SENATE

Tuesday, October 28, 1997

The Senate met at 1.31 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

CONDOLENCES
(Mrs. Martha Thompson)

Mr. President: Hon. Senators, I wish to announce that the mother of Sen. Dr. Eastlyn Mc Kenzie, Mrs. Martha Thompson, has recently passed away. On behalf of Members of this Senate, I wish to extend our sympathy to Sen. Dr. Mc Kenzie and her family.

SENATOR'S APPOINTMENT
(REVOCATION OF)

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON,
President and Commander-in-Chief of the
Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

To: MRS. NIRUPA OUDIT

In exercise of the powers vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, and all other powers there to me enabling, I, Arthur N. R. Robinson, President as aforesaid, do hereby revoke your appointment as temporary Member of the Senate made by instrument dated 20th October, 1997.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 27th day of October, 1997."

Just in case this letter conveys the wrong message, the appointment is revoked because Mrs. Oudit was appointed for the full period of the absence of Sen. Prof. Spence. Unfortunately, she cannot be here today and in order to make another appointment, hers has to be revoked.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have also received the following piece of correspondence from His Excellency, the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

To: DR. EDMUND CHAMELY

WHEREAS Senator Professor John A. Spence is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, EDMUND CHAMELY, to be temporarily a Member of the Senate, with immediate effect and continuing, during the absence from Trinidad and Tobago of the said Senator Professor John A. Spence.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 27th day of October, 1997."

OATH OF ALLEGIANCE

Sen. Dr. Edmund Chamely took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General on the accounts of the National Project Development Services Limited for the year ended December 31, 1990. *[The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung)]*

2. Report of the Auditor General on the accounts of the National Project Development Services Limited for the year ended December 31, 1991. *[Hon. B. Kuei Tung]*

3. Venture Capital Regulations, 1996. *[Hon. B. Kuei Tung]*

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts and financial statements of the Project Execution Unit of the Ministry of Housing and Settlements for the year ended December 31, 1993 in respect of the Programme of Institutional and Policy Development in the Housing and Urban Sectors as required by the Non-Reimbursable Technical Co-operation Agreement ATN/SF-3412-TT between the Government of Trinidad and Tobago and the Inter-American Development Bank. *[Hon. B. Kuei Tung]*

5. Report of the Auditor General of the Republic of Trinidad and Tobago and on the accounts and financial statements of the Project Execution Unit of the Ministry of Housing and Settlements for the year ended December 31, 1996 in respect of the National Settlements Programme as required by loan contract No. 584/OC-TT between the Government of Trinidad and Tobago and the Inter-American Bank. *[Hon. B. Kuei Tung]*

6. Report of the Supervisor of Insurance for the year ended December 31, 1996. *[Hon. B. Kuei Tung]*

1.40 p.m

STANDING ORDERS COMMITTEE REPORT
(Presentation)

The Minister of Community Development, Culture and Women's Affairs (Sen. Dr. The Hon. Daphne Phillips): Mr. President, I wish to present the Report of the Standing Orders Committee for the 1996/1997 session.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, today is Private Members' Day. However, I have consulted with Senators on the opposite side and it was agreed that we deal with "Bills Second Reading", and then "Government Business."

I therefore seek leave of the Senate to deal with "Government Business" after "Bills Second Reading".

Agreed to.

DHARMA PRAKASH SABHA (INC'N.) BILL

Sen. Carol Cuffy-Dowlat: Mr. President, I beg to move,

That a Bill to provide for the incorporation of the Dharma Prakash Sabha and matters incidental thereto, be now read a second time.

Question proposed.

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 9 ordered to stand part of the Bill.

Preamble ordered to stand part of the Bill.

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

Senate resumed.

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

LIMITATION OF CERTAIN ACTIONS BILL

[Second Day]

Order read for resuming adjourned debate on question [October 21, 1997]:

Question again proposed.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, when this debate was adjourned, I was in the process of giving an overview and referring to certain clauses of this Bill in order to show that the purpose was to give more flexibility in respect of limitation periods; to increase the period of limitation in respect of private law claims against the state from one to four years; and to give the court a discretion in certain circumstances to override the limitation period under the Bill.

I was reading from a discussion paper on the subject of limitation and notice of actions by the law reform commission of Western Australia. The paper dealt with the principles in other jurisdictions, and I was reading this to give hon. Senators some indication as to how different societies dealt with this period.

1.50 p.m.

In some cases the limitation periods have been longer, in other cases they have been shorter. I continue to read from Discussion Paper No. 86 of 1992:

> "In most civil law systems there is a general period of limitation after the expiry of which all claims of whatever kind are barred. This contrasts with common law systems, where particular periods are generally laid down for different classes of case. Some of these limitation periods are quite long, for example 30 years in France, Germany, Belgium, Holland and South Africa, and 10 years in Italy and Switzerland. In many of these countries, however, shorter periods are laid down for particular classes of case. In Germany and South Africa, for example, the limitation period for most tort actions is three years; in Italy it is five years and in Switzerland it is one year.
>
> In most common law systems, the basic limitation period begins to run from the moment the cause of action accrues, irrespective of the plaintiff's knowledge, but there are various supplementary rules to deal with the problem of latent damage. Outside such systems, it is common for the law to provide two limitation periods: a shorter period which does not begin to run until the injured person knows of the injury and the identity of the wrongdoer and a longer period running from the date on which the damage occurred, which acts as an ultimate bar. In Germany, for example, the general three-year period for tort claims does not begin to run until the plaintiff knows of the injury and the identity of the defendant, but the claim will be barred 30 years after the date of the act giving rise to the liability. The position in France is exceptional: the normal 30-year period does not begin to run until the damage is apparent."

Mr. President, one sees that over the years and throughout the world, different societies have had to grapple with this problem and they had to decide in respect of matters generally, and in respect of the matters with which we are dealing, what sort of society they would adopt. Fortunately for us, Mr. President, the policy was decided in 1981 that we would go with this kind of measure and the people of Trinidad and Tobago, through the Parliament, approved of that policy. Both Houses of Parliament voted in favour of that policy and the people were entitled to have it implemented. Unfortunately, over the years, the executive arm of the state has not been able to implement it and the wishes of the people, through the Parliament, have been frustrated. We now have a second chance to give to the people what they were due since 1981.

Mr. President, although I have dealt with some of the clauses, I think it is my duty to deal with the Bill clause by clause. I will, in effect, go through the Bill so that Senators would be able to follow exactly what the Bill states. There is no problem with clause 1, because it provides the name of the Bill.

Clause 2 defines certain terms used in the Bill, while the purpose of clause 2(2) is to identify the circumstances that may cause the court to extend the period of limitation. These circumstances are the disability or lack of physical ability to bring the action. The acknowledgment or part payment of a debt and fraud concealment of the fact that the person has a cause of action or mistake.

Clause 3 identifies the causes of action which are covered by the Bill which fall under the general four-year period of limitation. These causes include actions for breach of contract, except a contract made by deed or a quasi-contract of a tort or an action to recover money which any written law enables a person to recover. Libel, slander, assault and wounding for which there was a two-year period of limitation are also included. Clause 3(b) falls under the 12-year period of limitation, an action to enforce a judgment is in this category.

In clause 4 where two persons are guilty of a civil wrong and damages or compensation are awarded to one person, the two persons called tortfeasors must contribute to the amount of damages of compensation. Where one tortfeasor pays compensation he is entitled to recover a portion of it from the second tortfeasor. Under this clause he cannot bring an action against a second tortfeasor after two years of the date in which the court decided that the compensation must be paid.

Clause 5 is a proposal to alter the law as it relates to circumstances where the right of action continues after the death of a deceased person for the benefit of his dependants. Prior to this Bill, the four-year limitation period was calculated from the date from which the cause of action arose. To simplify the law, however, the Bill codifies an additional method for calculation of the limitation period. This is a date of knowledge in respect of such claim. What is also important is the date from which the personal representative becomes aware that there was a claim. This clause also makes provision for the courts to decide what happens when there is more than one personal representative.

Clause 6 deals with personal injuries under the Compensation for Injuries Act. It should be noted that this Bill does not alter the limitation period under the Compensation for Injuries Act, it remains four years. What it does is to improve its provisions in the following ways. Under clause 2 the meaning of personal injury is

expanded to include disease and impairment. Also by providing an additional time-frame for deciding how time will be calculated in a cause of action for personal injuries or where death occurs as a result of these injuries. Where inaction was founded in tort under the Compensation for Injuries Act, the four-year limitation period began to run from the date that the right to the cause of the action arose. This clause provides that this may be calculated from the date of the personal representive's knowledge, whichever is later.

Clause 7 identifies the date by which a person first acquired knowledge is to be decided. The clause speaks for itself.

With respect to clause 8, different time limits may be applied to different dependants for whom the cause of action is being brought, if injustice would result.

Clause 9 is a clause with which I dealt. This clause deals with the court's power to override the limitation periods. Notwithstanding all the rules introduced before the court, clause 9 may be empowered to disregard the limitation period where its application would produce an unjust result. Particular attention must be paid to subclause (3) which lays down the rules for the court's exercise of its discretion. These rules include the reason for any delay by the plaintiff, the conduct by the defendant after the cause of action arose and the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice in this matter.

Clauses 10 to 13 of the Bill deal with circumstances which need special treatment in the law. These sections cover successive conversions of chattels, disabilities, acknowledgment of an obligation of past payments.

Clause 14 postpones the date from which the limitation period is calculated where the defendant committed fraud against a plaintiff or where the plaintiff's right to sue was concealed, or where some errors on the part of another person caused the delay on the part of the plaintiff. Time begins to run from the discovery of the fraud, concealment or mistake.

Clause 15 is formerly section 24(1) to (4) of the Arbitration Act. It therefore does not alter the existing written law but for convenience the limitation provision relating to arbitration has been included in this Bill.

Mr. President, for the purpose of hon. Senators who do not know, an arbitration is the hearing of a dispute between two parties through a contract by a third person who has no interest in the contractual arrangements.

2.00 p.m.

The method for the resolution of disputes is normally included in the contracts and it provides for arbitration to be done in accordance with the Arbitration Act. In clause 16, where the defendant in an action also files an action against the plaintiff, this is referred to as a counterclaim and deals with the period of limitation. Clause 17 gives the court the right to refuse relief when the plaintiff is proven to have done anything which amounted to an agreement by the plaintiff to the actions of the defendant. Clause 18 treats the state as an individual for the purposes of the limitation period. Mr. President, clause 19 deals with saving for other limitation enactments, and clause 20 with the transitional provision, which says that the Act does not apply to any action brought upon a right of action which accrued before the commencement of this Act. The cause of action would arise after the commencement of the Act.

Mr. President, one will see from the schedule—if I may refer specifically to the second schedule—that the Compensation for Injuries Act, section 5(1) in relation to being formed, which has been done, was repealed. The whole Limitation of Personal Action Ordinance is repealed. Section 27 of the Medical Board Act which provided the limitation period of one year against doctors has been repealed. Section 24 of the Arbitration Act, except subsection 5 thereof, is repealed. The whole Public Authorities Protection Act is repealed.

I should mention that I have seen the proposal for amendment by Sen. Martin Daly, and one of the aspects has to do with the Workmen's Compensation Act. I have spoken to Sen. Daly—and this point arose in the other place, that is, whether this Act does not provide any reforms or does not redress the injustice which is now being committed under the Workmen's Compensation Act. Under the Workmen’s Compensation Act, section 11(1), the limitation period to make a claim for compensation in respect of workplace injury is six months from the date of the accident, or in the case of death, within six months from the time of death. Under section 4(3) of the Act, the limitation period to bring an action to recover compensation for injury by accident is one year from the date on which the cause of action accrued.

When this matter arose in the other place, I indicated to the honourable House—and I so indicate now again—that there is an Industrial Injury and Disability Compensation Bill, 1997 which will be introduced in the Parliament as soon as the new session of Parliament starts. That Bill deals with the whole

question of workmen's disability and the limitation period. I should indicate that this archaic limitation period is going to be removed to put it on par with this Bill.

The other issue raised by Sen. Daly has to do with the filing of constitutional motions and the time limit in respect of applications under section 14. I want to confess to Sen. Daly and this honourable Senate that we have not taken a decision on that matter, but may I say that that is a matter which we will certainly consider. In any event, if we have to put a limitation period under section 14, it would mean altering section 14 of the Constitution which will need a specified majority. The point is noted and I think that—if I remember my judicial review law—there is a time limit for making judicial review applications. I think it is either three or six months.

