at the same time my heart is very heavy when I should be pleased. I am considerably confused about the same judicial system which this Bill is intended to help.

I have just received a report that two citizens of this country were summoned to appear before a court and found guilty of apparently reporting observations relating to a very highly controversial trial. According to the report which I have before me, they were ordered to pay a fine of \$1,000 within seven days or serve an alternative of 21 days in prison. I am feeling guilty because I can stand and mention this in Parliament without being worried about being thrown into prison or charged, when these persons apparently could not comment in writing on their observations of a trial without being charged and found guilty.

I am wondering what is happening in my country when journalists are being jailed for doing what journalists do. One might not always agree with them, and certainly one might not always agree with the particular publications which they represent nor how they go about reporting, but I cannot remember a time in Trinidad and Tobago when someone was charged, found guilty and fined or imprisoned for expressing what I regard as a constitutional right.

While I am pleased to see that so much legislation is coming to us to help to address the judicial system to move more effectively and efficiently, which I think is highly commendable, I must express my fear and dismay at the reports of what is happening to people and freedom of the press.

Thank you.

**Sen. Martin Daly, S.C.:** Mr. President, some of us are very fond of repeating on nearly every occasion we speak in the Senate, that the activities of the state must be under continuous scrutiny which is usually carried out in the court, Parliament and the media. Anything that has the effect of diluting that scrutiny represents a fundamental danger to the security of our citizens. That is not to say that coroners cannot issue warrants for the arrest of persons, as they would be entitled to do under the old Coroners Act, as well as under the amendment to the Coroners Act.

I have two difficulties with this legislation. I do not feel comfortable with the fact that there are no guidelines being set for the holder of the office of coroner. I do not for one moment suggest that only lawyers or doctors should be coroners. In fact, at the moment, the whole country is having a terrible attack of *deja vu* as they watch the monumental callaloo which is being made by lawyers at the moment. Some of the lawyers are in the callaloo and we do not even know why. We are told

that they have intervened. They do not represent any party in the proceedings but they are there. This callaloo made by lawyers is burning on the stove and the whole country is smelling the burning, but we are proposing to pass a bill which does not give us any qualifications for the office of coroner.

We might find that a party group official has the power to issue warrants of arrest or to make findings if anyone has committed a felony, or perhaps, send people to jail for contempt of the coroners court. I would like to see this Bill amended. I do not have the expertise to know what is required to be a coroner. I would have thought that one would start with common sense and a balanced temperament. I do not suppose that can be put in legislation. That is my first difficulty with this Bill.

My concern is somewhat lessened by the fact that I understand that a journalist who was imprisoned on Friday has since got bail in the sum of \$75,000 from the Court of Appeal. My information which is being updated by that very unique relationship between the media and Parliament has not yet been updated to tell me whether this would be reported in the newspaper tomorrow. I sincerely hope it would. I am absolutely satisfied that whatever punishment is meted out to anyone for an infringement of the law, the fact that that punishment has been meted out cannot be secret. It would be very offensive to say that that would remind us of the Soviet Union because now in the Soviet Union, one can see continuous live updates on the television of Mr. Yeltzin and the other contenders fighting it out. Apparently we are regressing to the situation of secret jail.

**Sen. Mark:** Mr. President, on a point of order, under “Contents of Speeches” Standing Order 35(2— this matter is taking place in the courts of Trinidad and Tobago. I would like you to rule on Standing Order 35(2).

**Mr. President:** Sen. Daly, could you address directly the issue at hand since you are veering into an area which is a matter before the court at present.

**2.10 p.m.**

**Sen. M. Daly:** Mr. President, all I am saying—and you will guide me—is that I do not want someone whose qualifications are not prescribed, to have the power to issue a warrant of arrest or to keep secret the fact that he has issued a warrant of arrest.

Perhaps I can come off that section and go now to the omission of the section which I asked the Attorney General about last week, and that is, the repeal of

section 20, which is another problem I have with this Bill. I am concerned about the repeal of section 20 which says:

“Every inquest under this Act shall be a judicial inquiry and may be held as well on a Sunday as on any other day.”

I do understand the point which was being made by the Attorney General in response to my question, that under the amendment coroners may now have an inquisitorial role, but I do not accept that an inquisitorial role means that one is not carrying out a judicial inquisition. Therefore, Mr. President, I would like to see section 20 retained to remind everyone that the coroner is carrying out a judicial inquiry, and lest any of these unqualified persons should not understand, they should act judiciously. I would like section 20 retained so that persons who serve as coroners under the amendment are reminded that they must act judiciously and that judiciousness requires that there be no secrecy in the affairs of any arm of the state.

Indeed, some of my colleagues and I have campaigned and are still campaigning—I do not like the word transparency because it reminds me of certain things. We were, of course, children of very modest means and we did not have a cyberspace and a transparency was either something to do with a film or a ‘highfalutin’ word for a transfer. I am sure, Mr. President, that you remember a transfer in school. A person could put it in water, take off the transfer and stick it on his arm. That is what transparency makes me think of. I prefer to think about secrecy. I am very, very against secrecy in any of the affairs of state. I do not think anything the Judiciary does should be secret. I do not think anything the Legislature does should be secret. I do not think anything the Executive does should be secret.

A judicial inquiry is the exact antithesis of secrecy. Judicial inquiries take place in the open subject to the scrutiny of the media. Judicial decisions are rendered in the open subject to the scrutiny of the media. I think this is a particularly bad time for us to remove a provision which says that an inquest should be a judicial inquiry. We need to be reminded, Mr. President, of the great dangers of secrecy in any society. Any functionary who makes a decision concerning anything—and here, of course, I speak only of coroners because I have to be guided—and feels that that decision should be kept secret, would cause some concern in the society.

So, Mr. President, I express those two misgivings about the provisions of this Bill. May I say that I continue to be very heartened by the fact that the Attorney General is visibly and demonstrably committed to the implementation of the *Gurley*

*Report.* I am not at all alarmed by the speed or the volume of the legislation which he is bringing if it will make the judicial system more efficient, but I suppose we need to be reminded that the laws need to be implemented by man and laws can be made into callaloo by lawyers.

Mr. President, that is my contribution to this Bill.

**Sen. Penelope Beckles:** Mr. President, I, too, would like to raise some of my concerns as they relate to the Bill before this honourable Senate.

