

*Leave of Absence**Tuesday, March 31, 1998***SENATE***Tuesday, March 31, 1998*

The Senate met at 1.30 p.m.

PRAYERS[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. Vice-President: Hon. Senators, I have granted leave of absence to Sen. Nizam Baksh to be absent from the sittings of the Senate from March 31, 1998 to April 28, 1998.

SENATOR'S APPOINTMENT

Mr. Vice-President: Hon. Senators, I have been advised by His Excellency, the Acting President, that he has appointed Mr. Dennis Nancoo, a temporary Senator with effect from March 31, 1998 and continuing during the absence from Trinidad and Tobago of Sen. Nizam Baksh.

OATH OF ALLEGIANCE

Sen. Dennis Nancoo took and subscribed the Oath of Allegiance as required by law.

WATERWORKS AND WATER CONSERVATION (AMDT.) BILL

Bill to amend the Waterworks and Water Conservation Act, Chap. 54:41, brought from the House of Representatives [*The Minister of Public Utilities*]; read the first time.

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

Question put and agreed to.

INTERPRETATION (AMDT.) BILL

Bill to amend the Interpretation Act, brought from the House of Representatives [*The Minister of Works and Transport*]; read the first time.

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

Question put and agreed to.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts and financial statements of the Programme of Institutional and Policy Development in the Housing and Urban Sectors for the period January 1, 1997 to May 31, 1997 as required by the Non-Reimbursable Technical Co-operation Agreement ATN/SF-3412-TT between the Government of the Republic of Trinidad and Tobago and the Inter-American Development Bank. [*The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung)*]
2. Auditor's Report on the annual financial statements of Trinidad and Tobago Mortgage Company Limited (TTMF) for the year ended December 31, 1995. [*Hon. B. Kuei Tung*]
3. Auditor's Report on the annual financial statements of Trinidad and Tobago Mortgage Finance Company Limited (TTMF) for the year ended December 31, 1996. [*Hon. B. Kuei Tung*]

NEGOTIABLE INSTRUMENTS (DISHONoured CHEQUES) BILL

Order for second reading read.

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, I beg to move,

That a Bill to reform the law relating to dishonoured cheques and similar negotiable instruments be read a second time.

Mr. Vice-President, this Bill has its genesis in a request that has been made by the business community for such legislation. One will appreciate that having been a former member of the business community, I myself have had a great deal of experience with people who have been issuing dishonoured cheques or who issued cheques knowing, firstly, that they have not got an account in the name for the cheques which have been issued; and secondly, that they did not have sufficient funds at the time they issued the cheques as a result of which these cheques bounced, to use a local phrase.

Mr. Vice-President, this Bill seeks to reform the law in relation to bounced cheques only. I might add at the outset, that maybe it is a bit late for us to be dealing with bounced cheques. I say this in the context that today we have a number of different negotiable instruments that are used, given the state of the

technology that we have reached today. I am speaking about things like debit cards and credit cards. I know that cheques, as a negotiable instrument, have seemed to have given way in the main to instruments such as debt and credit cards. In spite of that there is still need, in my estimate, for legislation to be tighter with respect to dealing with people who issue bounced cheques. As I said, this legislation presented this afternoon deals only with bounced cheques. Legislation will be brought later on to this honourable Senate to deal with debit cards and so forth.

Mr. Vice-President, it makes it a criminal offence to issue, utter or pass a cheque on an account with insufficient funds. It will also apply to post-dated cheques by virtue of an amendment in the other place. The Bill under clause 3 provides that a person who writes a cheque on a non-existing account, on an account without funds, on an account with less funds than that required to honour the cheque or even without credit facilities, and thereby obtains property or services, commits a summary offence. A person who is convicted for such an offence under clause 5 may be fined an amount equivalent to 10 times the value of the cheque and to imprisonment for five years.