In the area of public law, there is a time-frame in relation to judicial review which is part of the public law domain. Having regard to what has been stated even in the passage which I quoted the last time in relation to having a period of limitation fixed in certain matters and where the legislatures and courts decided that they would find ways of extending that time, one cannot get away from the rationale of a limitation period. The rationale is that there must be at least as much certainty as possible. Therefore, in respect of constitutional motions filed under section 14—although there seems to be no fixed time limit, and the courts have interpreted it in different ways—I think it is the obligation of the executive arm to consider the matter and to come to Parliament with some proposals. I give Sen. Daly and this honourable Senate the undertaking that the matter will be considered.

Mr. President, I would say that the Bill, therefore, is one which I think the Parliament would support. I would like Senators to recognize that it is a matter which has caused some injustice to people, and which we are trying to redress. I know that there are other areas of the law which have to be redressed, and which are part and parcel of the 1981 package. In this honourable Chamber, I did give the undertaking to Sen. Mahabir-Wyatt that I would come back to the Senate to answer her question, with respect to a certain matter within a particular time-frame. I have not been able to do that, but I want to give her the assurance that in respect of the status of children and matters relating thereto, the Law Commission has been working on it. I have been getting the reports, and I am hoping that when the new session opens, I will be able to have that rectified.

With respect to the land law package, there have been drafts and committees working on it, and we are hoping to bring that package to Parliament in the next session.

Mr. President, I beg to move.

Question proposed.

2.10 p.m.

Sen. Pennelope Beckles: Mr. President, I rise to make my contribution on this Bill to make provisions for the limitation of time for bringing certain actions. I would like to say at the outset, that we on this side support this legislation. I do agree that the existing legislation where one can file an action against the state, but only within one year, where there is an act or an allegation of negligence, has been causing some injustice to certain persons in the society. Insofar as private individuals are concerned, it is four years. What this legislation is seeking to do is allow a plaintiff the opportunity to file that complaint within that four-year period or even, in certain circumstances, for a period further than four years.

Mr. President, as I indicated, we support the legislation and, therefore, I am not going to spend too much time going through the legislation clause by clause. I think the Attorney General explained it fairly clearly. What I would like to put focus on though is the concern that I have in relation to the various state departments that are likely to be defendants in these actions. Last week when the Attorney General spoke he mentioned at least one utility in which difficulties may have arisen as they related to certain persons where the year expired. He also mentioned that one may not even have been aware that one may have been injured within that particular year. So clearly, he was showing that the injustice really could apply and that the person may not even have a clue.

Mr. President, I ask your leave to refer to the Ombudsman's report which I think would crystallize the concern that I have. I feel that one of the things that would need to be done in relation to this piece of legislation is to bring to the attention of the various state departments, the extent to which this piece of legislation can cause the Government to pay a tremendous amount of compensation if a considerable amount of care and concern is not realized as it relates to the citizens of Trinidad and Tobago. Now, if I might refer to page 23 of the Ombudsman's Nineteenth Annual Report, 1996. It states that:

> "This year's statistics show a significant increase in the number of new complaints received over last year's figure, and indeed it is the highest in the last 10 years. This increase in the number of new complaints this year is due in

> part to the phenomenal number of complaints received against the Trinidad and Tobago Electricity Commission and the Water and Sewerage Authority. However, there have been increases, though much less significant, in complaints against ministries and departments such as Prisons, Ministry of Local Government, Ministry of Health, Police, Service Commissions Department and Ministry of Finance."

The Ombudsman went on to list the number of complaints and the increases, if I might just have your patience for a little while.

In relation to National Security, he indicated in 1995 there were 160 and in 1996, 237. Public Utilities—1995, 54 and 1996, 179; Ministry of Social Development—1995, 44 and 1996, 51; Ministry of Works and Transport—1995, 43 and 1996, 46; Ministry of Labour and Co-operatives—1995, 34; Ministry of Agriculture, Land and Marine Resources—1995, 32 and 1996, 39; Ministry of the Attorney General and Legal Affairs—1995, 25; Ministry of Local Government—1995, 23 and 1996, 55; Ministry of Health—1995, 22 in 1996, 51.

Mr. President, just two last comments. The Ombudsman's report also indicated that:

> "Last year I noted that there had been a change in the pattern of the distribution of complaints amongst ministries/agencies from earlier years. The distribution of complaints this year has tended to adhere to the pattern of recent years. This year the Ministry of Finance and Tobago House of Assembly are included in the nine ministries/agencies which recorded the highest number of complaints received while the Ministry of the Attorney General and Legal Affairs and the Ministry of Labour and Co-operatives which fell within that number last year have been excluded.
>
> The ministries/agencies with the highest number of complaints recorded against them this year, and in the order of priority are: Ministry of National Security (Police and Prisons), the combined Public Utilities (T&TEC, WASA, TSTT), Ministry of Local Government, Ministry of Social Development, Ministry of Health, Ministry of Works and Transport, Ministry of Finance, Tobago House of Assembly and Ministry of Agriculture, Land and Marine Resources."

Mr. President, whilst I was not able to get the figures indicating the amount of moneys that are paid out by the state yearly as a result of actions filed against it, bearing in mind what the Attorney General said last week and exactly what this Bill is intended to deal with, I think that this report is extremely helpful because it gives

us an idea as to what are the critical ministries to which complaints have continued to escalate over the years and, certainly, those are the ministries that provide the basic necessities.

Mr. President, I think it is extremely important we recognize that in terms of this legislation being passed, we have a situation where if these complaints continue to increase and, when one reads the summation of the Ombudsman, he is saying that in the majority of these instances the victims are persons of very little means and the complaints are justified. Not only are they justified, but in the majority of instances, at the end of the day when the complaints are investigated and found to be justified, the victims, the persons who have complained, because the time has expired, have not been able to be compensated. Even in instances where the time has not yet expired, the Ombudsman has referred to the extreme difficulty that citizens encounter in terms of being compensated for the wrongdoings by the several state organizations.

Mr. President, that, therefore, brings us to the recognition that these several ministries need to take extreme care in dealing with complaints of citizens and certainly a lot more preventative measures would have to be adopted if the state is to avoid paying several costs as it relates to litigation that may arise. I can use two very recent incidents to explain the point I am presently making. With your leave, I refer to the report of the committee appointed by the Cabinet concerning the Piarco Rainbow Industrial Development Project, dated April 21, 1997. I refer to page 31 of that report. The chairman of the committee stated that:

> "Further, the Committee is informed that the Honourable Minister of Works and Transport by letter dated March 19, 1997 requested the Honourable Attorney General to review the contract documents (relative to construction Package No. 6) between AATT and NYC. Despite this request for a review, (which the Committee considers necessary and appropriate) the said contract was executed before the review was completed. Upon such subsequent review the Honourable Attorney General found that 'a number of clauses in the General Conditions of the Contract for construction raised certain concerns which it was felt, should be addressed before the documents were finalised'. The contract having already been executed, these 'concerns' of the Honourable Attorney General cannot now legally be addressed."

He went on to say at paragraph 77 that:

> "It appears that AATT's Tender Rules and Regulations upon which AATT relied as its authority for the award of contracts for construction Packages Nos. 1, 2

and 6 were approved by Cabinet on 30.1.1997 subject to vetting by the Honourable Attorney General. As far as the Committee is aware, such vetting has not yet been completed."

2.20 p.m.

Mr. President, we know what has happened since that time. The observation of the committee's chairman was that it appeared that the committee in their eagerness to have the project completed did not ensure that the Attorney General was given the opportunity to vet those documents before they were signed. This is extremely important to this piece of legislation.

What has happened, subsequently, is that the person who had been given the contract, Mr. Galbaransingh, has since filed an action in the court and it is quite likely that the outcome could cost taxpayers millions of dollars. I do not want to anticipate and say that if the Attorney General had reviewed the contract that would not have happened. Clearly, the point is, there are mechanisms which the Government can implement to ensure that when it makes a decision, the proper department, the Attorney General's Department, can supervise and give advice on certain documents, clauses and contracts, to ensure that at the end of the day, litigation cannot be brought against the Government to cause it to pay an incredible amount of money, which inevitably is paid by taxpayers.

Clearly, this is one such situation which falls squarely within my concern as it relates to the various ministries, recognizing that this piece of legislation is extremely serious. If parties involved are not careful they can cost the state an incredible amount of money, and by extension the taxpayers.

The issue of the textbooks fiasco was another situation in which publishers, citizens of Trinidad and Tobago, filed certain actions against the state. It was a situation where one got the impression that the type of consultation necessary to avoid the litigation that was eventually filed before the Court, might have been because proper procedures and responsibilities were not realized by the parties involved.

While it is that we do not want an injustice to be done to the several citizens of Trinidad and Tobago by virtue of that one-year limitation, we want to ensure that the state would not be put through unnecessary expense as a result of persons not recognizing their responsibility and at times being overly eager to achieve certain goals which, at the end of the day, a little patience could have definitely avoided the state paying a considerable amount of money.

An important link with this piece of legislation is the Freedom of Information Bill. I am sure that the Attorney General is aware—certainly when he was in practice—of the difficulty often encountered by several citizens to obtain critical information that would assist them in filing their litigation successfully. I refer to several ministries and state-run organizations, particularly the Ministry of Health where, at times, it is virtually impossible for one to obtain one's medical records.

As a matter of fact, I am sure that the Attorney General is quite aware of instances where files have been known to disappear, therefore, I am suggesting that in order for this legislation to work successfully and for the several injustices to which reference was made, to ensure that citizens benefit, the Freedom of Information Bill, which was discussed earlier and which should come to Parliament some time, probably needs to be addressed very early so that persons filing their claims can go to the various state departments to get these documents they request so their actions can be properly litigated.

We are aware, particularly as it relates to the Ministry of Health—I am sorry I have to be saying the Ministry of Health so often but you do know that is one of the areas that persons here have serious concerns about in relation to accessing documents. A month ago the Midwives Association brought a professor to Trinidad and Tobago and some of the things that he revealed caused quite a hurrah. There were people on different sides of the fence claiming that his evidence was wrong and others saying that the statistics were available to show that what he presented was actually true. He indicated that those statistics were obtained from the Central Statistical Office. Several doctors indicated that the statistics they had were certainly different from what he presented. Our concern is with truth and good health care. We would like to know that the information presented to the population is credible and decisions we make in relation to the evidence presented, can be properly acted on.

Mr. President, several persons who called in to call-in programmes were able to give their personal situations relating to their visits to the hospital. Whether they could get the information to back it up, that is a totally different thing.

This brings me, of course, to another point. Traditionally we have not dealt sufficiently with the issue of malpractice and insurance as it relates to doctors. It is equally relevant to this legislation. Even though you have the personal action that gives a person the four-year period, ultimately, it is something that also goes hand in hand in terms of ensuring that persons who, as I said, are very often men of straw, may not be able to seek the advice of those who are really more

experienced. The legislation really needs to be that much more aggressively pursued so that persons who have had this injustice over the years can properly benefit from it.

I often mention education as it relates to Bills that come before this honourable Senate. If you go back to the Ombudsman's report particularly relating to local Government, where allocations are given by the Ministry of Finance yearly, what is the situation when several corporations have been found guilty of the acts complained of by citizens? They must recognize that because it is not themselves paying the money but the state, that is not something that they should just say, "Well the Ministry of Finance and the state would pay." We all have a responsibility to ensure that the money—even though it is not coming from us directly, it comes through our tax dollars. I feel that it is absolutely necessary that the various ministries and the various state-owned organizations be properly educated on the consequences of this legislation and the burden that they would put on the state if they are not more careful.

We remembered, two or three weeks ago, in a particular case, a station diary that was necessary in a particular action was found and the relevant pages had actually disappeared. This is the type of injustice that persons very often encounter and are not able to prove that certain things which they said happened, actually did. Documents and all sorts of things disappear. Of late even guns and ammunition are disappearing from police stations, so we know the difficulties that persons can encounter.

2.30 p.m.

Mr. President, there is one area which I would ask the Attorney General to address in his winding up, and it is the issue of dealing with libel. I do not know whether the Attorney General will be bringing a separate piece of legislation to deal with that but in our existing legislation, when one files a writ as it relates to libel, that writ dies with the plaintiff. We do have the situation of the former Attorney General, Mr. Selwyn Richardson and as we are speaking of injustices I think that, certainly, the family of Mr. Richardson was never able to benefit from the outcome of that case; whether it may have gone against him. The point is that we are none the wiser as to what the outcome would have been and if the ruling were to have been in his favour, his family would never be able to benefit from that ruling.

Mr. President, we on this side support the legislation and I have given an indication as to what my concerns are as they relate to ensuring that the injustices that have been previously meted out to the several citizens of Trinidad and Tobago cease. If we are really to ensure the effective implementation of the Bill, then we should ensure that the various state departments and ministries also recognize their responsibility in ensuring that the legislation is implemented in the way that Parliament intended.