The Attorney General, in his contribution on June 11, 1996, stated that this Bill is attempting to put into law the recommendation of the *Gurley Report* that persons who are not magistrates can be appointed as coroners. If I might just refer to the recommendations of the *Gurley Report*—I am subject to the Attorney General's clarification—it stated that at least seven magistrates should be appointed immediately to sit as coroners to attack the backlog. Three of these magistrates should be posted to the magisterial district of St. George West, and two to the magisterial district of Victoria. The remaining two should be assigned to the other magisterial districts as required.

Mr. President, as I said, the Attorney General stated that he was attempting to put into law the recommendation of the *Gurley Report* that persons who are not magistrates can be appointed as coroners. My reading of the recommendation of the *Gurley Report* was not that persons who are not magistrates can be appointed as coroners.

The Attorney General traced the history of the development of coroners. He gave us examples of the Canadian, American and British positions. Over the years these countries would have developed; they would have done investigations and come to certain conclusions. In Britain, the persons who are used as coroners very often are either qualified lawyers, or doctors who have also qualified as lawyers. Certainly, my investigation does not suggest that those persons do not have legal training.

Without wanting to say that the Attorney General has suggested that those persons who are appointed as coroners are non-lawyers, I think that if the Bill were clearer, then we would be comfortable in terms of the interpretation; that what he is saying is that those persons may be lawyers but not magistrates. So when Sen. Daly raises the question of the qualifications of the coroners, that is a very legitimate concern because no where in the Bill does it really clear up [*Interruption*] Of coroners? What section? All right, criteria for selection, but even

in terms of the qualifications, Mr. President, I hope the Attorney General will specify whether or not coroners will either be former magistrates, lawyers or doctors and what would be the criteria for selecting those persons.

I think the whole issue as it relates to the inquiry being judicial was simply because of the consequences that can flow and the serious, sometimes legal issues which may arise at the end of the inquest. Now, I have no difficulty in the suggestion that, for example, there are so many inquests arising out of suicides that the coroners may very well, having perused those documents, feel that there is no need to go any further, and we may very well find that at the end of the day the number of inquests pending would be considerably reduced. In his presentation, the Attorney General stated that over 3,000 inquests are outstanding in Trinidad and Tobago. As a matter of fact, he gave us the figures up to April 1996, which I think are very helpful.

I would ask the Attorney General very kindly, if it is that the Bill before this House would not necessarily deal with the issue of delay, as is his concern, if he would not seriously ask for statistical data on the breakdown of those 3,000 and more inquests that are pending.

**2.20 p.m.**

My investigations would have told me—and I am suggesting to the Attorney General that he gets this cleared up—that when the information “pending” is given, some of the inquests have actually been completed. When I say completed, Mr. President, I mean that they would have already taken evidence from all the witnesses in the case and they have reached a stage in the Magistrates’ Court where the evidence has not been typed. The Attorney General would be surprised to find out that in several of the courts in the country, there are situations where inquests have been completed and all the evidence taken but has not been typed in order to be submitted to the Director of Public Prosecutions.

It is quite easy to say that a Bill is very simple when it comes before the House; that the *Gurley Report* was submitted in 1992 and we are now in 1996 and certain things have not been done. However, Mr. President, we may very well find ourselves in a situation where this Bill becomes law but all the necessary infrastructure that needs to be put in place to ensure that the Bill is implemented is actually in place.

Mr. President, I would like to give this Senate a little idea of exactly what happens. A person dies, and I am sure we all know that sometimes hours may pass

and there is no DMO in attendance. Then there is the next stage where the DMO gives the person a post mortem report. Mr. President, I do not know whether any investigation has been done, in terms of inquests that are pending, to find out the length of time it takes from when the DMO's report is sent to the police station or the court to the start of investigations. The Justice of the Peace may have several other inquests and it is almost within his sole discretion to decide when those inquests are to be listed for hearing.

Further complicating the matter—and I know the Attorney General is aware of this—is that the investigating officer may not necessarily be the person entrusted with the summons to serve to those witnesses. If we are putting in train these simple pieces of legislation to ensure that they work, all the chains in terms of what has transpired from the time a person dies until the inquest has actually started, need to be addressed.

There are shortages of summons pads in the police stations. Very often an investigator comes to court and says that he is not responsible for serving the witness. I hope that the Attorney General will also be looking at those issues. Matters are called, there are 20 witnesses, the investigators are present and not one of those witnesses is served. When we talk about delay; it is not simply bringing the Bill before the Parliament; it is ensuring that all the different steps are taken so that these things actually materialize and that they are as effective as we want them to be.

The Attorney General said that he wants the Opposition to give an explanation why this legislation took so long. Mr. President, my colleague indicated that there was a comprehensive package presented by the People's National Movement while they were in Government in terms of how certain things were to happen to ensure that the machinery, mechanism and infrastructure were in place. Presently, as I understand it, there are 32 magistrates sitting. The Attorney General has sought and has gotten approval for an additional 12 magistrates which will bring the strength up to 44. Is it necessary, Mr. President, if we now have 44 magistrates sitting to have additional persons to sit as coroners?

When the PNM was in government there were additional courts because the Arima court was being built; a court in Sangre Grande; the Hall of Justice in Port of Spain and other courts were scheduled to be built in San Juan and Chaguaramas. Therefore, one would, at least, have the buildings first. Approvals were also being sought for an increase of judges and magistrates, so that at a particular point, one could have seen a logical flow in terms of the mechanisms

being put in place, so that one would reach a particular place and point in time where one can see that the administration of justice was being strengthened and dealt with from a holistic point of view.

Mr. President, the Bills are coming very fast and furious, but speed does not necessarily mean efficiency or that the delays in the administration of justice would be dealt with quickly. I have no difficulty in supporting this Bill and the fact that the Attorney General is making efforts to bring all these Bills before the Parliament. However, the point is that one cannot simply want to give oneself credit for bringing these Bills, it has to go a little further than that. I think that the community does not only want to see the Bills being passed, they also want to see that whatever is put in place ensures that the administration of justice moves smoothly. We are looking to see whether those things are happening.

Mr. President, as happened in another place, the Bill was passed and became law but one goes down to the court and sees people's cars are being wrecked, and there is no accommodation for the jurors. All those things depend on whether one has the machinery in place to avoid certain things from happening.