Mr. Vice-President, the court, of course, under the Interpretation Act, has a discretion whether to impose this maximum penalty in each case and, further, to decide whether the punishment would be alternative or accumulative. Under clause 6 the court also has the power to order restitution to a person of any property or the value of any property he lost by means of a dishonoured cheque or the value of any services he has rendered. Thus the Bill seeks to prosecute the users of bad cheques and protect and compensate the victims of bad cheques.

It is to be noted, however, that the severity of the Bill is tempered by clause 7 which provides a statutory defence. That is, a person who issues or passes a bad cheque cannot be prosecuted within 10 days if he makes satisfactory arrangements with his drawee to honour the amount represented by the cheque. In the case where such a person issues a cheque on a non-existing account or on an account with less than sufficient funds and is incapable of finding the funds within 10 days, he will be prosecuted immediately. Where there is a prosecution, the prosecution would be able to rely on a number of presumptions as stated under clause 4. Then it would be for the defendant to rebut these presumptions.

Mr. Vice-President, it is also noted that this Bill deals only with one area of commercial fraud. As I said earlier on, further legislation will be introduced at a later date to deal with all other types of financial fraud, including computer fraud and credit card fraud. This Bill, however, is long overdue and urgently needed to

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put a halt to the high incidence of bounced cheques which can affect the confidence required to attract sustainable investment in our economy.

Mr. Vice-President, the proliferation of bounced cheques, that is, cheques which are drawn on a banker and subsequently dishonoured upon presentation, has for a long time plagued the business community in Trinidad and Tobago. Within recent times the Chamber of Commerce has pointed out that this practice has escalated to really undesirable proportions. A cheque may be dishonoured because the drawer has no account, an account has no funds, an account with insufficient funds or does not have an approved credit facility to cover the amount of the cheque.

Mr. Vice-President, it is against the background of a growing economy, fierce competition among business persons, coupled with the easy availability of bank and credit cards, consumers as well as unscrupulous businessmen have abused the use of the process of payment by cheque. Millions of dollars are lost each year due to the fact that goods and services are obtained by use of dishonoured cheques and also by the fraudulent use of bank and credit cards.

The increased incidence of the issue of cheques which are dishonoured upon presentment has resulted in the business sector urging that the issue of bounced cheques remain a criminal offence. This Bill will amend the law by removing the presumption of innocence by making the mere fact of presenting a cheque which is dishonoured, a criminal offence unless the presenter of the cheque can establish a reasonable belief that at the time he wrote the cheque, there was such funds in the account which would have enabled that cheque to be honoured.

Mr. Vice-President, under present law in Trinidad and Tobago there is no specific offence of passing or using a bad or dishonoured cheque. The Bills of Exchange Act, Chap. 82:31, section 47 provides that when a bill is dishonoured by non-payment, an immediate right of recourse between drawer and endorser accrues to the holder. This Act, however, does not address the problems created by the issuing of cheques for which there are no funds or those issued on non-existent accounts.

Section 34(1) of the Larceny Act, Chap. 11:12 states that:

“Any person who, by any false pretence, with intent to defraud obtains from any other person any chattel...or causes or procures...any chattel...to be delivered, to himself or to any other person for the use or benefit or on account of himself or any other person, is liable to imprisonment for five years.”

Intent must be shown. The prosecution must prove that the defendant's intent was dishonest and deliberate.

Subsection 36(1) of the Summary Offences Act, Chap. 11:02 states that:

“A constable may arrest without warrant any person having in his possession or under his control in any manner or in any place anything which the constable has reasonable cause to suspect has been stolen or unlawfully obtained.”

1.45 p.m.

When a person is presented with a bounced cheque he has an immediate right to sue for recovery under the civil law and may also make a complaint on the basis of which criminal prosecution may be brought. The person may also seek the arrest of the passer of the cheque if by reason of that cheque, goods or services were unlawfully obtained. In addition, a transaction involving a bounced cheque may be prosecuted either as forgery, fraud or deception. A person tendering a cheque impliedly makes a representation that the facts are such that as far as can be reasonably foreseen the cheque will be honoured upon presentation.