Mr. President, I thank you.

Sen. Martin Daly: Mr. President, it is a very rare occasion and privilege to offer unreserved congratulations to the Government for a piece of legislation. *[Desk thumping]* I wish it could happen more often.

I do share Sen. Beckles' concerns about what the amendment to the limitation period may cost the Government if politicians and public servants are not careful in their dealings with the public. Indeed, I could try to lament the hoax that is being perpetrated on us about the airport by being told that National Insurance Property Development Corporation (NIPDEC) is taking care of it when NIPDEC can have no jurisdiction over contracts already made. However, I do not want to spoil the occasion, I just want to add a few examples of my own so that colleagues might fully appreciate the relevance of what we are doing.

Mr. President, as you would be aware, if a public service vehicle bounces you down, you have a year to sue. That year could go by very quickly, then you are without a remedy; whereas if a private car bounces you down, you have four years in which to bring your action. It is as simple as that. We are now equating the state a wrongdoer with any private wrongdoer. What is shocking about this is that it has taken us more than 50 years to do this.

The reform of limitation periods began in the United Kingdom, on whose concept this is based, in the year 1939 and which progressively kept up to date. There is another very striking feature about this legislation and that is why I feel so complimentary about the Government today. They have finally dusted off this Bill, which I understand, was first incorporated in the 1981 Limitation Bill but never brought forward. We are over 50 years behind with these reforms so it is an occasion for unreserved congratulations.

I am going to give another simple example. In this Bill the Government is taking a considerable risk, and I want to praise them for that in due course as well, by repealing the Public Authorities Protection Ordinance. Colleagues would see

that in a list of items being repealed on page 20 of the Bill. I think it is important to explain how far-reaching this is.

The Public Authorities Protection Ordinance was a 19th century piece of legislation in England which we adopted in the early 1900s. The purpose of that was to allow the state not only to run but to hide. It worked like this. The state was a public authority and anyone employed by the state—any servant of the state—acting within the scope of their public duties, was protected by a one-year limitation period. So any little employee—from captain to cook—in the state could commit a breach of contract or tort, providing it was within their public duties in which case the one-year limitation period applied. Of course, in many cases the state would keep people negotiating for 11 months and then in the 12th month they might be scrambling to file an action. That Act was abolished in England, certainly by 1939, if not earlier. We are now abolishing it in 1997, thanks to the diligence of this Government for taking the 1981 Bill out of the cupboard, dusting it off and making it work.

The risk which the Government is taking which I admire, is that they are opening up the state to being on the receiving end of justice from individuals. I accept what the Attorney General has said about my proposed amendment, which I would not pursue, in relation to constitutional motions because it could completely slip me. Then, of course, it would require a special majority and, therefore, not appropriate in this Bill.

Despite the fact that there has been a difference of judicial opinion in the courts, the better view is that the Public Authorities Protection Act applies to constitutional motions so there is this very strong argument that a constitutional motion would have been subject to a one-year limitation period. I emphasize there are different judicial views about it and it has not been settled by an appellate court. The risk Government is taking by abolishing the Public Authorities Protection Act is that if it does indeed apply to constitutional motions, unless and until they bring some legislation required by a special majority, constitutional motions now would have no discernible time limit. The Government is opening itself up to considerable potential liability with that view of the Public Authorities Protection Act. I think it is very commendable but it takes a brave Government to face its liability without one of its traditional and however, misused defences.

Mr. President, what I am saying in summary, is that this reform is over 50 years old; we are more than 50 years behind certain parts of the civilized world in equating the state as a wrongdoer with individuals. I am particularly pleased by the

repeal of the Public Authorities Protection Act which had this very wide ambit which I described; and that the Government is taking the risk of doing it without putting some other limitation measure in place.

I should say in passing, I note that in connection with this whole business of time limits, the Government is not ducking the problem of Pratt & Morgan which is also in a sense a limitation problem, by publishing guidelines concerning appeals to the United Nations Commission on Human Rights. It is relevant to this Bill because it shows the importance of having clearly defined procedures. While people may differ about whether the time limits are selfish or generous and the procedures are not what they would like to see, the fact is that at long last somebody is dealing with Pratt & Morgan. We have had that problem for six or seven years now and it has not been dealt with; it has just been lying there. The courts are grappling with Pratt & Morgan, attempting to get persons convicted and appeals heard in the two-year period generally prescribed by the Privy Council, although it is a matter of discretion. The state, through this Government, is laying down guidelines to the appeals to the United Nations Commission on Human Rights and now it is tidying up limitation periods in civil actions.

Mr. President, the other reason this is commendable is that we pass many pieces of legislation that are dependent on the Government setting up other structures and bureaucracies and reforming them. What is so pleasing about the work we are doing here today—and it is the time I note my loathing of jargon—but this is genuinely a Bill which will empower people. That is, it will empower them without being dependent on the state to set up an office anywhere, or a registrar of patents, an office of intellectual property or an 11-member board for livestock. Once this Bill is passed, it is effective; it is not dependent on the Government doing anything else, so it is a very real pleasure to be associated with a piece of legislation that will be effective and bring relief to persons as soon as it is passed.

We really have to query as a society, if we have inherited a legal system from another jurisdiction, why we just allow things like this to languish for 50 years and more, causing injustice. I cannot even remember if we have reformed a loophole in the Habeas Corpus law. *[Interruption]* We have done that; thank goodness! That is another example of something that languished for 40 or 50 years and indeed, in an indirect way the Attorney General is the beneficiary of that loophole in another life in which he pursued an anti-state interest with the same vigour that he now

pursues pro-state interest. I hope that this is a sign that the Government is going to deal with these other areas of law reform that are lagging so far behind.

2.40 p.m.

The last thing I would like to mention, Mr. President, is that I had not realized the question of workmen's compensation had been raised in another place and I know that this package of labour legislation concerning industrial injuries and other things is coming in.

I read the timely warnings of Sen. Cabrera, from time to time, as to what would happen if they are forgotten. I know this is an undertaking that is backed by the labour wing, so to speak, of the Government and therefore they would be suitably prodded not to forget it. You will notice as well, Mr. President, as much as it pains me, that I have had to exclude mentioning certain persons as being part of the labour wing of the Government because sometimes it is not clear whether they have abandoned that portfolio for good. So I am sure anyone whose name I have not mentioned will not take offence but will recognize that, perhaps, we need a little re-introduction to the persona and to some of the contributions to which we are accustomed.

Thank you very much, Mr. President. *[Desk thumping]*

Sen. Elizabeth Mannette: Mr. President, I just wish to ask the hon. Attorney General one question in connection with this Bill. I am following up the points raised by my colleague Sen. Beckles. She expressed a concern about the increased cost that the state may have to pay because of this legislation. I think one way that we may seek to reduce the additional cost is to exercise more effective oversight of Government ministries and so forth.

The Attorney General may recall that in March of this year I asked him about the question of parliamentary committees and he did indicate that he intended to bring the legislation to Parliament in six weeks. It has been about six months and I think that if we are—

Mr. Maharaj: *[Inaudible]*

Sen. E. Mannette: More than six weeks in any event.

Mr. Maharaj: More or less.

Sen. E. Mannette: If one is bringing this piece of legislation which will expose the state and the taxpayers to greater liability, then one certainly will want to put

some infrastructure in place to limit that liability. I hope the Attorney General will respond to that when he is winding up. Thank you very much.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, may I express, on behalf of the Government and Senators on this side of the House, thanks to hon. Members for their support of this measure and may I, in responding, start from the last hon. Senator, Sen. Mannette.

Mr. President, with respect to the question of the legislation and the amendment to the Standing Orders, they have been drafted but, as you recognize, the legislative agenda has been very busy. That is also a matter which will be on the Order Paper when the new session of the Parliament opens.

There is an amendment to the Constitution because the aim is to make the Service Commission accountable to the Parliament; to make every aspect of the Government accountable to the Parliament. There will be select committees to monitor the administration of these arms, departments and ministries of the state. This is all in keeping with the whole question of scrutiny of public action, governmental action and executive action. May I say, Mr. President, that when the last Opposition attempted to effect these reforms in 1992, the then Government opposed those reforms and they opposed them on the basis that governmental actions should not be scrutinized to that extent. So, I want to give her the assurance that this Government has given the commitment and that the Bill has been drafted. There have been drafts of the Standing Orders and I do agree, I gave a time limit and I have not kept it. I apologize for not keeping it, but I am sure the Senator will understand that it is difficult sometimes when you have a busy legislative agenda.

Mr. President, with respect to the hon. Sen. Daly, I must also thank him for his support. I think the Members on this side of the House were very surprised to hear the hon. Sen. Daly unreservedly congratulating the Government. We do recognize that Senators and Members of this House have to take positions as they see fit and I think Sen. Daly should be complimented, not only for supporting us, but also for criticizing us from time to time because it is on that democracy is based and flourishes. *[Desk thumping]*.

Mr. President, the Habeas Corpus Act, just for information, was amended and that was passed in this honourable Chamber as well as in the other House.

On the question of time-frame, I am glad he raised that. It is the policy of this administration to try, in all aspects, to see whether things can be more efficient;

whether it is matters pertaining to administrative affairs in the ministry or whether it is matters pertaining to the hearing of applications before the United Nations Committee and the Inter-American Commission on Human Rights. We decided that we would want to put time-frames in order to ensure that things are done in an orderly way.

We accept what he has said and we wish to indicate to him and this honourable Senate that what has been happening is that the death penalty in Trinidad and Tobago, although it is the law pronounced by the judicial arm of the state—a law authorized by the Parliament on an administrative basis—because of administration, the law has not been able to be implemented. We have set up a Case Management Unit in the Ministry of the Attorney General to monitor, on an initial basis, death penalty matters to see that everything is facilitated. The executive arm will do whatever it can do to ensure that there is some expedition of matters so they will not be kept back. We must recognize, however, that the executive arm of the state functions separate and apart from the judicial arm of the state.

We have also set up machinery in the United Kingdom whereby matters can be expedited before the privy council, so that there will be no delays as there used to be. In a short while—when I say 'short while' I do not want to give time in weeks now, but in a short while the Government will be making a statement on the question of the death penalty. There will be statistics produced which will give an indication of how delays in these matters have been at a very critical stage, if I may say so.

In respect of the United Nations Committee on Human Rights in Geneva, and for the Inter-American Commission on Human Rights: we have set up the necessary units for those activations to ensure that matters will be heard within the time-frame. The executive arm of the state is doing all that it can possibly do to keep all these time-frames.

With respect to what Sen. Beckles has stated, I want to tell her and this honourable Chamber that the Freedom of Information Bill went out for public comment and there have been many comments about the Bill as to the machinery to be used. We are hoping to have it in this session of Parliament. It is still not yet completed having regard to the various comments which are being considered. There have been regular meetings as we are working on the Bill. It may not be at the commencement of the next parliamentary session but during the next parliamentary session we are hoping to have that Bill introduced.

2.50 p.m.

Under the freedom of information legislation, obviously, much information would have to be given. There would be an entitlement for people to get information. But the point was made in the public discussions, that you do not want a bureaucratic set-up whereby, in applying for the information and in getting the information, there will be a lot of delay and bureaucracy.

In respect of the libel matter, I do not know how to answer this, because the question of the change in the libel law forms an integral part of the Green Paper on media reform and the PNM has asked for that Green Paper to be withdrawn. I do not know whether Sen. Beckles has read the Green Paper, but I would ask her to read it.

Sen. Beckles: You are not answering the question.

Hon. R. L. Maharaj: But obviously, a Green Paper is not a policy decision. This matter was in the Green Paper which went out for public comment and members of the public have commented. May I say that most of the population of Trinidad and Tobago who have commented on the Green Paper as well as organizations abroad, have supported it. There are some aspects of the Green Paper which they have not supported, but the comments we received are in support of the Green Paper. There are certain aspects of it about which people have expressed reservations and certain aspects which they have not supported. But generally, the Green Paper has had support, not only in Trinidad and Tobago, but also in the Caribbean and internationally, from human rights organizations and international organizations dealing with the media.

I want to answer specifically that that aspect of the law is part and parcel of measures which we would like to introduce. What we will do is to bring a bill dealing with some of the aspects of defamation and have it brought before the Parliament whilst the discussions on the other aspects of the Green Paper take place.

It is a measure to which we are committed and we think it is a grave injustice. As a matter of fact, at Caricom, we had the benefit of having members of the media discuss the matter with us. We have a special committee at Caricom looking at the whole question of the laws relating to libel and slander. One of the aspects which had been spoken about was this measure. Not only the former Attorney General of Trinidad and Tobago suffered that injustice, but also many poor people, because of this law. It is a law which should have been amended a long time ago.