At present, in Port of Spain and several other districts, the Magistrates' Court is understaffed. Very often the same note-takers who are conducting other matters of a criminal nature or a petty civil nature would also be taking the information of the coroners. We have a situation now where one note-taker takes notes in more than one court. When the Attorney General talks about explaining, it is because one has to ensure that one has the relevant staff and that there are people who are properly trained to ensure that the right things are done so that we do not continue to have matters clogged.

I think we have to raise serious issues of concern, when there is a situation where we remove the issue of the judicial enquiry. One can have murders relating and certain matters pending and the Attorney General outlined all the several other issues relating, such as legal issues that can flow and people wait until the outcome of the inquest in order to decide what further steps should be taken. For example, the Clerk of the Peace from the Siparia court who was responsible for doing the inquest has been transferred to Port of Spain. There is a situation now where typing and getting the information for the inquest prepared is no longer happening. Mr. President, those things are now at a standstill. I am saying, put additional coroners, but one must also have the staff to ensure that when the evidence is taken, things are tied up very quickly and sent to the Director of Public Prosecutions.

In several of the courts in Trinidad and Tobago there are magistrates who do not like to deal with the inquests; magistrates are doing other matters and also doing inquests. The same staff used for handling inquests is used for other matters. Is the answer simply to say, appoint other coroners? Mr. President, that should also mean the appointment of additional staff. One would also have to be sure that the police officers, who are doing the investigation, are given all the tools so that they can have all the documentation ready to deal with these matters quickly.

**2.30 p.m.**

Mr. President, the point is that 10—15 years ago there were magistrates who went to different jurisdictions only doing inquests. They started at a particular time and things had reached a stage where they were moving very quickly. I think we must admit that what has happened in Trinidad and Tobago is that crime has escalated and therefore the necessity to deal with matters very quickly obviously would have arisen. Sometimes we have not been able to keep up with the extent to which things have been moving and to put all the measures in place to allow them to be dealt with as quickly as they are happening. I will ask the Attorney General, in his analysis and investigation, to look at the inquests that have been completed, but are called pending simply because they have not been typed out. Several of the inquests, as well, are those relating to suicide that could be dealt with quickly.

Mr. President, we also have a situation, which may have developed because we have not seriously looked at the whole administration of the magistrates court system. Some magistrates start inquests and then they are transferred to Princes Town, or to Siparia and the witnesses lose interest and nothing goes further. We really do not want a situation where we are simply shifting the problem and not dealing with the solution. I feel that it would not serve in the interest of many of the victims and family members of persons who are deceased to appoint coroners who may not understand and appreciate some of the serious legal issues.

I know we are all aware that we are having situations now where crime is almost becoming so modern and scientific that some of us just cannot really detect what some of these criminals are doing. Therefore, it is not going to be very easy to simply take a person who may not have the necessary legal training and who may not appreciate the fact that we are reaching a stage of what one might call advanced crime, and put him as a coroner. When we have that situation, I think that we all have a responsibility to ensure that we are absolutely careful in terms of the persons who are appointed as coroners.



There are several pieces of law reform documents from persons who would have conducted inquiries over time. I think that one of the areas that we have not examined at all and which I would also suggest that the Attorney General looks into, is that sometimes in terms of the magistracy, persons who would have practised law all their lives are made both magistrates and administrators. So very often we do not have persons who may be skilled in the field of administration and these things may not be looked into to see how one may assign magistrates and other persons to ensure that these inquests are dealt with properly.

I feel that there are sufficient persons who are retired magistrates who can be utilized for the purposes of doing many of these inquests. We have to be sure that we have, as I said, the infrastructure, the building and the staff and that we do not have a situation where we encourage low morale because members of the staff feel that they are being asked to do additional work and they are not properly compensated or consulted before many of these things come into train.

As I have indicated, I had hoped that some form of proper analysis would have been done in terms of the breakdown of the 3,000 plus inquests which the Attorney General mentioned. My information is that 'pending' does not mean to say that those matters have not been completed. When we look at the conditions under which the staff have to operate in some of the courts in Trinidad and Tobago, I think that if we are coming before the Senate and bringing these Bills, we also have a responsibility to ensure that we improve the conditions and ensure that the staff and other members who work there are comfortable. Those of us who have been to any of the magistrates court would have seen that many of the members of staff are overworked.

Mr. President, I hope that when this Bill becomes law, that the Attorney General will also look at some of those issues so that the members of staff would feel comfortable. It would mean that not only are we bringing legislation very fast and furious, but we are also looking very seriously at the persons who, at the end of the day, would have to ensure that these pieces of legislation work properly and efficiently so that we do not continue to have delays in the administration of justice. So often we feel that when we bring bills before the Parliament and they become law that we are actually solving the problem, and that we are dealing with the delays in the administration of justice. What we do not realize is that there are so many other things that need to be done.

I recall the last time the Attorney General was here, he indicated that some of the legislation would take time and I just want him to know that we on this side are fully aware of that, but measures must be put in place to make sure that when

they are implemented, they are effectively done and that all members of the society feel that they are getting justice. Speed in passing legislation does not mean that there is justice, and I say again, that I would like the Attorney General to clear up the issue in terms of what would be the guidelines for these persons holding office. He mentioned, and my colleague, Sen. London, spoke about the fact that coroners can subsequently become magistrates. The inference from that is that those persons would, as I said, more likely be attorneys. I also share the concern that the removal of the phrase, "...shall be a judicial enquiry'.

Mr. President, there are several inquests—and I could remember for example the Bernadette James inquest—that were never completed. The magistrate who was on that matter was elevated to the status of a judge before it was completed. Those are some of the things that are done that impact very seriously on the family of those persons, and we have to ensure that when this Bill becomes law that some of the mistakes that have been made would be avoided so that proper guidelines could be set down.

We do not want a situation where the Judicial and Legal Service Commission, which has the power to appoint those persons, is not given clear guidelines in terms of what is the selection process—in other words, an attorney with five, seven or 10 years' practice, or an ex-magistrate. I think if that is cleared up we would feel much more comfortable in terms of what the expectation is. I also feel that if the particular aspect to which the Attorney General referred, which is when the coroner peruses the information that is sent to him he could decide by giving his decision in open court, several of the inquests that have traditionally taken a great length of time would be considerably reduced.

Mr. President, I do hope that the Attorney General would address in his winding up some of the concerns which I have raised. I think the Bill is one which quite a number of members of the public would welcome but, as I have said, we need to know that all the different links in the chain are addressed from the time of death to the time in which the inquest is completed.