Where a person has no money in his account or no account or no right to overdraw, the representation in the absence of a cheque card is false and if the recipient relied upon it and goods or services were obtained, then they were obtained by deception. The business community is being put at risk by the prevalence of bounced cheques. The present law is inadequate as the onus is on the business person to bring the prosecution. The virtual complainant, the business person, must actively participate in the proceedings by being present in court each time the matter is listed to be heard. It is also time-consuming and expensive to bring a civil action to recover the sum due and owing.

The law at present is abused by many who take advantage of the need for the state to prove that the cheque was written in the knowledge that there were insufficient funds. Such a defendant may create reasonable doubt in the minds of the magistrate or jury by several arguments. For arguments sake, he may honestly have thought that there were funds in the account; he may have thought he had overdraft facilities; a third party's cheque he had deposited into his account might have been dishonoured; or the branch manager was transferred and, as his friend, he would have authorized payment of the cheque. The general timelag between prosecution and hearing, both in a criminal and civil matter also discourages business persons from having recourse to the courts, resulting in the continued and

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unpunished use of dishonoured cheques. This state of affairs really cannot be allowed to continue.

The provisions of this Bill are intended to deter people from writing bounced cheques knowing that the writing of such cheques makes them guilty of an offence. The Bill will act as a deterrent to those who write bad cheques by shifting the onus of proof to the writer of such a cheques. Placing the onus of proof on the defendant is not a new concept in our law. I may also add that a similar position obtains in Canada, France and the United States. The Bill which owes its origin to the Law Commission, will also seek to compensate, by an order of restitution, any person who has been deprived of property or services by means of a dishonoured cheque.

Mr. Vice-President, the purpose a bad is cheque is being made an offence is the same purpose behind the common law crime or false pretences which is inadequate to deal with all bounced cheques, that is, the prevention of fraud. A second and equally important reason is to discourage the use of worthless paper in commerce and, therefore, maintain confidence in the business sector both for the local and foreign investor. A third reason is to facilitate prosecution by defining standards of criminal conduct in this special area of business. A fourth is to provide the merchant with a simple, effective method of recouping money owed to him which has been promised by such an instrument. It is intended that by making the issuing of a bad cheque a criminal offence, it will prohibit the high incidence of this problem.

As a former member of the business community I understand and appreciate the crying need for such legislation. I know that in deliberations in this honourable Senate the Members on the opposite side will understand that crying need and will seek to assist the Government in satisfying this need. It is my pleasure, therefore, Mr. Vice-President, not just to present this Bill but to be the mover of this piece of legislation which I know will receive a wide acceptance from all sides of the Senate.

Mr. Vice-President, I beg to move. [*Desk thumping*]

Question proposed.

Sen. Elizabeth Mannelle: Mr. Vice-President, I will make not too lengthy a contribution on this Bill to amend the law dealing with negotiable instruments, particularly dishonoured cheques.

The hon. Minister of Finance in his presentation stated the objectives of this piece of legislation. We certainly support those objectives and we support the Bill because we understand that in order to promote confidence in our financial system and, as the Minister stated, to attract foreign investment, we need to insure that we have a stable economic system and that the banking and financial industry is functioning well. My only concern with respect to the actual text of the Bill is in clause 5 which states the penalty for an offence under this Bill. It states that:

“A person who commits an offence under section 3 is liable on summary conviction to a fine in an amount equivalent to ten times the value of the cheque and to imprisonment for five years.”

While the Minister did indicate that a magistrate would have some flexibility in determining whether to impose both a fine and a term of imprisonment, I wanted to know exactly what was the reason for setting the fine at a fixed amount of 10 times the value of the cheque and the imprisonment term at a fixed term of five years. It may promote greater justice if you permit the fine to be up to a maximum of 10 times the value of the cheque and to imprisonment up to a maximum of five years. I believe that is the way these provisions have been framed in other jurisdictions and I wanted to know if there was some specific reason for wording ours in this way.