In respect of the complaints against ministries, I think that the way the governmental services are organized in countries, one cannot get away from the fact that there would be complaints. I think the duty of a government, really, is to try to minimize as far as possible and eliminate all possible complaints. But that is totally impossible, I think. What one needs to do is to have avenues whereby, when people complain, the complaints would be attended to.

When one looks at the reforms with the select committees; when one looks at the freedom of information reform; when one looks at the whole question that the Ombudsman Act is going to be reformed to give him more powers; and when one sees that in respect of this legislation, as far as limitation is concerned, that if people do not know of the wrong, time may not run against them, one sees that there will be the safeguards and the protection.

But the point is taken. What I can say, although it falls under the purview of the Ministry of Public Administration and Information, is that we have had complaints desks set up at the ministries and we have machinery to deal with some of these complaints. But I should say there has to be an orientation that members of the public are being dealt with and people have to act in accordance with law and to recognize that the exercise of power must be done fairly and not whimsically and not in a way which is reckless or capricious.

We are trying to see whether we can instill those values but I am sure Senators on the other side would recognize that these are problems which have not come overnight; they have come over the years and we are trying our best to reform some of these measures.

The mere fact that the system is being opened up, with more and more open government; more and more transparency in government; more and more accountable government, would, in effect, put the pressures upon Ministers, public officials, upon all persons who exercise public power, to really comply with proper principles of administration.

I thank the hon. Senators on the other side, and I beg to move.

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 22 ordered to stand part of the Bill.

First and Second Schedules ordered to stand part of the Bill.

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

Senate resumed.

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

3.00 p.m.

SUMMARY COURTS (AMDT.) (NO. 2) 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 Summary Courts Act, Chap. 4:20, be read a second time.

Mr. President, this Bill has its origin in a recommendation of the Judicial and Legal Service Commission, that the basic qualification for appointment to the Magistracy should be reduced from seven years' practice as an attorney-at-law to five years' practice. As we know, Trinidad and Tobago functions under three main arms. We have the executive, the legislative—that is part of what we are here—and the judicial arms.

The structure of the Constitution is based on the fact that there are limitations of the three arms trespassing upon each other's functions. The Judicial and Legal Service Commission is an independent commission under the Constitution of Trinidad and Tobago which is given the power, under the Constitution, to make appointments and to deal with matters pertaining to the administration of justice. That is to say, to appoint and to discipline officers.

The Judicial and Legal Service Commission is the body which appoints magistrates. It has asked that this Act be amended.

Mr. President, it would be interesting for us to see what is being amended. If I may read clause 3A of the Summary Courts Act, Chap. 4:20 which states:

> "No person shall be appointed a Magistrate unless he is a member of the Bar of Trinidad and Tobago or of England or a Solicitor of the Supreme Court or a Solicitor of the Supreme Court of Judicature of England and he has either—
>
> (a) so practised in one or other of the capacities mentioned above; or
>
> (b) after he became qualified to practise as a barrister or a solicitor, so served in the judicial or legal department of a Commonwealth country; or

(c) so practised and has so served, for periods which together amount to not less than seven years:"

Mr. President, under the existing law, it was possible for a person who did not even have seven years' practice but who, under clause 3A(a), practised in one of three capacities as mentioned above, may have one, two or three years' practice but who could have been appointed as a magistrate. Under subclause (c), it was so drafted in a way that if there was supposed to be a yardstick of seven years, it could have been achieved under that section. The new clause attempts to, and I will read:

"3A. No person shall be appointed a Magistrate unless he has been admitted to practise as an attorney-at-law in Trinidad and Tobago and has practised as such for a period of not less than five years save that for the purpose of satisfying the latter requirement practice as an attorney-at-law or as a barrister or solicitor and service as a judicial or legal officer in a Commonwealth country, shall be deemed to be practice as an attorney-at-law in Trinidad and Tobago."

3.10 p.m.

The aim is to put a minimum requirement of five years' practice as an attorney-at-law or solicitor in the service as a judicial or legal officer to be deemed to be practice for the purposes. It is hoped that most appointments would be made from persons with over five years of practice. The Bill would repeal and replace the existing clause 3A.

The Judicial and Legal Service Commission has been experiencing great difficulty in recruiting suitable candidates who are willing to serve. It is considered that those with less than five years' experience are insufficiently suited, while those with seven years' experience or more may be unwilling to accept such an appointment, because they have settled down to what may be the beginning of a lucrative practice. The commission is of the view that after a minimum of five years' experience, an attorney ought to have acquired sufficient knowledge of the working principles of the law to enable him or her to discharge the functions of a magistrate.

One knows that a magistrate's functions involve mainly the determination of summary matters whether obscene language, wounding or matters done under the Summary Courts Act. A magistrate also hears and determines preliminary inquiries of the more serious offences. In those circumstances, the magistrate's function is

not to find guilt but to determine whether a sufficient case has been made out. If a sufficient case has been made out, the magistrate commits the accused to stand trial for the Assizes. If insufficient evidence has been adduced, the magistrate would discharge the accused. In those matters, the Director of Public Prosecutions has the power, if he considers the magistrate to be wrong, to apply to a judge and obtain a warrant for the arrest of the accused and have the person indicted for the offence. A magistrate also does petty civil court matters. The smaller civil claims used to be $5,000, but it has been increased to $15,000. The magistrate sits as a petty civil court judge and decides whether a plaintiff is successful in his claim or not.

He also sits as a coroner at times. The magistrate does very serious work which affects the right and liberty of individuals. The commission is of the view that a magistrate with that experience can adequately perform the duties. We also know that the court system is geared in such a way that if magistrates make errors, there are rights of appeal to the Court of Appeal. I say this to give an overview of the way in which magistrates function and the appeal processes.

A review of the statistics provided by the commission revealed that in most instances during the period 1991—96, the commission has been able to fill half of the existing vacancies. In 1991, there were six vacancies. Upon inviting applications to the post of magistrate the commission received five applications of whom only three candidates possessed the requisite seven years' professional experience. In that year only two appointments were made.

In 1992, 1993 and 1994, the commission was marginally more successful in filling vacancies. In 1992, there were five vacancies and of the four applicants, three possessed the seven years' professional experience and two appointments were made. In 1993, the commission advertised for three senior magistrates. There were two applicants and two posts were filled. In 1994, the commission advertised for six magistrates. Of the 13 applicants only three had acquired seven years' professional experience and only five appointments were made.

In the period 1995—96 there existed 15 vacancies. Of the 21 applicants, nine had acquired seven years' professional experience. During that period only eight magistrates were appointed. From the statistical review it is apparent that the commission has been unable at any given time to fill the existing vacancies in the Magistracy. Even where in absolute terms the commission received applications in the required number, many of the applicants had not yet achieved the requisite seven years' experience. The commission was at all times unable to fill the existing vacancies unless it exercised a discretion under the proviso.

It is hoped that this amendment would obviate the difficulty experienced by the commission in identifying and persuading suitably qualified practitioners to serve as magistrates. The administration of justice would benefit from the appointment of the new magistrates which would be facilitated by this amendment, as the Magistracy plays an important role in the administration of justice and can only function at optimum when it is fully staffed. This amendment would facilitate the Judicial and Legal Service Commission to fill the necessary vacancies which exist from time to time, in order to perform the expected role in the administration of justice.

The function of the executive arm of the state is to give the Judiciary the necessary resources to ensure that it performs its functions. In this context, this administration decided to respond to the request of the judicial arm of the state in providing the necessary means and resources whereby it can perform its functions to the society. I would not go into the details but if it becomes necessary, I would give the particulars. May I say that since this administration took office, it has provided the judicial arm of the state with resources, not only in terms of money, but also additional staffing. It has also passed legislation to provide for additional judges and taken steps to create new posts in the Magistracy. It has provided facilities for expert reporting in the Judiciary, training and assistance to judicial officers.

In the two-year period the aim of the executive arm of the state has been to try to give to the judicial arm all that is necessary for it to discharge its functions in administering justice. The Government has agreed in principle to a judicial sector reform project with the assistance of the World Bank in which the entire administration of justice is expected to be reformed. This is in collaboration with discussions with the Chief Justice and the Judiciary.

3.20 p.m.

As we all know, the entire structure of the administration of justice has been there from colonial times. We really have a colonial-time Judiciary and Magistracy, which is being asked to discharge its functions in a world which has expanded, not only in terms of technology and trade, but one in which there has been an increase in the nature and complexity of disputes; an increase in internationally organized crime and more difficulties in prosecuting and adjudicating in both civil and criminal matters. This judicial sector reform project is to reform the administration of justice in a way in which there would be expertise to assist the Chief Justice by providing assistance in respect of case management flow and the daily

requirements of administering the Judiciary and the Magistracy. In effect, there would be a court administrative unit which would assist the Chief Justice, and to a great extent the Chief Magistrate, in the administration of justice.

I mention this because it is not an amendment to be looked at in isolation. We recognize that there are problems which affect the administration of justice, but these problems have not come about overnight. When one looks at the history of the administration of justice one sees that there have been several reports. In 1892, there was a judicial inquiry and a report on the administration of justice. In 1956, there was the Napier Report. There was the Julien Report, and a report by Mr. Justice Karl de la Bastide in 1972. There was also a report in 1977. There were four O&M reports, the *Gurley Report* and the World Bank reports in 1995 and 1996.

We have decided that the time for action is now and the executive arm is prepared to give to the Judiciary whatever it needs, subject to obvious constraints, to assist it in improving the administration of justice in Trinidad and Tobago.

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, today has been a rather peaceful, calm and quiet one in the Senate. I give you the assurance that I do not intend to spoil the atmosphere that prevails.

This Bill is indeed a very serious piece of legislation in that it is seeking to reduce the experience for the appointment of magistrates in the Magistracy of Trinidad and Tobago from seven to five years. The hon. Attorney General indicated in his presentation that the Bill is as a result of a recommendation made by the Judicial and Legal Service Commission.

[MR. VICE-PRESIDENT *in the Chair*]

However, Mr. Vice-President, we have some very serious concerns with this legislation. In fact, I would like to indicate at the outset that we believe that this reduction should not take place because it will not solve the problem of being unable to fill the existing vacancies in the Magistracy. It raises the question of the experience of an attorney-at-law in terms of that person being appointed.

The Attorney General made mention of the doctrine of separation of powers. We know how very important this doctrine is and, in the past, our administration has attempted at all costs to maintain the independence of the Judiciary. When the Attorney General mentions that this is the recommendation of the Judicial and

Legal Service Commission, it gives the impression that we should just close our eyes and go along with it. The Attorney General, however, made an interesting point in his contribution. He said that the function of the Executive is to give resources to the judicial arm and whatever the judicial arm needs, the Executive will provide. Our view is that in respect of filling the vacancies in the Magistracy, the executive arm should look into improving the terms and conditions that exist presently for magistrates.

Many years ago, when I was a student in my first year of legal study, this was an issue which was very topical—the fact that over the years magistrates have been experiencing tremendous difficulties. The whole question of their salaries and other terms and conditions has been an issue for a long, long time. Of course, you can ask what the PNM did, but I think it is fair to say that all governments of Trinidad and Tobago have shown very serious concern with respect to the problems in the Judiciary and our country.

The Attorney General himself has pointed out that way back in 1892 reports were done with respect to the administration of justice. I do recall that it was the Attorney General in the past administration who appointed the Gurley Committee to look into all aspects of the administration of justice with a view to improving it. We are very familiar with the *Gurley Report*.

In another place, I heard the hon. Attorney General agree that there was a report, but stated that the PNM did nothing. With all due respect, I view that as just political rhetoric because the facts will show that—and I am sure that the Attorney General can vouch for it—between the period 1991 and 1996, there was the completion of that beautiful structure which is now known as the "San Fernando Hall of Justice". I am sure that the hon. Attorney General himself had some wonderful days practising there before he became Attorney General.

We know of the introduction of the Night Court in Arima. We know of the construction of the Arima court. We know, as well, that over the last couple years, a programme has been embarked upon by the Judiciary, with respect to computerization.

3.30 p.m.

A tremendous amount of resources were in fact directed to it so that when the Attorney General made mention—*[Interruption]* All the CAT Reporters and the training that was taking place with respect to improving the reporting in the Judiciary. Those things were happening long before the Attorney General was in office.

Mr. Vice-President, when the PNM was in government much work had been done with respect to improving the administration of justice, and, indeed, the recommendations of the *Gurley Report* are there for all to see and it would have been just a matter of time for the other aspects to be implemented.