Mr. President, that is my contribution.

**2.40 p.m.**

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. President, may I start with the last speaker, Sen. Beckles.

It is very surprising that the PNM can get up in this Senate and talk about implementation of legislation. One sees the attitude of the PNM in serious legislation; talking about the Jury Act being passed but there is no parking space at a court and there is wrecking of vehicles. Of what relevance is that? Then, talking about we have to be careful that legislation which is passed, if there is no infrastructure there would be no implementation.

Mr. President, this would bring a response from this side of the Senate, because if one government was guilty of that, it was the PNM when it was in office. As I stand here today, the Dangerous Drugs Act, which was passed in 1994, to deal with crimes of drug lords and people involved in the drug trade, the PNM did not set up any machinery to implement that legislation—neither investigatory, neither information gathering, neither machinery in the land registry or the companies' section in order to gather information. They did not set up any machinery for detection of these persons. They did not set up any machinery, if such persons were even detected, for the prosecution of these claims both on a criminal basis and on a civil basis.

The Act specifically calls for a report as to the workings of the Act being laid in Parliament by the Minister of National Security, but no report has been laid. No report could have been laid because the Act was not implemented. The PNM gets up today in a serious debate on a piece of legislation such as this—which they could not draft for four years—to talk all around the sun and the moon about non-implementation of legislation.

As a matter of fact, it is because that Act was not implemented—and they would know why they did not implement it—and the Act calls for the setting up of a parliamentary committee to monitor its operations, but the PNM demitted office without setting up that parliamentary committee. And they involve in drugs, and they are interested in solving drugs and crime and implementing money laundering legislation?

**Sen. Beckles:** Mr. President, “And they involve in drugs”. Can the Attorney General say who is the “they” he is speaking about?

**Hon. R. L. Maharaj:** Mr. President, I do not know—it was a slip of the tongue and then I said—Your tongue never slipped! *[Laughter]* I did say “They involve in drugs” and then I said “...they are serious about implementing drugs and crime legislation?”

You see, they like to get up here and talk and when matters are responded to, they get annoyed.

**Hon. Senator:** The Member likes to lock up people.

**Hon. R. L. Maharaj:** Mr. President, I would not deal with the Senator here. The Senator knows about the locking up of an Opposition Leader; Mr. Ramishand and Company.

Mr. President, that is not the only piece of legislation—

**Sen. Jagmohan:** Mr. President, I regret to have to intervene at this time.

**Hon. R. L. Maharaj:** Mr. President, on what is the Senator standing?

**Sen. Jagmohan:** Point of order, Sir.

**Hon. R. L. Maharaj:** What is the point of order?

**Mr. President:** To which Standing Order is the Senator referring?

**Sen. Jagmohan:** Mr. President, I do not have my—

Mr. President, the Attorney General is being irrelevant in his reply. He is using retroactive legislation to reply on the instant matter. It seems to me the heat of the political hustings is having an effect on him and his outburst is in bad taste.

**Hon. R. L. Maharaj:** Mr. President, I would have thought that Senators would know what is an aside. If this hon. Senator would get up whenever there is an aside and say that, and he comes to this Senate and he does not walk with a copy of the Standing Orders—

*Sen. Jagmohan rose*

**Mr. President:** Sen. Jagmohan, please state whether it is a point of order, state the Standing Order being contravened.

**Hon. R. L. Maharaj:** Mr. President, that shows the PNM's way of preparation and running a country. They come to Parliament and they do not even have a copy of the Standing Orders.

*Sen. Jagmohan took out his copy of the Standing Orders.*

**Hon. R. L. Maharaj:** He knows it and does not know he has it. So, he does not know when he has a Standing Order, Mr. President.

**Sen. Jagmohan:** Mr. President, no law is absolute, a man must give way to conscience.

**Mr. President:** Let us have some order, please! Continue, Attorney General.

**Hon. R. L. Maharaj:** Much obliged, Mr. President. That is not the only law that has not been implemented and I would just give two instances.

There is the Preliminary Enquiry (Amdt.) Bill, which was passed under the PNM government, to permit statements to be used at preliminary enquiries to prevent delays in the hearing of a determination of preliminary enquiries. That Bill was passed in 1993 and up to when the PNM left office the machinery was not put in place, and it is now being put in place by the present administration in order to implement that bill.

So that laws were passed here under the pretext of attacking the delays in the administration of justice and they were not implemented. When the PNM gets up and talks about implementing legislation and passing law to implement legislation, this Senate, the media and the population must know that is “ole talk”.

Mr. President, what is the other point raised by the Senator? The Senator tried to adopt what Sen. Daly stated about criteria but she did not understand what was stated so it was difficult for her to articulate it.

If what she is saying is that she does not know whether the Bill would provide for coroners who are non-legal persons, then it is quite clear that the Bill only makes provision for persons who are legally qualified. Coroners would be appointed by the Judicial and Legal Service Commission and that Commission—if she read it, she would know—deals with judicial and legal officers only. So that only lawyers, whether they were ex-magistrates or whoever, would be entitled to be appointed as coroners. The policy of the Bill is not for doctors or other persons to be appointed as coroners.

I thought that the hon. Senator would have read the Bill and the Judicial and Legal Service Act to understand in what context this Bill was being put.

In respect of the other submission with respect to criteria, the Government looked at that because that was one of the matters which was considered—and that was a point made by Sen. Daly—but we operate in a system in which there is, what is called, the separation of powers. The state is comprised of three main arms—the Executive, the Legislature and the Judiciary. The judicial arm of the state is separate and apart and it is supposed to be administered separate and apart and the Executive should not interfere in the operations of the Judiciary.

Under the Constitution of Trinidad and Tobago, the Judicial and Legal Service Commission is given the power to make appointments in respect of judicial officers, and it is regarded as a contravention of the rule of law for the Executive to try to usurp the functions of the judicial arm of the state.

One of the matters we considered is that although there are, in the case of magistrates, certain qualifications—a lawyer has to have a certain number of years' practice before he can qualify to be appointed as a magistrate—in respect of this matter the policy of the Bill should be that the Judicial and Legal Service Commission should be given the power and the sole authority to determine whether a person is suited for that appointment.

**2.50 p.m.**

Mr. President, one cannot legislate for these matters, and I think Sen. Daly knows this. One cannot legislate in respect of everything. One would expect that if the Judicial and Legal Service Commission has to make an appointment, it would conduct its interviews and take every step that is necessary to ensure that the best appointment is made.