Interestingly, the Minister of Finance stated that there was a crying need for this legislation in the business community. I sought to get a sense of the actual problem; a sort of a quantitative understanding of the problem of dishonoured cheques in our system. My information from one debt-collecting agency was that in 1996 this one agency handled approximately 800 bounced cheques on behalf of at least two major banks. The total amount of money that the debt-collecting agency pursued was approximately \$2 million, and the average amount of a bounced cheque in 1996 was \$3,200. In 1997, the information from the same debt-collecting agency was that the total amount of cheques pursued was 1,192 and the total amount of money was \$3 million with the average amount of cheques being, again, \$3,200.

That information certainly does not represent the entire business community but I think this debt collector represented two major banks and certainly we can perhaps project his figures to make some approximation as to the problem in the system. It does indicate that both in 1996 and 1997 the average amount of a cheque was the same, \$3,200. Therefore, we can fairly say the problem we are facing is really a problem where you are trying to pursue people who write cheques of that amount.

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Understanding that or having that information, we can then put this piece of legislation in a different perspective. If you are trying to deal with financial impropriety and deceptive and fraudulent behaviour as well as problems in our economic system, you will understand my position and our party's position that this legislation pales in comparison to the real legislation we need to deal with the real problems facing our system. When we consider the losses that are being borne, the misrepresentation, improprieties and deceptions that are being put forward on this country, particularly by public officials and those in state enterprises, we really, in my estimation, ought not to be focussing too heavily on dishonoured cheques to the tune of \$3,000.

Quite frankly, we are passing legislation to tackle those persons on the street who write cheques for \$3,000 and we have losses, overruns and wastage in the public sector to the tune of \$20 million, \$30 million and perhaps hundreds of millions of dollars. The question is, what piece of legislation should we really be debating or what motion should we really be focussing on today? We are all familiar with the situation at National Flour Mills where rice was ordered and the price of the rice—these are all relevant because we have to put things in context. We are dealing with dishonoured cheques, \$3,000 worth of bounced cheques, but is there really a crying need for this legislation as the Minister of Finance stated? Is there not a crying need to stop the corruption and wastage that is taking place in the state enterprises?

We have the hon. Minister of Energy and Energy Industries with us today and it has been reported that he submitted a report to the Prime Minister or Cabinet with regards to the situation at National Petroleum. We have not heard anything about that report but the issue there involved a consultant who was hired and there was a question of some financial irregularities with respect to his previous employment. There was some question of conflict of interest. These are all important to financial confidence in the system. If you are going to talk about confidence, let us talk about confidence; let us talk about actions and activities that really affect confidence, not \$3,000 cheques that people write when they are in a squeeze. Financial mismanagement and conflicts of interest; we need some legislation or some action to deal with that type of corruption.

The Dishonoured Cheques Bill is appropriate. We approve of it. We do not have a problem with it, but let us be serious and focus on the things that really concern the country for which there is a crying need. I do not know, the hon. Minister of Finance may be able to help us with respect to whether these actions at

National Petroleum and National Flour Mills and the \$20 million paid to fix a sugar factory that still is not working; whether or not the Government is going to pursue the public officials who may have been involved in some sort of corruption under the Prevention of Corruption Act. There was an Act that was passed in 1987 by some Members of your Government. Indeed, the Minister of Planning and Development is here and I believe he was part of that government. I want to know what sort of action is going to be taken against those public officials. There is a Prevention of Corruption Act on the books and the Government certainly does not have an excuse with respect to that.

I also want to ask the Minister of Finance what is his Government's position with respect to the report of the Joint Select Committee appointed to consider the integrity legislation and the recommendations on the Green Paper on integrity legislation. That Green Paper and the report of that commission dealt with issues to regulate the conduct of persons exercising public functions. Indeed, it includes a number of recommendations with respect to legislation and other activities that could reduce the abuse of public office and reduce the corruption, mismanagement and financial improprieties that are taking place presently.