We believe that when one is dealing with the appointment of magistrates, the period of a magistrate's experience is a very important consideration. We heard from the Attorney General about some of the matters that are dealt with by magistrates; he spoke about summary matters and petty civil court matters. We also know that in the Magistrates' Courts throughout Trinidad and Tobago, that the busiest court tends to be the one which deals with maintenance and custody matters, especially now that domestic violence is so topical. The magistrates are the ones who have to deal with these matters. We believe that a person with more experience would certainly have a different approach in dealing with some of the matters that may be brought before him.

I know for a fact, and I am sure that the Attorney General can testify to this, that in some instances constitutional motions have been filed by persons who had been arrested under warrants that were executed in matters that had already been dismissed in the Magistrates' Court, but for some reason, those warrants were not properly recalled and cancelled at the time the case was dismissed and that has been creating much litigation. I am sure that the Attorney General is mindful of it.

What this situation points to is that within the Magistracy there is need for some kind of training programme to take place so the more experienced magistrates would be able to impart their experience and knowledge to the younger ones who are being appointed. Essentially, we believe that by simply reducing the time from seven to five years is not going to improve the situation in terms of quality, and what the Government should be focussing on is to improve the terms and conditions of employment for magistrates in Trinidad and Tobago.

Thank you, Mr. Vice-President.

Sen. Dr. Eastlyn Mc Kenzie:. Mr. Vice-President, before I ask my question I would like to thank the President and Members of the Senate for their expression of sympathy on the passing of my mother.

I ask your permission to stray a little from the topic to say what a beautiful dining room and common room we have and that human side of enterprise is certainly having a nice effect on all of us, and I congratulate all those who are responsible. I do not know if it is the Ministry of Works and Transport, our

colleague, Sen. Baksh and his staff, but whoever is responsible for the lovely environment and the service we have, I feel very happy about it and I am sure others would join with me in saying congratulations.

Mr. Vice-President, I take this opportunity to welcome my friend, Sen. Agnes Williams. I congratulate the Government on bringing the balance up and to tell the hon. Minister of Finance and Minister of Tourism that he has someone with experience in finance and budgeting and he should not be scared to have a woman at his side helping him with the figures. *[Laughter]*

Now to the topic at hand. I felt very concerned when the Attorney General's emphasis during his contribution was on the length of service. I thought that there would be other criteria, rather than length of service. For instance, I thought about variety of experience and maturity, because there is a certain level of specialization by some of our attorneys. There are some who just like to do bar licences. *[Laughter]* You will understand, Sir, you have been in the field, but I thought that variety of experience and maturity would be looked at, rather than merely length of service. Some specialize and they like to deal in certain areas, some like to deal only with land law, others like to deal with matrimonial matters. So in the consideration of the appointment of someone to be a magistrate, one should not just look at five years' service. It gave me the impression that when there was a vacancy for six magistrates and only three had seven years' service, if they all had the seven years' service, they would have been accepted. I would not feel comfortable with such a situation. Other areas should be looked at, such as their performances before they are given that sanction. This is my concern.

Thank you very much.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, in considering the features of this Bill, I have very serious reservations particularly with that provision which seeks to reduce the experience that an attorney must possess to qualify for appointment as a magistrate from seven to five years. As a layman, I feel very uncomfortable with that, which I consider to be the principal feature of this piece of legislation, notwithstanding the difficulty explained by the hon. Attorney General in the recruitment of our best attorneys who feel that pastures are greener and better elsewhere. Is this indicative of one of the characteristics of our age and our time, which is the lowering of standards?. It has been said that when it comes to an examination like the CXC—and those teachers who correct

the papers have expressed very great concern about the pass mark that is expected—the pass mark is very low and as the years come and go, it is noticeable there is a lowering of the pass mark.

3.40 p.m.

[MR. PRESIDENT *in the Chair*]

Mr. President, matriculation, even to universities, seems to be dropping. I have been told that there was a time in some institutions to obtain a pass mark one had to make about 50 marks out of 100. It then went down to 40, 35 and now maybe 33 1/3. What we are witnessing as I speak about the lowering of standards—and I hope this is not implied in the Bill; I have my worry, concern and discomfort—is that students gain their pass mark in examinations but are hardly educated and well prepared for their professions and jobs.

I am not the only one, but I think you would have noticed in the press the expressions of many of our citizens who are concerned about falling standards within the judicial system in Trinidad and Tobago. I wonder if you are aware of the frequency of errors in judgment. It dawned on me only recently, a few months ago, and I have been making a collection. It seems to be a pattern. I hope I am wrong. Something is amiss within our judicial system. Too many cases are subjected to retrials and the public is concerned.

Ever so often I will read of the determination of some hearing where the Court of Appeal ordered a retrial and the reasons given were: "Issues presented by the trial judge would have left the jury confused; inadequate direction in summing up from the trial judge." This is like a chorus for many cases. I have listed within the last few months about seven. In another case, Mr. President, the Court of Appeal quashed conviction and ordered a retrial. You find one judge contradicting another and one court contradicting, so frequently, another court. In another case, a High Court judge reversed his own ruling.

Mr. President: Hon. Senator, I think you are going off mark a little. You are talking about a different court. Would you concentrate on the Bill before us?

Sen. Rev. D. Teelucksingh: Thank you very much for your direction, Mr. President. The point I was trying to make—let us say I did not make it—I am going to start all over again to make this point because I strayed. But it is so very important. I am talking about a fear that, with the provisions in the Bill, we are lowering standards. Mr. President, I am also drawing to your attention and to this

honourable Senate's attention the fact that the public has noticed that so often we find that when decisions are given in the Magistrates' Court—I will stay there. In the Magistrates' Courts decisions are also deeply flawed and this term has been repeated over the last few months. Deeply flawed summations. Somebody is misdirecting the jury. *[Laughter]* This is very common. Somebody is misdirecting somebody. I am worried.

Is our judicial system—when I say judicial system I mean the whole works, all of them—at war with itself? This is the question we are asking. Something has to be wrong. Mr. President, you know there is a saying that to err is human. All right, I will give in to that. We are all sinners and we all have our weaknesses, but what is happening within recent times is that these errors are coming too fast and furious. We are now being told that because it is very difficult to recruit magistrates with the normal experience qualifications of seven years, it will be made easier. This is where I am worried. We have our problems already and I feel that this is going to lower the standards and I am very uncomfortable. This is the heart of the Bill. Do we need to review the qualifications of magistrates? I think the emphasis should be on excellence. Excellence in qualifications and excellence in professional practice is absolutely essential if people are to be promoted, as it were. Do we have refresher courses even for those who are in the Magistracy? Do we have refresher courses at all, or do we just give them their long leave, their sabbatical and they go on a world cruise, or something like that, with their families? We need to look into that. It is very important.

Let us look at clause 2 in the Bill which refers to the Commonwealth. Instead of lowering standards when we have our big cases in Trinidad and Tobago, those who can afford it, do they not bring lawyers from other places? Should we not recruit instead, using possibly the personnel available within the Commonwealth? We are being told about recognition of qualifications within the Commonwealth in that clause. Mr. President, instead of lowering standards it might be better to seek, within the Commonwealth, the service of suitably qualified magistrates and judges to supplement our present judicial personnel.

I thank you, Mr. President.

Sen. Prof. Kenneth Ramchand: Mr. President, I have mainly a set of questions. The Bill to amend the Summary Courts Act has, as its purpose, as one gathers from the introduction by the Attorney General, to fill vacancies in the Magistracy, but not just for the sake of making up numbers. The Attorney General wants to fill vacancies in the Magistracy in order to facilitate the administration of

justice. I take it that "to facilitate the administration of justice" has two main aspects: one is to grant justice expeditiously and the other is to make sure that justice shall be just. If that is the purpose of the present Bill we have to ask: To what extent is the proposal to lower the number of years of experience from seven to five years expected to increase the number of applicants in order to make justice more expeditious and more just? How do we know that lowering from seven to five years will increase the number of applicants?

3.50 p.m.

Has there been a survey of the applicants since 1992 to decide how many more people would have been eligible among those applying if it had been five rather than seven? Has there been a survey to ascertain the reason why others have not applied? Do people want to know the reasons? Could it be that people do not apply because the conditions of service are not acceptable? What about the conditions in which they work? Could it be that there is not enough money? Have we made a survey of why there are not enough applications? Is the main reason a time factor? Would giving five years rather than seven encourage people to overcome their reservations about salaries and working conditions?

Mr. President, I feel that there should be a proper survey. For instance, we have to work out whether one of the problems is the great backlog of cases. Should special provision be made, first of all, to wipe out the backlog? Should some device be created to deal specially with the backlog to get rid of it? Not necessarily through the existing Magistrates' Courts, but by some other means. Has thought been given to the possibility of employing distinguished attorneys on a part-time basis so that the courts are running but someone would work for six hours a week in the Magistrates' Courts? It is not his full job; it is just part of his job where he does six hours. Can we not have some part-time arrangement?

I think we should be drifting towards some kind of reallocation of functions. Maybe the magistrates have too many different things to do, and perhaps we can reduce the amount of work being done by the magistrates so that the present number of magistrates could clear up the stuff in the Magistrates' Courts. I know this places the work somewhere else, but can there not be some kind of reallocation of functions which would then allow the qualifications to be altered so that more people would be able to be magistrates to deal with certain kinds of matters? Just to clarify, I am thinking of a reallocation of functions in conjunction with a tiered system of magistrates to break up all the matters that come to the Magistrates' Courts into three classes.

We could say, to be a magistrate to deal with matters of type (a), one must have a certain type of qualification. To deal with matters of type (b), one must also have a certain kind of qualification. There would, therefore, be a Magistrate I, II and III, which allows you to do what Rev. Teelucksingh is complaining about—lower the standard, but have the ones with the minimum qualifications dealing with the kinds of matters that those minimum qualifications can adequately deal with. It might be that that kind of tiered system, and that kind of division of the matters into three categories, would help to expedite and create fairness.

I want to come to Rev. Teelucksingh's and Dr. Mc Kenzie's point, that took the same line—with which I agree—that we do need to be sure that by experience, we do not just mean clocking up a certain number of years. What, after all, is experience? And what should experience lead to? In these matters, experience would include technical experience in the practice of the law; technical legal experience, but I believe that a magistrate requires another kind of experience that leads to wisdom and proper judgment. It may well be possible that dropping from seven to five years would give the person adequate legal mileage, but would it give him enough experience of life? Would it give him enough of a reflective mind? Would it give him time to judge things properly? Would he have developed that capacity in such a short period? To take Dr. Mc Kenzie's point, would five years be enough to give that person a variety of legal experience, so that when he becomes a magistrate, he can handle all the matters before him out of legal experience?

Mr. President, I sympathize very much with the need to expedite the administration of justice, and I am a great supporter in the proposition that justice should be just. I know that is an old fashioned view. I am not sure that lowering the number of years from seven to five is the only way, or the best way. I would have liked to see more proposals addressing the problem, different kinds of proposals such as the ones I have suggested in my inadequate way.

I thank you.

Sen. Philip Marshall: Mr. President, I just have a few comments on this Bill to amend the Summary Courts Act. I would like to enforce the previous presentation by Prof. Ramchand and say that this is a very important Bill. It is a very important issue. One of the definitions of insanity is to expect different results while attempting to carry on in the same old way. The problem facing the hon. Attorney General is a serious one. If one were to attempt to measure the

performance of the Minister of Finance and Minister of Tourism, one would use certain indicators such as our reserves abroad, our level of inflation and, our GDP per person.

How do we measure the performance of our administration of justice? I would say that if we have a backlog of thousands of cases, it means that we are not administering the law. People's behaviour would not change if there is no feedback. If there is no reward, no punishment, no administration of justice, there is no justice.

4.00 p.m.

The point is that we are fortunate; and you all know that I have more than a passing interest in technology. I do not necessarily think we should mourn the fact that the *Gurley Report's* recommendations have not been implemented. Since that time, the availability and the cost of that technology has fallen and risen in power by hundreds of times, possibly thousands of times in some cases.

The moment therefore, is now to use technology to improve our administration of justice. What do I mean by technology? The hon. Attorney General talked about a case approach. A case approach is a term used in re-engineering processes. Just like in the hospital one has a patient one has a case, where one has a team of people following through that case from its initiation to its disposal. Sen. Ramchand very clearly and lucidly talked about the problem, which is; how do we have sufficient magistrates with the required level of experience? How can we use technology to overcome that shortage in numbers? In the medical profession, in the accounting profession and I would expect in the legal profession, technology is being used to leverage knowledge where, with the use and access to knowledge bases a less experienced magistrate may be able to retrieve and inquire into circumstances very similar to the one that may be facing him in a specific situation to see how that case was dealt with in a private situation.