Mr. President, there could be a lawyer who has just come out of law school and would be a very good appointee in respect of being a magistrate or a coroner than a lawyer who has spent 10 years in the practice of law. One cannot really discriminate because it may be that a lawyer with a shorter period of practice may be a better appointee than a person with several years of practice. One has seen, not only in this jurisdiction, but many other jurisdictions, lawyers with years of experience and it does not necessarily mean they make the best judicial appointees.

So what we decided to do was trust the Judicial and Legal Service Commission in making appointments for lawyers to fill these offices as coroners, and we believe that they are quite capable to make those appointments and that the persons they appoint will be able to fulfil their duties under the Act.

Mr. President, in respect of assigning magistrates and coroners, a point that Sen. London made, one would see that under clause 3 (4) of the Bill:

“The Chief Justice may assign any number of Coroners to one magisterial district or one Coroner to any number of districts.”

The Government, no government, has the power to assign a magistrate or a judge to any court. The assigning of a magistrate or coroner is done by the Chief Justice, obviously with the concurrence of the Chief Magistrate. It is because the judicial arm of the state must function independently of the executive if the citizens' rights are to be protected and the system we have, whether we like it or not, is that if, for some reason, anyone believes that their rights are infringed, whether that person is a lawyer, a Member of Parliament, a Minister of Government, a journalist, or an oil worker, the court is the place where those matters are determined. If one is dissatisfied with the decision in the High Court, one can go to the Court of Appeal and in Trinidad and Tobago if there is a perception of interference, or no justice and that one can get better justice, one can even go to the Judicial Committee of the Privy Council. There is a system in Trinidad and Tobago now, Mr. President, that even if one does not win in the Privy Council, under the International Covenant on Civil and Political Rights one can file a petition before the United Nations Committee on Human Rights in Geneva. If one wants to explore it a little further, since we are party to the Inter-American Commission on Human Rights, one can even go before the Inter-American Commission. So one sees that there are avenues, if one believes that one's rights are infringed; one can go to the courts and get redress.

When the Bill, therefore, makes provision for the Chief Justice to assign coroners and we are asked who will decide and what kind of equity would there be? We need to have confidence in somebody. Not in Sen. Nafeesa Mohammed; not in Members of this side of the House, not in the Government, but in the Chief Justice and the Judicial and Legal Service Commission and the Judiciary. I could understand when people get frustrated, they do not have confidence in anyone, but if one looks objectively and we live in an orderly society, one must be subjected to rules and law. There must be discipline. When something does not satisfy one and that person decides to get on like a "spoil child" and sit down and say 'Not you, not you' it shows that person is not fully politically mature.

Mr. President, I think that the population of Trinidad and Tobago is well protected with this measure, in that the Chief Justice will assign the magistrates and the coroners to any particular magisterial district and he exercises that discretion. In this country, as a matter of fact—[*Interruption*] Mr. President, in this country even if people are not happy with the decision of the Judicial and Legal Service Commission they can file judicial review against the Commission. They can file for a constitutional motion, and they can go from the High Court to

the Court of Appeal to the Privy Council. There is precedent for that, Justice Crane was dissatisfied with the decisions of the Commission.

We live in a society of which we need not be too afraid and we must not be too quick to jump to conclusions and believe that things are wrong and violative of people's rights; and that people are being taken advantage of. We must learn to have patience; and go through the normal channels to be able to see what is happening.

Mr. President, there is one point that Sen. Mahabir-Wyatt raised which had to do with specialists' reports and inquests. She quoted a particular matter of someone who died. The whole purpose of this Bill is to try to have these inquests determined quickly. What happened, for example, in the death of Mr. Selwyn Richardson, former Attorney General, was that the police took no action to prosecute anyone. Thereafter no inquest was held and the whole purpose of the Coroners Act, really, is that if for some reason the police cannot make headway with their investigations, at least, a date can be fixed for an inquest to be held. But there are occasions on which investigations continue for a period of time because there is still a possibility of making headway in respect of the particular crime. I understand that accounts for some of the delay in the hearing and determination of inquests. The purpose of this measure is that, apart from those exceptions, we should really have a quick determination of inquests so that people will not only get over that matter very quickly, in the sense of having to give evidence and not have it hanging over their heads for a long time, but it has to do, on occasions, with people's rights and obligations so that they can have their matters settled.

**3.00 p.m.**

Mr. President, I do not want to get involved in matters which may not be able to be published. Therefore I do not want to respond to every matter I have heard in the House this afternoon. What I do want to say is that a court is entitled to make an order in any criminal trial to preserve the fair trial of a matter. It is the law of the United Kingdom; it is the law of Trinidad and Tobago; it is the law of the United States of America, that a judge is entitled to make restraining orders against anyone for the publication of any matter which the judge considers may prejudice the fair trial of a matter. That is the law. It is not that the matter would not be published at all; it is, what is called, a postponed publication. That



happens regularly in the United Kingdom and in the United States of America. It happened even in the OJ Simpson trial that we saw.

So if what was said can be construed as—I would not say an attack—some criticism of what was done, I would like to say that it is the law of the land, and it can be done. I am not going into the actual facts of any matter. It is also the law of the land that the court is entitled in certain matters to ask for lawyers and to get lawyers to represent it, as friends of the court. That is no callaloo.

**Sen. Daly:** Would the Attorney General give way? Can he say, in his experience, whether in any of the countries which he cited, persons have been sent to jail and the fact that they have been jailed is kept a secret? Can he say?

**Hon. R. L. Maharaj:** Mr. President, I do not want to get involved in any particular matter, but if Sen. Daly reads any book on contempt of court, or reads a book on the media law—reads recent books—he would see that journalists in the United Kingdom were jailed.

**Sen. Daly:** But not secretly.

**Hon. R. L. Maharaj:** I am not getting into the fact of any matter. The point I want to make also is that if persons, whether they are parties to an action or whether they are members of the public, are dissatisfied about any particular decision, there are particular ways in which these matters can be dealt with in accordance with law. Therefore, I do not want, in this House, to respond to the comments that Sen. Daly made.

**Sen. N. Mohammed:** Mr. President, on a point of clarification. Can the hon. Attorney General indicate to us, on average, how long it takes for a matter to be heard in court and the cost factor that is involved, be it for a judicial review matter, a constitutional motion or otherwise?