I am not suggesting, and I do not want the Minister to make the predictable response that it did not start with them or, why are we raising this? I think we are in the House today and there are issues facing us in the country today and if we are dealing with this piece of legislation then we should put things in context and deal with the pressing issues that are facing our country.

The hon. Attorney General is not with us. I anticipated that he would be here and I was going to perhaps suggest to him as he travels to New York, I believe, to meet with some international group dealing with corruption, that he should perhaps solicit some suggestions and some ideas with respect to how they can deal with corruption in public enterprises and with public officials. I do not mean to cast aspersions on all those persons—

Mr. Vice-President: I do not want to interrupt the hon. Senator in full flight but the contribution so far has concentrated on an anti-corruption pitch and has strayed considerably away from the subject before us. I do not want the debate this afternoon to find itself focussing on a corruption kick and losing sight of the fact that the piece of legislation before us specifically focusses on the dishonoured cheques issue.

The Standing Order, as you know, asks for relevance and I am going to ask that we try to keep our debate focussed on the piece of legislation before us. I am

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not going to allow latitude to stray into all sorts of other areas that are of no relevance to the piece of legislation presently under debate. I ask you to bring your contribution back in line with the piece of legislation that we have in front of us.

2.00 p.m.

Sen. E. Mennette: Certainly, Mr. Vice-President, I am so guided and I will bring my contribution back in line. Indeed, I was about to conclude by doing so.

This Bill deals with dishonoured cheques. It is meant to promote confidence in the financial system and I would like to restate that we have no problem with the Bill, we have no problem with the objectives, but we just wanted to put things in perspective in a certain context and encourage the Government to bring legislation, but also not to fail to deal with the pressing and important issues now facing our country.

I thank you.

Sen. Edmund Chamely: Mr. Vice-President, I, too, stand to lend my support to this Bill. I want to make a few comments, or remarks and/or questions related to clauses 4, 5 and 7. Clause 4(3) states:

“Where a cheque is dishonoured because of insufficient funds the drawee may prove the dishonour by the introduction in evidence of a notice, or protest of the dishonoured cheque, or of a certificate under oath of an authorised representative of the drawee declaring the dishonour, and this proof shall constitute a *prima facie* proof that the cheque is a dishonoured cheque.”

I think the addition to that was:

“...only if such notice or protest had been issued by the drawee to the drawer of the cheque.”

A case cannot be made unless it can be proved that the drawer received the notice. In other words, the person who has issued the cheque will have to prove that, in fact, he received the notice, so that may have to be altered just a little.

Subclause (4) still under clause 4 states:

“Where a drawer or representative drawer, without the consent of the payee, stopped or countermanded the payment of the cheque, or otherwise caused the drawee to disregard or dishonour the cheque, and failed to return or tender the return of the property...”

Tender meaning offer the return of the property—is there a time limit in there? In other words, there are many reasons why an individual may stop payment on a

cheque and these reasons may be valid. Therefore, the return of the goods or tendering the offer to return the goods, will have to be specified, or have to be qualified on that level.

Subclause (5)—like Sen. Mannette, I, too, wanted to find out what is the reason for putting limits of 5,000/10,000, five or 10 times the quantum. If there is a reason for that, please let us know.

In clause 7, with the change of clause 7, including the new subclause (1), it will make subclause (2)(a) redundant. Therefore, I will suggest that subclause (2)(a) which states:

“knew he did not have sufficient funds in his account and was incapable of funding the account within ten days from the date of the utterance;...”

That has already been written into subclause (1) and, therefore, should be removed and subclause (b) only should be left here, therefore it will have to be just:

“did not have an account with the drawee.”

Those are my comments, Mr. Vice-President.