Think about it. How do airline pilots learn to fly a specific type of aircraft? How are they reconfirmed in terms of their experience? They go into a simulator. Why can we not have situations where magistrates, maybe even judges are put into the equivalent of a legal simulator? They are given a test case with certain principles and issues and rather than go through the long process that may cost this country millions of dollars because of a wrong judgment, we can use technology that will cost us a few thousand dollars to disseminate the learning and knowledge to our people.

This is an important issue. We talked about this in the Senate a few months ago. We were talking about the retirement ages of people in certain Government positions. When top people in our legal profession, whether they be in the private or public sector, retire, leaving with them are decades of irreplaceable knowledge. How do we go about the process of encapsulating that knowledge? Yes, into computer technology. There are very simple ways in which that knowledge, based upon our knowledge of precedent in our specific situation, can be captured in knowledge based systems that, with the use of communications and technology, our attorneys at large, our learning attorneys can have access to what was done before. The honourable Attorney General should not in any way minimize the significant power of how we could use technology to increase the shortage of our knowledge resources in this very important area.

Sen. Prof. Kenneth Ramchand talked about classifying the cases, that is an excellent idea. If it were an inventory classification, let us take our 10,000 cases backlog and classify them; let us have a match-in, using technology of expertise at a certain level with the requirements of a specific case. Let us get rid of and eliminate that backlog of cases and demonstrate to the population of Trinidad and Tobago that when cases come before the Magistracy or the judicial system they are dealt with, disposed of and the law is upheld in Trinidad and Tobago.

I am grateful and I would beg of the Minister of Finance and Minster of Tourism that he releases as much funding as he can to provide the Attorney General with the necessary technology and I am sure the Minister of Public Administration and Information would gain also. This is an example whereby, if we are to become a learning nation, a nation of quality, this would be one specific example.

Mr. President, they say learning disabilities in children are horrendous and I can assure you certainly that learning disabilities in our magistrates or our Judiciary would be fatal.

I thank you and I support this Bill.

Sen. Martin Daly: Mr. President, the Senate is certainly, today, showing itself sensitive to the nation's requirement that we be peaceful and thoughtful after some of the matters on which we have had to pronounce recently.

What is interesting about this debate is the tremendous brain power of the persons who sit here who understand that this Bill is not really about age or experience; it is about providing for minimal qualifications in order to select

persons whom one literally has to grow. That is really the burden of the debate so far. I personally have no difficulty. To me, five years and seven years is a distinction without a difference. You will get to some point—which I am not prepared to specify—where a person would be so unseasoned as to be fresh. But five years to seven years is not important.

Therefore, I think we ought to support this Bill. What we are doing, from all our different perspectives and disciplines, is bringing suggestions to the Government which it may in turn take to the Judiciary as to how one grows people who have been selected to be judicial officers at whatever level. I think that is an important point that Sen. Teelucksingh was making, one cannot focus on any one part of the system. Therefore, I want to support the Bill. I am very heartened by all that has been said so far because it is not simply about qualifications, it is about what influences one brings to bear on the persons who serve as judicial officers.

We have had many suggestions. I now have the opportunity—I never thought Sen. Mc Kenzie would ever forget me. I have many persons who forget me, but I never thought Sen. Mc Kenzie would forget me and that is what has stimulated me to remind persons of something to which I will come in a minute. I thought, perhaps, in her encomiums about the tea room Sen. Mc Kenzie might have mentioned the person who first complained about the cubby hole. As I dare say, when we get to the airport, long after I am dead, assuming I served my biblical term, that whenever they open the airport in the next century, they will say, "Well there was one fellow who used to be very critical about the airport." You know when you get a little mention, but that is by the way.

I remember asking Prof. Deosaran, when he was a Senator, to raise this in the Senate, even though this is one of the things Sen. Ramchand is getting at. Mr. President, the backlog in the legal system is beyond human endeavour to clear up. Sen. Marshall is suggesting we use technology. Sen. Ramchand is making other suggestions. I made this suggestion repeatedly and I make it again. It is subject to certain safeguards, particularly with the use of technology. I think any case that is on any list that is more than five years old needs to be looked at for removal from the backlog by administrative rather than judicial means.

4.10 p.m.

Let me say straight away, when I said any case more than five years or more, there must be very clear and specific exclusions. It could be the subject of a study by a parliamentary committee. You certainly would have to exclude all serious

offences that offend against the root fibre of society—murder, rape, manslaughter and things of that nature, therefore, you would have to be very careful in your selection. As Sen. Prof. Ramchand has pointed out there are different levels and tiers. To keep bringing more human bodies—and this is what he is saying, you have to solve problems by technology and not bodies—to chase after the same backlog, is really another manifestation of the insanity of which Sen. Marshall has spoken.

Therefore, I am suggesting that apart from improving the physical and other conditions, we need to attack that backlog by administrative means. It may mean that the Government would have to consider paying compensation in certain types of cases, but if that is what it takes, ultimately, we need to wipe the slate fairly clean. We should not have a boundary dispute between two neighbours over six inches of land ploughing through the courts for 12 years. It is cheaper to pay one to give up the six inches than to have a case like that going through the courts for 12 years. I am sure if the experts study it they will tell you ultimately it would cost the state less money to buy the land from one of the disputers than to have a case going through the court for 12 years.

The boundary dispute may escalate into a chopping, as you know how people feel about these things. Thus, another case would arise out of something that is essentially "settleable" by society and does not require judicial intervention. That is why we have to look seriously at all, except the most serious offences, to consider whether they cannot be removed from the backlog through administrative means. Then, armed with the technology and the new persons recruited, we can then be attacking a manageable problem. The problem is not manageable. Continuing to recruit people and changing the qualifications to get more human bodies, to my way of thinking is a waste of time.

One has to be very careful when talking about a sensitive area of our society like the Judiciary and I do not want to be misunderstood. I am going to tell a story which I have already told the Attorney General privately and have since got permission to repeat. It will bring home the point I am making. I think it was Sen. Rev. Teelucksingh who spoke about refresher courses but that brings into question the wider issue of training and orientation.

The Attorney General is a good example of someone who changed his orientation himself, because he is now the arch prosecutor having got to that position by becoming famous as an arch defender. He has moved from one part of his career path to another. I assume it is self-taught. He has taught himself that he has to have a different orientation. He cannot just bring his brain, brawn or

experience, but has to have a different orientation. Indeed, anybody who makes a transition from private to public life also has to be at orientation. When people stop you on the street and they are miserable and you feel to tell them whatever, you have to recognize that they regard you as someone to whom they can legitimately complain. I certainly had to learn patience, almost to the extent of bursting a blood vessel. I have had to change my orientation.

Likewise a judge or judicial officer has to change orientation. It does not matter how bright you are, you have to recognize that you have limitations. There are some of us who could not sum up a case to a jury because we never did a jury case. Therefore, you have to be molded, trained and sorted out for this purpose. So that no one would take offence, no one is suggesting that the Judiciary is anything more than competent. Indeed, I will say in passing, the one sterling quality about our Judiciary right through our period of independence, is that it has never sucked up to Governments. Our Judiciary, warts and all, has a record of independence that can be the envy of the entire civilized world. [*Desk thumping*]. I am certain about that.

One only has to look in the law reports, in fact, one prime minister was moved to described lawyers as "2 by 4" when they were opposing certain ways in which he wanted to do things. That has always been a problem. You only have to consider some of the cases that went through the court in the 1970s and 1990s, to see that we never had a Judiciary that did the bidding of the Government. This is something of which we have to be extremely proud. When we are discussing these reforms we must be very sensitive in what we say. Times change and people's orientation change and at the time you begin a career the conditions operating in the outside world are very different from when you get to another stage of your career.

I do not think that there is any problem in reducing the minimum qualifications of a magistrate from seven to five years, as long as thereafter we subject them in the best sense, to all the positive influences of a career in the Judiciary.

Mr. President, I was told a very interesting story by an extremely reliable source, about orientation. We regard the British Judiciary as one of the finest in the world and, indeed, their House of Lords which is really the Privy Council is our final Court of Appeal. The British Judiciary is facing a big problem; the new labour government is proposing to introduce a Bill of Rights, that is to say, to bring to the United Kingdom for the first time, a written constitution. There is not a judge sitting in England, with the possible exception of those in the Privy Council and

therefore have gained that experience from countries other than England, who knows how to deal with a system that is governed by a written constitution. A small elite of those who have sat in the Privy Council and have had the benefit of cases coming from Trinidad and Tobago, Jamaica and Tuvalu. That is how the British judge has learnt to deal with the written constitution, but only the top Judiciary has had that experience.

As a result of the coming introduction of the Bill of Rights I understand, from an extremely reliable source, that 90 British judges—these are high people who have knighthoods. When they drive down the street the police salute them three times and when they go on the Assizes, they have trumpeters. These are high men, people who could afford to feel puffed up. We have people in our society—not judges—who get puffed up when a wonderful person from Tobago is appointed to the Senate; they puff up over that. We have a tendency to puff up very easily.

You know what happened when those 90 judges assembled in the Hall of Justice in the Lord Chief Justice's Court in the Strand in London? I am told a Barrister, a QC, but a young one—reminds me of myself [*Laughter*]—who was an expert in constitutional law was asked to address 90 of Her Majesty's judges on their role vis-a-vis, a written constitution. That is training and orientation and it takes a broad mind to understand how we have to move with the times. They could be men—you could be a judge up to 75—in their 50s, 60s or 70s, with the world of experience, illustrious careers that we have never dreamed of, brains, as we say "bright like bulb', but their life experience has changed and they need to be trained and oriented to deal with the new situation. It has nothing to do with age or the number of years, but the influences to which you are exposed. I dare say, we still have nasty Magistrates' Courts, in fact, I was asking Sen. Chamely to see whether I was on the right track.

4.20 p.m.

If you are a doctor, no matter how intelligent you are, how patriotic you are, how much money you will be paid and you are told that you have to work at that hospital, you are not going to work there if you have a choice. It is not only about money; it is portrayed as though people do not want to take these career jobs. My good friend, Sen. Rev. Teelucksingh, talks about green pastures but those are not the only disincentives. Likewise, if you have to be a magistrate and sit in a nasty court with cockroaches running up your leg and a modesty panel consisting of brown paper—ask the female magistrates how many courts there still are in Trinidad and Tobago with modesty panels on the desk consisting of brown paper

stuck up with thumb tacks. You are asking people to work in those conditions; you cannot pay them money to sit for cockroaches to run all over them.

We really must be very sensible when we are approaching this question about what are the qualifications and difficulties in getting people to serve in the Judiciary. There have been very unkind remarks made recently about the fact that the Judiciary is getting younger. Why can we not give the younger Judiciary an opportunity to prove itself? Let us wait and see. Their orientation might be such that despite the snide remarks about their age, they might serve us well. I do not think we need to get hung up on this red herring about age and experience. Of course, age and experience are very important but if the society cannot produce persons who have the ideal age and experience to fill these positions, we cannot just throw up our hands and do nothing; we have to try different approaches.

Therefore, what my colleagues and I are saying on this Bench is, as long as the minimum qualifications are not negligible then we will extend the opportunities to people to have a career in the Judiciary but we must service their career path with the required tools, training and orientation. However high you are, you have to recognize when you take on a new career there may be things in which you have to be trained or oriented, like the 90 judges who went to listen to a young Queen's Counsel describe to them his perspective on what their responsibilities would be in a changed system.

Finally, Mr. President, I want to say to the armchair critics in the Judiciary, it is said that a society gets the government it deserves, the dog catches its deserves and you got the Judiciary you deserve. If the Judiciary is not treated with respect and provided with the tools, then you will get a judiciary which you might think is worthy of criticism. We are all responsible for the type of Senate, House of Representatives, Judiciary, politician and reporter that we produce unless we have some common objective about how we would like those people to perform.

Mr. President, I would ask Members to support this Bill subject to the reservation that what becomes of the persons who have minimum qualifications once they decide to serve the country would be as a result of what tools, training and orientation we provide for them.

Mr. President, I thank you.

Sen. Dr. Eric St. Cyr: Mr. President, I will be very brief. We have a very straightforward amendment proposed. I am encouraged by the speakers who spoke before me that we must put this specific amendment in a wider context and

do the many things proposed so that the administration of justice as a whole, would be improved.