**Hon. R. L. Maharaj:** Mr. President, the Attorney General was once jailed for contempt whilst appearing in a matter and the whole country knows how long it took. Other people were jailed for contempt and the country knows how long it took. Sen. Nafeesa Mohammed also knows that matters, although they may take long, can be heard expeditiously. Of what relevance is that to what I am talking about?

With regard to the other point Sen. Daly made with respect to *[Interruption]* I am not surprised at the PNM; they would try to make politics of everything and

they would use every institution in the country to try to make politics of it. The public would judge them on their behaviour in matters like these.

**Sen. N. Mohammed:** And God will judge you!

**Hon. R. L. Maharaj:** God has already judged you.

Mr. President, in relation to section 20 of the Act, and the point that Sen. Daly made about the judicial enquiry, I regretfully say that I cannot agree with him that this is really necessary, and I would have to agree with the advice that I got. If I may try to explain this. In any event, according to the law as it exists now with respect to public law, any decision which affects the rights of an individual is regarded as a judicial enquiry. There is no longer an executive act. In the face of the law; in the face of the court, as long as it affects the rights and interests of an individual; whether before it was regarded as an executive act or a *quasi* judicial act, it is now regarded as a judicial act, and therefore, it is of no significance to put in legislation a judicial enquiry when the issues which are being determined are matters affecting the rights, interests and legitimate expectations of individuals.

I hope I have responded to all the matters which were raised. I did not do it individually, but I hope I have responded to all. There is one point about Tobago. With respect to the absence of the pathologists in Tobago, I think that is a matter which must be of great concern. What I would undertake to do is really an administrative matter and it may be that what should happen—I do not know; I would need to get advice on this—is that there should be a certain number of pathologists attached to Tobago, so that at any given time there would be at least a pathologist there if his services are needed. I would undertake for the hon. Senator to take that matter up with the Minister of Health and an administrative arrangement can be made as part of implementing this Bill, that there would be sufficient medical personnel in Tobago.

**Sen. Mahabir-Wyatt:** Mr. President, I wonder if the Attorney General would be so kind as to explain the point which I raised about fees and putting fees in a dollar value in a bill that is going to last for a long time.

**Hon. R. L. Maharaj:** I am thankful and I apologize for not remembering that one. I wrote it down but I could not understand my handwriting. There seems to be a policy in drafting legislation—I am not saying it cannot be changed—that one puts fixed fees. The reason for that, I am told, is that it is easier accounting. For example, it would be known that "x" dollars are to be paid for a particular act, and if it has to be done by a Minister's order, it will probably take a very long time for

all the paper work to be done. What we can undertake to do is look at this issue and instead of having these fees reviewed every 25 or 30 years, probably there should really be machinery whereby the fees for professional services should be reviewed in a particular way and in a timely fashion.

Another argument for its change is that medical fees are specified and architects' fees are specified but lawyers fees are never specified. So it may be that in respect of legislation, we are discriminating in favour of lawyers and perhaps that is a reason for it to be looked at. The time is coming—as a matter of fact, I have seen a piece of legislation from a part of the Commonwealth in which they are saying that legal fees in respect of matters should be "x" dollars—when we would have to specify particular amounts for fees, generally, in respect of matters like these.

So I can give the undertaking that we would look at it, but I cannot, in this piece of legislation, effect that change.

**Sen. Mc Kenzie:** Would the Attorney General make a comment about the specified places to be used as coroners' courts?

**Hon. R. L. Maharaj:** I am sorry, I thought I had dealt with that. Under the present set-up, inquests are held in magisterial districts. What is stated in clause 3(4) is:

"The Chief Justice may assign any number of Coroners to one magisterial district..."

For example, take the magisterial district of Tobago, he could assign three coroners to Tobago or he could assign one—

**Sen. Mc. Kenzie:** No. My question is the physical place, where you are going to sit.

**Hon. R. L. Maharaj:** I see. The coroners normally sit in the magistrates' court, but sometimes they do not have court buildings and other places are designated. The Chief Justice, in consultation with the executive arm of the state, would, in effect, be able to have places located.

### **3.10 p.m.**

For example, if there is no room in the Magistrates' Court in Tobago that does not prevent there being a coroner's court because another building in Tobago can be designated as a court.

For example, in Sangre Grande, there is a problem with the court and if a building is acquired, that building can be designated as a court. Similarly, if there is no room for the coroner another building can be acquired for the holding of the coroners' court.

Mr. President, I beg to move that this Bill be now read a second time.

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

*Clauses 1 to 7 ordered to stand part of the Bill.*

*Clause 8.*

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

**Sen. Daly:** Mr. Chairman, I am proposing the deletion of clause 8. I maintain that there is no justification for removing the designation of a judicial enquiry whether the coroner is acting inquisitorily or not.

**Mr. Maharaj:** Mr. Chairman, as I indicated, I regret we cannot go along with that. It is our view that since the coroner is now performing an inquisitorial role in addition to performing a judicial act, if one leaves that clause in the Bill, then it can be construed that the inquisitorial role must be performed as a judicial enquiry. In answer to the fact that there may not be a judicial enquiry, I am saying that under the common law, in any event—under the principles of public law—any exercise of power by anyone, whether it is a minister of government or a coroner, which affects the rights, interests and legitimate expectations of anyone; that is regarded in law, as a judicial act; as an exercise of a judicial power. Therefore there is no necessity for having a clause to specify that when the coroner is performing his inquest he is doing a judicial act.

**Sen. Daly:** Mr. President, may I point out to the Attorney General that under section 10(a) when he performs an inquest he is doing it in accordance with the Act. The section that is proposed to be repealed only applies to inquests.

**Mr. Maharaj:** Mr. Chairman, I wonder if Sen. Daly would respond to the fact that the existing principles of the law are that if one exercises power, it affects the rights and interest and it is an exercise of a judicial power.

**Sen. Daly:** That is all the more reason we can leave it there. It is just stating what the law is. That Act states that—

"20. Every inquest under this Act..."

Every inquest, not every preliminary investigation or every reading of the DMO's report.

**Mr. Maharaj:** Mr. Chairman, in effect, what Sen. Daly wants is to ensure that there is no doubt that the inquests are held in accordance with a judicial enquiry. And, if it is so, under the common law principle, there should be no objection.

**Sen. Daly:** That is right. It does not attach to anything else the coroner may do other than inquests.

**Mr. Maharaj:** Mr. Chairman, we could then delete the words "Section 20 repealed" appearing in the marginal notes and delete clause 8.