Thank you.

Sen. Diana Mahabir-Wyatt: Mr. Vice-President, like everybody else, I support the intent of this Bill, but I do have a couple of worries where it comes to some of the procedural aspects of it. As unlikely as it is that the banks may want us to believe this, banks do make mistakes from time to time.

I do not think that this legislation allows for steps to be taken when a bank has made the mistake, rather than when an individual has dishonoured the cheque. I am supporting the comments that Sen. Chamely made, because I agree with them and if I could just refer to clause 7, in addition to what he said in clause 7, there is a period of 10 days that, if a person:

“...makes satisfactory arrangements with a bank to honour the cheque within ten days of the dishonour, and no prosecution shall be commenced...”

We are an island nation. People in Trinidad and Tobago travel a lot on business of one sort or another and are frequently out of the country for more than 10 days/two weeks at a time on a regular basis. To limit this period to 10 days seems to be far too short. Surely, where mistakes are made on the part of the bank, or on

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the part of an individual and this can very well happen, there should be at least a minimum of one normal pay period, which is one month in most cases, before the arrangements have to be made. In many cases, people may not discover immediately if they have made a mistake, and it would seem only reasonable that one pay period, or even two pay periods should be the period under which the person is allowed to correct the mistake, if a mistake was made on his part.

In clause 5—and I am going backwards here—it says that:

“A person who commits an offence under section 3 is liable on summary conviction to a fine in an amount equivalent to ten times the value of the cheque and to imprisonment for five years.”

There are occasions when banks either by mistake, or falsely, or deliberately, or mischievously for all I know, dishonour a cheque. We have had, unfortunately, numerous instances of officers in banks being responsible for actions contrary to proper procedures. If someone, for whatever reason, dishonours a cheque wrongly in a bank, should not the financial institution also have to pay a fine in an amount equivalent to ten times the value of the cheque to compensate the person against whom the offence was made?

In other words, if a bank dishonours a cheque by mistake, or falsely for some reason, should it not have to pay to the person whose cheque it has dishonoured, a sum of money equal to the same 10 times the value of the cheque in compensation for what it has done? I wonder if the Minister would consider this.

At the appropriate time, Mr. Vice-President, I intend to move an amendment to clause 7 to reflect the views that I have just mentioned and possibly also to clause 5.

Thank you, Mr. Vice-President.

Sen. Vincent Cabrera: Mr. Vice-President, I rise in support of the Bill entitled “An Act to reform the law relating to dishonoured cheques and similar negotiable instruments.”

Mr. Vice-President, the law pertaining to transactions by cheques is found in the Bills of Exchange Act, Chap. 82:31. That Act had its origins in legislation dating back to 1884. There is a definite nexus between the Act and the Bill; the Act and the Bill affect the law concerning negotiable instruments. The definition of a cheque in the Bill includes drafts and negotiable instruments. The Bill also deals with notice of dishonour and protests that are also covered under the Bills of Exchange Act, so that there is this connection.

The Bill recognizes situations of deliberate fraud, as is the case in the Australian and Canadian jurisdictions. Where an individual writes a cheque or instrument and has no account, that individual has perpetrated deliberate fraud. Where a person utters a cheque or instrument and knows that he has insufficient funds to cover the instrument, he has perpetrated a deliberate fraud.

Mr. Vice-President, when a citizen signs a cheque and is deliberately reckless as to whether he has enough funds to cover the transaction, such a person has perpetrated deliberate fraud. Fraud is white collar crime. Uttering false cheques is a white collar crime and should be treated as such.

There are no statistics readily available in the incidence of dishonoured cheques, but the Chamber of Commerce, banks and businesses generally have confirmed that there are significant losses incurred and significant losses have been incurred over the years as a result of dishonoured cheques, worthless cheques in exchange for goods and services.

The payee of cheques incur losses and sometimes great losses after having delivered value in exchange for dishonoured cheques. At times, the drawee banks have been the victims when they have honoured these cheques in error and then found themselves with uncollectable overdrafts.