I want to say quite simply, that the question in my mind is, in addition to the many improvements elsewhere proposed, do we also need to make this one? I answer that question with a "yes". The hon. Attorney General gave some indication from which I gather that among the applicants for positions of magistrate, there have been persons with less than seven years' experience. I imagine the responsible authorities would have looked at these persons and would have seen among them, persons they felt worthy of appointment or else they would not have proposed an amendment such as this. We want to assure ourselves that while we do not want our standards to fall, the length of service—seven years—is a benchmark and it is as possible to find persons with several times seven years' experience who are not good candidates as it is to find persons with five years' experience who are very suitable.

With those remarks, Sir, I would like to say that I would support this amendment and encourage similar behaviour among my colleagues.

Mr. President, I thank you.

Sen. Pennelope Beckles: Mr. President, I rise just to make some brief comments as they relate to this Bill to amend the Summary Courts Act, Chap. 4:20.

Mr. President, whilst listening to my other colleagues, the serious issue to my mind is that the Judicial and Legal Service Commission, prior to this Bill brought before this Senate, has appointed several persons as magistrates who had even five years' experience and less. My concern, therefore, is why is it necessary to have this piece of legislation? If in previous years we have appointed persons who have been in practice for less than seven years and in some instances, less than five years, then what is the necessity for the legislation? Is it that they are saying that they did not have a discretion? Is it that they are saying when they appointed those persons they were wrong? Or is it that the Attorney General is attempting to clear the air in relation to ambiguity that may exist as it relates to the legislation?

The Attorney General gave us several persons who have been appointed over the last couple years. He did not indicate whether some of those persons appointed were actually persons who were in practice for less than seven years. I ask whether the Attorney General could address that issue specifically because I think that it would have clearly assisted me in the position I would have liked to have taken. I

know that there were persons who were in class with me at law school when I was five years out, who were appointed magistrates. So it is clear to me, as a matter of fact, that the Judicial and Legal Service Commission—I do not know if I should say appears to have a discretion, but certainly—was exercising that discretion in appointing persons under five or seven years before.

Mr. President, what I am concerned about is, if that is so and is a fact, why is it necessary to have this legislation? Is it that we are saying clearly that the persons must be in practice for five years and that that discretion ought not to exist? If I am to listen and I have listened very carefully to my colleagues on the Independent Benches, what is being said is that there may very well be cases where persons are out to practice for three years and when you look at the qualifications and experience those persons may very well be good magistrates. So if somebody is out three or five years and may make a good magistrate—*[Interruption]* I am hearing my colleague saying nobody said that—the point is if you are saying that, it is quite possible that some of the young persons can make good judges or magistrates, the Judicial and Legal Service Commission had already been exercising its discretion in appointing young magistrates. If it has done it before, then why are we really debating this piece of legislation because it seems to have always had that discretion?

4.30 p.m.

Mr. President, I just want to refer to the fact that one of the areas that we could look at is the fact that over the years there have been several conferences, lately the magistrates have not had conferences and/or workshops. If we were to look at several pieces of correspondence material dealing with the workshops as it relates to magistrates, I think it would very well have assisted us in deciding whether or not this piece of legislation is necessary. Mr. President, those several workshops were always made possible by virtue of grants by the Government of the Republic of Trinidad and Tobago. I would like to refer to one such workshop and that is found in the report of the proceedings and papers of the second magistrates' workshop that was held in Trinidad and Tobago in 1982.

Some of the persons who should have attended, but did not attend, and gave comments on the workshop were Lord Diplock, Lord Denning, and we had several other dignitaries from the Caribbean and from Trinidad and Tobago. We also had several magistrates who presented papers to assist each other in terms of their interpretation of the law. That issue of the orientation and training which I have always mentioned every time I rise in the Senate to make a contribution as it

relates to Bills dealing with the Judiciary, is the issue of training. We do know that if a magistrate is appointed tomorrow morning he starts sitting on the Bench the same day without having had any sort of training and orientation as to what is expected of him as a magistrate.

Mr. President, if I may just read very briefly from what Sir Ellis Clarke, then His Excellency, said as it relates to the magistrates. He stated:

> "This is why we want the best both in the nature and quality of Magistrates and in the conditions that will tend to bring out the best from that human Magistrate. Let us not forget it, the Magistrate is human and will react as a human being. If he is in a Court House that's how he will behave in a manner that is hot and bothered. If he has to worry about the fact that rising prices make it virtually impossible for him to educate his children, he cannot have that poise, that dignity, that equanimity that we associate with the administration of Justice. If he himself is having difficulties in meeting his housing problems, what sort of Magistrate do we expect him to be in the Rent Restriction Court."

He concluded by saying that:

> "It is good that Magistrates should get together from time to time and ponder on the matters that are of vital importance to their work... If our country can feel convinced that justice is duly and properly administered we shall indeed have the foundation for everything else to follow in its wake."

Mr. President, the issue really is whether we are satisfied that in terms of our recruitment policy as it relates to magistrates being appointed, that we have really made enough efforts to reach persons who might have been in the seven-year category or even less. The issue of sourcing, marketing and advertising up the islands—we have the Hugh Wooding Law School, we have Barbados, we have Jamaica. As a matter of fact, up the islands several of the attorneys general, directors of public prosecutions, registrars are persons from Trinidad and Tobago. As a matter of fact, in the British Virgin Islands we have no less that 10 Trinidadians working there, some as magistrates some as registrars. We have them in St. Lucia, Grenada, St. Vincent. Trinidadians are leaving Trinidad to go to some of the other islands to become magistrates, registrars and directors of public prosecutions. Some of them have between seven and ten years' and more experience. The issue is, why are they leaving Trinidad and Tobago to go and work in some of those other islands?

Sen. Rev. Teelucksingh spoke of greener pastures. I know the hon. Attorney General is going to say the PNM certainly did not do sufficient to improve the conditions for the magistrates. If we are here dealing with a Bill and we are all giving our experience and time, somebody, like myself, who practises fairly regularly in the Magistrates' Courts, would be prepared to admit that, as a society, we really have not done enough. The issue is whether we are not attracting them because of the seven-year limit or the five-year limit, or is it because we have not made the posts sufficiently attractive. We may very well find that having debated this Bill and the fact that the issue has now become popular and attorneys are now aware that the entire country is trying to make this improvement to make conditions better for magistrates and judges, persons will be more sensitized. There may even be those who are prepared to make a sacrifice in the administration of justice.

If we were to do a survey, even among the legal fraternity, and enquire as to whether or not they are aware as to when advertisements had gone out in relation to magistrates, some of them may say I have never seen any. The last time I saw an advertisement was probably two or three years ago. Even those issues are relevant. How do we market? Do we send it to the Law Association? Do we put it up in the courts, in places where the attorneys frequent so they might be aware that the issue of appointment of magistrates is something that will be dealt with in a week or two? I think, like everything else, when you want something you have to go out and market it. I am not convinced that over the years that approach has been adopted. As I said, now that the issue is on the burner and it will get the publicity, I feel that many persons—I have mentioned to some of my colleagues as it relates to this Bill, some of them have never thought about it, some of them do not even know what the terms and conditions are. So, I am saying that I feel one of the areas that we have not addressed over the years is the issue of marketing, marketing the clients as they say in the corporate world sometimes, those whom you want to come and give of their time.

Recently the Salaries Review Commission published, and it was accepted, the whole issue as it relates to the increase in conditions for the judges salaries. I am sure the Attorney General would be able to say that, certainly, this time around, it was a lot easier for persons to have considered being appointed to the Bench. Even the Chief Justice was saying there were problems. When you make the comparisons now between what the judges are offered and what the magistrates are offered, I think that is where we have the problem. In some instances, I know

the salaries are between $20,000 to $25,000 tax free as it relates to the judges. The Chief Magistrate's salary is about $12,000 and he has to pay tax, a senior magistrate is about $9,000 and the junior is $8,000, all paying taxes. Very often some persons graduate from the Magistracy to go to the higher Judiciary. So, the fact that we have accepted there is a problem as it relates to crime, and that we collectively want to deal with the issue as it relates to the administration of justice, then we need to accept that those are some of the critical areas that we have to deal with.

Mr. President, it has been accepted, I think everyone has said it over and over again, that the magistrates are the ones who deal, more or less, with the burden of the majority of the cases that pass through the system and therefore if we are saying that is so, then I think it means we need to treat them in a manner that will definitely cause those who may not have considered coming on the Bench before to want to come.

I have said several times before that you get the impression sometimes that some of the prisoners who are being taken to the respective courts in Trinidad and Tobago are given better security than that of the magistrates. I mentioned on another occasion, the Attorney General may not have been—

Mr. President: Hon. Senator, I would like to suspend for tea unless you are wrapping up in five minutes or so. If you are let me know.

Sen. P. Beckles: I will wrap up in five minutes. I mentioned just two weeks ago that in Chaguanas, in one week there were three bomb scares causing the court not to have sittings. We have that serious concern. I admit and I accept that several efforts have been made by the Attorney General as they relate, in some instances, to some courts particularly in Couva where, whenever there is rain, the court cannot sit; and in Port of Spain there has been carpeting, painting and some improvements and certainly in Arima they are shifting from downstairs to upstairs.

4.40 p.m.

So that I am not saying that improvements have not been made, particularly with respect to improving the comfort of the magistrates. But I think even certain things like a car loan, for example, a magistrate is still offered $75,000 to purchase a vehicle. On the issue of housing, most of them still have a problem in obtaining houses and, therefore, they get a housing allowance.

There was a Commission of Enquiry set up to deal with reports of alleged widespread dissaffection among magistrates owing to alleged arbitrary and sectional practices, which disaffection could have adverse effects on the administration of justice in Trinidad and Tobago. That was in 1997. That report is extremely extensive in which several magistrates were interviewed and were able to give you almost a ball-by-ball detail on what are some of the problems which affect the Magistracy. One of the critical problems was the whole issue of transfers, which still exists. Persons living in the East go to court in San Fernando or Point Fortin. Some persons who live in Point Fortin come to court in Port of Spain. Some of the problems which have been existing are problems with which we have not, in a very simple fashion, tried to deal so as to make the lives of the magistrates much more comfortable.

I have some concerns, but as I said in the beginning, if it is that magistrates have been appointed before, when it was seven years; there are persons appointed with five years; in one or two cases, less than five or six years, then I am not convinced that this legislation is necessary.

Thank you, Mr. President.

Mr. President: We suspend for tea and resume at 5.15 p.m.

4.43 p.m.: *Sitting suspended.*

5.15 p.m.: *Sitting resumed.*

Sen. Mahadeo Jagmohan: Mr. President, I rise mainly to lend support to the contributions of my colleagues and to state that the measures intended in the Bill to assist in the administration of justice are good, rational and well thought out.

Having said that, I seek your permission and I crave the indulgence of this honourable Senate to extend Divali greetings at this time. On behalf of all Opposition Senators and the People's National Movement and its political leader, I note that the event of Divali 1997 is a significant one. It has brought about a great deal of meaning and understanding to the national population. We wish you, Sir, and your family a happy and peaceful Divali 1997.

I take the opportunity to extend the same wishes—a meaningful, happy and joyous Divali 1997—to all Senators and their families and also to all citizens of Trinidad and Tobago. We hope that the illumination that the Deyas will bring in this entire nation, if any at all, will help to eradicate the darkness from the lives of all citizens of Trinidad and Tobago. I thank you very much.

Mr. President: Any other contributions? Dr. Chamely.

Sen. Dr. Edward Chamely: Mr. President, our hon. Attorney General mentioned that the legislative and judicial arms of the state had requested from the executive arm a reduction in the number of years from seven to five. I have no problem with that. The problem lies in two areas. Firstly, not enough magistrates and secondly, too large a workload. I hope that the Attorney General would have done an assessment among his colleagues as this would give a clearer idea as to what they will require to become magistrates.

The second problem is the large number of cases. There have been many recommendations made. Sen. Marshall stated that one should not expect different results while doing similar things. If we do that then we are all made. I am hoping that we are all not made on that level.

Many recommendations have come as to the ways of reducing the large case load that exists. One of the cases I support was from Prof. Ramchand which has to do with the use of technology. Sen. Marshall also made that suggestion. Technology does, in fact, make workload easier on that level.

I would like to draw a small example as to what has happened on the medical end and maybe, the legal end can follow through on that. Sen. Prof. Ramchand said if one categorizes cases and deals with groups of cases, one may be able to do these things quickly.

At the San Fernando General Hospital, we have been able in the eye department, for example, to bring all the cases of cataracts in and do all of them in one setting. In fact, we have done that over the last three years. We have brought down a group called CANSEE and they have done approximately 120—140 cases in four days and that was all they concentrated on, cataracts only.

In fact, we can use all the legal cases in one area to reduce the workload. This is an idea of what can be done in categorizing the cases and expediting the reduction of the large workload. I presume, if we do that, maybe the need for the number of magistrates will be reduced.