*Question put and agreed to.*

*Clause 8 deleted.*

**Mr. Chairman:** Clause 9 now becomes clause 8 and clause 10 now becomes clause 9.

*Clauses 8 and 9 ordered to stand part of 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.*

**3.20 p.m.**

**COMMONWEALTH DEVELOPMENT CORPORATION (PRIVILEGES AND IMMUNITIES) (AMDT.) BILL**

[SECOND DAY ]

*Order read for resuming adjourned debate on question [June 11, 1996]:*

*Question again proposed.*

**The Minister of Foreign Affairs (Hon. Ralph Maraj):** Mr. President, I do not intend to speak for very long but I do welcome the opportunity to complete my winding up contribution on this Bill which was interrupted to allow Independent Senators, in particular, to have a chance to examine the operations/conditions and agreement of the Commonwealth Development Corporation. I am sure they have had a chance to do so, and I feel certain that

there would now be an even clearer understanding of the Commonwealth Development Corporation, the purposes of this Bill and how we intend for the Commonwealth Development Corporation to continue to operate in Trinidad and Tobago.

Mr. President, the CDC is not a profit-oriented organization in the normal sense of the word. I maintain it is an instrument of the Government of the United Kingdom for generating private sector activity in developing countries. It is geared specifically and philosophically to engender private sector activity and to help encourage financing of activity where there could be some difficulty. If we look at the 1993 report and accounts of the CDC we would see that in the report of the President it is underlined that the CDC's investment philosophy is that it should invest only when projects are expected to make a positive contribution to national development. That was one of the points I was making.

The national development of the countries where it operates is of concern to the CDC. It would contribute to the implementation of such projects by making loan and equity investments and extending technical management in consultancy services on terms to be agreed. One is not only getting financing but one is also getting technical assistance through the operations of the CDC. There will also be training of one's local personnel so that your skills bank will constantly be augmented by the participation of the CDC in one's country.

Of course, it is done through consultation with the Government. Nothing can be done through the CDC without proper consultation with the Government. It is not exploitative, and no advantage can be taken of the country and its economy. The Commonwealth Development Corporation is not to be feared; it is not aggressive, it is not an exploiter. It is a friendly mechanism from a friendly country for assisting the development of Trinidad and Tobago.

Mr. President, it is interesting that the areas of activities earmarked for the CDC's activities include agriculture, agro-processing, aqua-culture, tourism and hotels, manufacturing, industrial estates and others. I point out those because, clearly, in Trinidad and Tobago we need to place more emphasis than ever on these areas. If we are to reduce the levels of unemployment in Trinidad and Tobago, we need to go into agro-processing, we need to go into the agricultural sector, we need to go into aqua-culture, we need to go into tourism and hotel construction. We need the development of industrial estates. We are talking about Point Lisas being overcrowded. There is clearly the need for the development of

another industrial estate with the kinds of investments that are coming into Trinidad and Tobago. We need to give further fillip to our manufacturing sector.

Already they are doing so very well. I was privileged to be part of a mission that visited Curacao recently and our manufacturing sector must be complimented for seizing the initiative, for facing the challenge of the globalized economic environment and for doing very well. In fact, they are being seen as trading giants in the Caribbean at this point in time.

**Sen. Prof. Spence:** Hon. Minister, I find it strange that forestry was not mentioned. I find it strange the emphasis is on the industrial side. I think that is one we could do for ourselves, not the CDC.

**Hon. R. Maraj:** Actually forestry is mentioned. I did not include it in the list, but it is part of the specific sectors in which CDC will be involved.

Mr. President these areas, including forestry, are areas that we need to develop. One would have heard about jobless growth, economies growing, but the unemployment increasing. In order to ensure the wealth that is generated through whatever resurgence in the economy eventually trickles down to everyone in the society, we need to generate employment in these areas and, of course, increase the productive capacity of Trinidad and Tobago.

I do not think there is really any need for me to go further to make the case for the Commonwealth Development Corporation (Privileges and Immunities) (Amdt) Bill 1996. I feel assured of almost unanimous support in spite of the original reservations that were expressed. I have noted as well, that Sen. Prof. Spence has circulated an amendment and I have been told that he has been given the assurance of serious consideration to the amendment and I have no doubt that we will see what happens to this amendment when we get to the committee stage.

I thank hon. Senators for participating so constructively and vigorously in the debate. Mr. President, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

**3.30 p.m.**

*Bill committed to a committee of the whole Senate.*

*Senate in committee*

*Clauses 1 to 4 ordered to stand part of the Bill.*

*Schedule:*

*Question proposed, That the Schedule stand part of the Bill.*

**Sen. Prof. Spence:** Mr. Chairman, I beg to withdraw the proposal I made last week in favour of the one I have given today.

*Amendment withdrawn.*

**Sen. Prof. Spence:** Mr. Chairman, I beg to move that the Schedule be amended by deleting paragraph 2 and substituting the following:

“The Minister of Finance may grant exemption to the Corporation in respect of its operations in Trinidad and Tobago that assist the development of the economy of Trinidad and Tobago from all direct or indirect taxes, duties, levies, deductions and other imposts of any kind imposed in Trinidad and Tobago.”

**Mr. R. Maraj:** Mr. Chairman, I wonder if Sen. Spence could clarify the need in his view to have the Minister of Finance, and also to restate what the operations agreement includes.

**Sen. Prof. Spence:** My problem is that between last week and this week I have been told that one of the new directives to the CDC is that it must be more self-financing. Although it does not declare profits in taxes, the United Kingdom Government is no longer going to support these bodies by grants from the Treasury. It seems to me that pressure is being put on this organization to earn an income even if it does not distribute the profit. I want to be sure that when it is earning an income, it does not do so in any way at the expense of Trinidad and Tobago. Therefore, I want such responsibility in the hands of the Minister of Finance to make that decision.

The suggestion that the Minister of Finance be guided by the fact that it must assist with the welfare of the economy of Trinidad and Tobago is in the agreement. Under section (1) 1.1 the agreement states:

“examine and study possibilities of investment in public or private sector projects which are within its statutory powers, financially sound, of economic benefit and assist the development of relevant sectors of the economy of Trinidad and Tobago;”

One is merely putting what is in the agreement as a guide. The decision of the Minister of Finance is that project or sector (a), (b) and (c) would be those that should be assisted by the Commonwealth Development Corporation.