I support reducing the number of years experience from seven years to five years because I do not think it really makes a difference. Thank you very much.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. President, I must again thank Senators for the contributions which they have made. This debate has demonstrated that hon. Senators are very concerned about matters affecting

the administration of justice and the perception which members of the population are having about the administration of justice. I believe that these concerns, as expressed, should be drawn to the attention of appropriate quarters. I give the undertaking to this Senate that I would draw the attention of the head of the Judiciary to these matters. As we know, the head of the Judiciary is also head of the administrative arm of the Judiciary.

Mr. President, may I say that one cannot avoid issues, One of the issues arising from this debate is, obviously, whether there should be some form of accountability by the judicial arm of the state in respect of duties which it performs. Mr. President, there is also the question which has been raised as to whether there should not be some form of criteria for the appointment of magistrates and even for the appointment of judges.

5.25 p.m.

The other question which was raised was whether there should not be some form of continuing judicial education for magistrates and judges and some form of training for judicial and magisterial officers. These are legitimate concerns and, as a Parliament, it is our duty to express them if we feel they affect the administration of justice. Justice is probably one of the most important services which any government has to deliver to its population. If there is the perception of injustice the whole question of the rule of law and subversion of the Constitution of Trinidad and Tobago can be affected.

In this context, different countries have had to face similar problems. Trinidad and Tobago is not the only country with these problems and concerns. These problems and concerns did not come overnight. Sometimes when they are expressed, no ill intent is meant, but they can give the impression that there has been no improvement. For the record, in fairness to the present head of the Judiciary, there have been improvements over the last few years with respect to the administration of justice. I recognize that the improvements are not answers to some of the concerns. There should be a machinery of justice which would not be rationed and people should feel that society is getting its due. People who have to go to court should feel that justice would be administered in an efficient and competent manner.

Countries have talked about this issue. At the Commonwealth Law Ministers Conference, which was held in Malaysia about one year ago, it was decided that the time had come for the judicial arm of the state to be more accountable to the

population. Arising out of that conference it was thought that a distinction had to be made in respect of judges and magistrates deciding cases and the administrative machinery of the state. There has been cause for more openness and transparency in the appointment and selection of judicial officers, including magistrates, and the promotion of judicial officers. This is not what the Government of Trinidad and Tobago has said. Governments all over the Commonwealth, judicial officers, writers, professors and people who have been studying the administration of justice have expressed the view that this has become necessary because good governance involves the administration of justice fulfilling its role and functions.

When the Attorneys General of Caricom were considering the question of the Caribbean Supreme Court, one of the issues which arose was whether judges without criteria should be appointed to that proposed court. Should the only criterion be that a person should have practised law for 10 or 15 years? Trinidad and Tobago took the position that it was very important to have criteria in the appointment of judges to the Caribbean Supreme Court. The mere fact that a lawyer has practised for 10 or 15 years does not necessarily mean that he would be equipped to do appellate work at that level. One should be able to martial the principles of law and the evidence in a case to demonstrate that one has an analytical mind.

Other Commonwealth countries have adopted the procedure. In the Law Chancellor's office in the United Kingdom, there is a booklet with the stated criteria for the appointment of judicial officers. This is important because it is a form of accountability by the judicial arm of the state to the population. The matters about which hon. Senators spoke have been engaging the attention of Parliaments throughout the world. We have to be open-minded enough to grapple with these problems.

The Caricom Attorneys General went a step further. Trinidad and Tobago put forward that there should be a code of judicial conduct and judges must adhere to it. Violation of the spirit of the letters of that code would mean consequences. At first, it was resisted by the Caricom Attorneys General, but ultimately, they agreed. It is my duty to take what has been stated here to the head of the Judiciary. I take Sen. Daly's point.

There seems to be a feeling that if one is appointed a judge or magistrate it is against the dignity of that individual to be subjected to continuing education. One has to understand that we are living in a different world today and that every day is a learning process. If a judge is appointed but has never done a criminal matter

before, either as a magistrate or a lawyer in the Assizes, to put him to do a criminal trial without training, is like putting a man who has never driven a vehicle to do so. He would cause accidents. We have to understand that if good governance must be administered to the population of Trinidad and Tobago, we must consider these matters. In some of my comments I have made it quite clear that there cannot be an effective judicial system unless there is continuing judicial education.

In the United Kingdom, Canada, New Zealand, Australia, India, South Africa and other countries, judges who have to sum up a case do not walk into court and read from a paper.

5.35 p.m.

Summing up a case is a very serious matter because when there is a retrial it costs the taxpayers money. When one sits in court, sees the clerk, police officers, magistrate or judge—all the people associated with the court—it costs taxpayers money. When judges make simple errors it is, in effect, a travesty of justice, not only to the parties before them, but to the population at large. I am not saying that judges are not entitled to make mistakes. All persons make mistakes, but one must try to prevent errors from being made, especially elementary ones.

What do we have in these societies? We have a judicial handbook so that if the case is one of murder and there are issues of self-defence, provocation, or issues of the voluntariness of a statement, there are written directions in law for the judge to read. That has worked well in that it has reduced considerably the number of unsuccessful appeals.

In the United Kingdom, there is a Judicial Studies Board where judges are subjected voluntarily to renewing judicial education. The time has even come for lawyers to have continuing legal education. Also in the United Kingdom, the Law Society is requested to have continuing legal education in respect of certain lawyers. One cannot practise a profession effectively and be excellent if one is not open to continuing education. Mr. President, parliamentarians, in some way or the other, continue their education. We continue to be enlightened whether at seminars, courses or just by reading *The Parliamentarian.*

I think that these matters are very important for us. If you have other suggestions which you would like to send to me, please do. I think that the administration of justice must be such that the population generally should not have any misgivings about it.

I agree with Sen. Daly that regardless of the faults we have, we can say very confidently that we have a good system of administration of justice and good judges and magistrates. In the light of what has been stated, that fact is no reason not to try to improve the system and not to try to promote more confidence.

I agree with Sen. Marshall, Sen. Chamely and the other Senators who spoke about computers and technology. This administration has provided computer facilities, information technology, created the positions of Systems Administrator and Systems Officer and have set up the CAT reporting system. Just to set the record straight on this being in the pipeline for some time, I do not want to be partisan, but this matter has been raised. During the last administration many decisions were taken and moneys spent, but when the time came there were no CAT reporters. The contract had to be terminated and this administration had to set it up. We had to employ people from abroad and from Trinidad and Tobago, and it is as a result of that that we have the CAT reporting system operating in the Judiciary. The head of the Judiciary also spent much time trying to get this matter sorted out.

We are committed to giving the Judiciary whatever technology it needs. As a matter of fact the Judicial Sector Reform Programme has a whole sector which deals with improving the technology in the Judiciary.

I would like Senators to understand—I know Sen. Daly and other lawyers here understand—that in deciding cases, whether at the Magistrates' Court or the High Court, we have not reached the stage where a computer can do it. There must be a human being. Facts have to be weighed and applied to the principles of law. Facts are decided sometimes by looking at a witness to determine whether he is speaking the truth or not. So, in the judicial process, visual observations are very important and although one can get on the Internet and get some of the principles of law, it is not all the time one will get a given case with the same facts.

So, whether it is a magistrate doing a maintenance matter, an affiliation matter, an obscene language matter, or a traffic matter, the magistrate has to assess evidence and sometimes apply principles of law. Sometimes the law is very simple and sometimes in a very simple case very complex questions arise. We need magistrates who will be able to do this job.

I agree with Sen. Daly that when magistrates are appointed some training should take place. I am not saying that this is a stated position, but it may be that before we even appoint them we may have to have them trained. Some countries do that. This is a developing world, one in which we get ideas and pool them, and one in which we have to make decisions in the best interest of society.

Senators have expressed the view that we should do something to improve the administration of justice, and as the executive arm is responsible, we will channel it through the head of the Judiciary asking that it be considered and find ways and means to show how these ideas have worked well in other countries. As the executive arm of the state and as the Parliament, I am sure we will do our duty when it becomes necessary to promote the administration of justice.

It is in that context that I ask this honourable Senate to regard this Bill as one in which the Judicial and Legal Service Commission, under section 110 of the Constitution of Trinidad and Tobago, has the power to make appointments of judges and magistrates to the Bench. We cannot, in this Bill, set criteria. It would be wrong for us to do that. We cannot circumscribe those things in this Bill. What we can do is to communicate those matters and, as is done in some other countries, see whether the Judiciary would determine to have the criteria published.

The points are taken, and even with respect to continuing education and matters of that nature, we have to have confidence that when the Judiciary considers this they would regard it as being in the best interest of the country. We would have to presume that the best decision would be made in the interest of the country.

5.45 p.m.

I ask you to support this Bill in the context of what it does. It does not lower standards; it is a misconception—if I may say so, with the greatest respect—to think that it does that. It sets the minimum requirements. As a matter of fact, under the existing law when one reads the Summary Courts Act, one sees under 3A there is a question of seven years practice, but there is also a discretion being given to the commission to appoint someone who has not practised for seven years. The intention and the spirit of the law have been a seven-year benchmark, but in practice, the appointment was not seven years, it was less. What happened was that the purpose and the spirit of the law had been defeated. It was thought that in order to strike a balance, a benchmark of not less than five years had to be put, which would be a sufficient period in its view. As a matter of fact, the commission has opted not to have the discretion in order to have less than five years.

At present it could have been had for four or two years. It is not fair to say that it is a lowering of the standards. If it is looked at in this way, it is to increase the pool of potential magistrates. One has to have the confidence that if the Judicial and Legal Service Commission has this pool it will weigh and consider the matters

and appoint the persons who are best suited to do the job from the pool. It is in that context that I ask Senators to support the Bill.

If we say that we cannot support this Bill because a person with five years' experience cannot be a magistrate, we are saying that our young people who have five years' experience are not good enough to be magistrates, or even our own people who have five years' experience as a magistrate. How could we rationalize that with our call to give young persons a chance?

Mr. President, I think I am very privileged to have seen all sides of the law. There are lawyers who have been in practice for 15 years, and there are lawyers who have been in practice for three years who would be better equipped than those who have been in practice for 15 years. There are lawyers who have been in practice for five years who could be magistrates, and those who have been in practice for 25 years who would not be very good magistrates. In Trinidad and Tobago, there was a certain judge—he is no longer a judge—who was very versed in criminal law, very good at the Bar, but he made the most errors as a judge in criminal law. So for one to have hard and fast rules is not good enough when one is dealing with the legal profession. Sen. Mohammed would know that having 10, 15 or 20 years' experience does not necessarily mean that a person with such experience could be a good magistrate.

Because of its experience over the years, and the fact that it has interviewed persons, the Judicial and Legal Service Commission has come to the conclusion that five years is a reasonable benchmark and it is in that context, I say to the Senators that we have a duty to uphold the Constitution and to support the judicial arm of the state where it needs support. This is a measure in which the judicial arm is saying, this is the position in which we are and we are not lowering standards, but creating the minimum requirement and we would like the legislative and the executive arm of the state to give us the necessary approval so that there can be magistrates of five years' experience appointed to deal with some of the problems which confront the administration of justice.

Mr. President, I take Sen. Rev. Teelucksingh's point, I know how he feels. It must be a feeling of great injustice for members of the public to see that time and time again elementary errors are reported to have been made but that is something about which we should not be afraid to talk, because the administration of justice must be criticized if it is to be improved. Similarly, governments and parliaments must be criticized if they are to be improved. It is because of those kinds of criticisms we would be able to see what can be done about those matters because

the Government has a duty to respond to criticisms which are very legitimate ones. So I take the point, and I ask Sen. Rev. Teelucksingh not to allow that to prevent him from supporting the measure because if it is not supported, it can have more adverse effect on the administration of justice.

I also say to the Opposition that this is not a partisan matter, it affects justice in our country and we should not play politics. It is a matter where one is talking about delivering justice, making people feel confident that the Constitution is alive and I ask you, I plead with you, I beg you to give support to this measure because if it is not done, history will not absolve you for voting against the citizens of Trinidad and Tobago.

Mr. President, I beg to move.

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 and 2 ordered to stand part of the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. President, before moving the adjournment, may I inform my colleagues that next week Tuesday we are going to be dealing with the Venture Capital Bill together with some other matters under private business.

I would alert the Senators that we may have to meet either on Friday, November 7, 1997 at 8.30 a.m to 12.30 p.m or on Saturday, November 8, at the same time, but we are trying to work things out.

I beg to move that the Senate do now adjourn to Tuesday, November 4, 1997 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.57 p.m.