In the list of the Minister of Foreign Affairs, I would have thought that the Minister of Finance would have looked at our present circumstances in Trinidad



and Tobago and would not have asked the CDC to develop industrial estates. I thought that is an area we would do for ourselves. On the other hand, something like forestry, which we are not doing, is long-term and the economic returns to the investor are not going to be as substantial as if we invested in the industrial estates. I thought that Point Lisas was very successful. If another industrial estate were developed in some other part of Trinidad with investment in the private sector, that would also bring in immediate income and profit. I do not see forestry bringing in an immediate profit in the next 20 years. That is the sort of area I hope that we would ask them to develop.

It seems to me that we want the Minister of Finance, perhaps, with the advice of the Minister of Planning and Development, to look at the long-term economic development of Trinidad and Tobago and agree that this is an area which could do with some activities from this organization, instead of the organization saying that it is having a hard time this year, because it is investing in many activities that would not bring in anything for a long time, and the Treasury is saying that it cannot give any more money. Perhaps they are thinking that the investment in the industrial estate looks like a good bet. Let us put some money there and give us an income to carry out our activities.

**Mr. R. Maraj:** Mr. Chairman, I do not see the need to repeat what is in the agreement that it should assist the development of the economy of Trinidad and Tobago. To me it remains superfluous. I can buy the argument about the Minister of Finance being granted permission for the exemption, but I do not see the need to repeat in the Bill what is already in the agreement.

According to its statutory powers under the legislation, it is charged in this direction.

**Sen. Prof. Spence:** Does the CDC have these privileges in the United Kingdom? I know it has in a number of other countries. I know of other organizations which were formerly Commonwealth to which United Kingdom Government would not give such privileges. I think it is a relevant question. The United Kingdom would be an area in which it could invest and make a profit to help with activities overseas.

**Mr. R. Maraj:** Mr. Chairman, the Commonwealth Development Corporation was not formed for activity in the United Kingdom but for activities in developing countries in the Commonwealth and is financed essentially by AID money out of the United Kingdom budget.

**Sen. Prof. Spence:** That AID money is drying up. If it had this sort of privilege in the United Kingdom, it would be well placed to invest in the United Kingdom to make profits not for distribution, but to help with activities in our country. Do not let it use Trinidad and Tobago in that way. If it is not intended to, I have no problem. Why should we even allow the possibility? Why should we not do everything to ensure that it goes in the right direction which we want it to move? There should not be any problem with doing it that way. I cannot see the objection.

**Mr. R. Maraj:** There is no objection. We accept. I do not see the need for the repetition in the Bill of what is already in the agreement.

**Sen. Prof. Spence:** Because agreements can change.

**Sen. Hamel-Smith:** Mr. Chairman, I suggest that there is a certain level of comfort that exists that maybe we are not looking at quite outside the agreement. The hon. Minister was referring to the United Kingdom legislation which brings life into the CDC itself. It says that under that piece of legislation the CDC is charged with the task of assisting overseas countries in the development of their economy. That is the focus. If they embark on anything outside of that ambit, they would be in breach of the Act which incorporated them.

**Sen. Prof. Spence:** Mr. Chairman, is it possible for the United Kingdom to change legislation? I cannot see why we should rely on the United Kingdom legislation for our focus. We are concerned with our legislation giving focus to our own activities. There is no harm in repeating something which may be in the United Kingdom legislation which they may be able to change.

**Sen. Hamel-Smith:** If they change their legislation, so can we. If when we gave them certain immunities it was done under certain conditions, if the conditions change, we can also change.

**3.40 p.m.**

**Prof. Spence:** Mr. Chairman, I find it very difficult to understand why this strong argument is coming in opposition to our suggestion that the Minister of Finance should be guided in how he takes his decision. I am now getting more concerned. There must be some good reason for this.

**Sen. Dr. St. Cyr:** The sense I am getting is that there is every support for the CDC operating here. What I gather, though, is that there is a subsidy from the Treasury in terms of taxes foregone. All we want to do is to ensure that we control

how the subsidies are used. We do it by taking control, from the start, of the projects which would benefit from those subsidies.

**Mr. Maraj:** Let me make the point clear, Mr. Chairman. We really have no objection to the fact that we are operating CDC based on the premise that its activities must assist in the development of the country. I was just making the point that it seems superfluous for it to be included in the amendment. That is the point. There is no opposition to it. We accept it. However, if Senators are insisting that it remain, we have no problem with it remaining. I am just asking that you consider moving it out, but if Senators are so passionate about this particular aspect, there is no problem.

**Mr. Chairman:** Just before I put the question, I want to make sure that the amendment that is before Senators is the correct amendment proposed.

Delete paragraph (2) and substitute the following:

“The Minister of Finance may grant exemption to the Corporation in respect of its operations in Trinidad and Tobago, which assist the development of the economy of Trinidad and Tobago, from all direct or indirect taxes, duties, levies, deductions and other imposts of any kind imposed in Trinidad and Tobago.”

*Question, on amendment, put and agreed to.*

*Schedule, as amended, ordered to stand part of the Bill.*

**Sen. Rev. Teelucksingh:** Mr. Chairman, I would like to ask a question on the comment made the last day by the hon. Minister of Finance that the CDC had intended to base its headquarters, in Trinidad and Tobago, and changed its mind and went to Barbados because conditions here were not favourable enough. Can the Minister elaborate on that, please?

**Mr. Kuei Tung:** I merely said that I had heard that from the CDC people who had been involved in TTMF. I have no information other than they had felt at the time that they were not welcome. It was not a question of not being favourable; they felt that they were not welcome, therefore they shifted their emphasis to Barbados. That was one person who had represented CDC in Trinidad posing a personal opinion, I am not sure that it is an official CDC position. For that reason they formed a regional office in Barbados which they still have.

*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*

*Tuesday, June 18, 1996*

**ADJOURNMENT**

**The Minister of Public Administration and Information (Sen. The Hon. Wade Mark):** Mr. President, before adjourning this Senate to Tuesday, July 2, 1996 I would like to take this opportunity, on behalf of the Senate, to extend warmest fraternal greetings to the labour movement in Trinidad and Tobago on the occasion of the 59th Anniversary of the founding of the modern trade union movement in Trinidad and Tobago, which is being celebrated tomorrow, Wednesday, June 19, 1996.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 3.48 p.m.*