It was a criminal offence to issue a dishonoured cheque even before this new Bill, however, there are certain pitfalls in the established legislation. The litigant had to establish false intent with intent to defraud by the defendant and the offence of false pretence under the Larceny Act, Chap. 11:12 had to be established in the court. One obvious loophole, is that it is a very difficult proposition to prove that the person who issued the cheque had the intention to defraud.

Goods sold on credit or the issue of a post-dated cheque escaped the scrutiny of the law. An individual could pay his membership fees to an organization with a post-dated cheque and enjoy all the benefits of it, including running for the highest office in that organization, all the time knowing that the cheque which he or she had issued would have become a dishonoured cheque.

While the law is applicable in respect of obtaining chattel, money or security, it does not apply to services rendered. Today, we live in a society, in a world where services are even more important to our commercial activity, much more important than in the year 1884.

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This Bill protects workers in the society, because under the present system, a worker may give his services to another person—you may call that person an employer, under most circumstances—and the worker may work for as long as a month and then be issued a dishonoured cheque. In the present circumstance, the worker would have to join a trade union and that trade union would have to take up a trade dispute over the non-payment of wages owed him. The legislation will make that act a criminal one. So not only would the worker be able to seek to further his trade dispute through the Industrial Relations Act, but the person writing such a cheque would have committed a criminal act and would be treated as such.

This Bill seeks to make it a criminal offence to utter a dishonoured cheque. This is the term in the legislation. The legislation recognizes a new concept which the Bills of Exchange Act did not take into consideration. The Bill seeks to simplify to a great degree, prosecution, since it is no longer required to prove the offence of false pretence. The Bill proposes a fine in an amount equivalent to 10 times the value of the dishonoured cheque and to imprisonment for five years. The court can also order that any property which has been obtained through the dishonoured cheque can be returned to the person who was defrauded. All this will improve the position of a victim of a dishonoured cheque. It does not matter whether the victim is the payee or the holder of the cheque.

A victim of a dishonoured cheque will no longer find it necessary to talk to his attorney. He now has the right in law to pass the matter over to the police, for this is now, indeed, a police matter. The more we look at the legislation, the more we see the improvements from the Bills of Exchange Act and the Larceny Act. The victim of fraud will no longer be forced to spend his money to recover his security or valuables, for the matter would now lie in the hands of the state. The state now has that responsibility for prosecution and recovery of what is, in fact, stolen property.

The Act facilitates prosecution by introducing presumptions. It is presumed that the individual knew that he had insufficient funds when he wrote the cheque. It is presumed that the individual intended, or believed that the cheque would be dishonoured. In the future, the Bill may need further tightening, since the banking community would be most interested in the enforcement and interpretation of the Bill as far as the following scenarios are concerned: where the customer believed that he had sufficient funds to cover the cheque; where the customer has no

overdraft to cover his or her cheque; where the customer was not advised of the relevant clearing and holding procedures regarding certain cheques; where there were clerical errors on the part of the bank which caused the cheque to be dishonoured; where the cheque was dishonoured for reasons other than insufficient funds, for example, an incorrect date on the cheque, and so forth.

The Bill, however, behoves the banks to render a more professional service. The introduction into evidence of a notice or protest of the dishonoured cheque or a certificate under oath, of an authorized representative of the drawer declaring the dishonour, is *prima facie* proof that the cheque has been dishonoured. The Bill, in clause 4(2) and (3) shifts the burden of proof from the plaintiff to the drawer. In all these circumstances, the Bill gives easier justice to victims of fraud and I urge this Senate to support the legislation.

I have already noticed that in many business places throughout Trinidad and Tobago, the headlines of the newspapers referring to the coming into being of this law have been cut out and stuck up on those business places, because business places, as well as honest citizens, know very well the importance of this legislation which has been brought before this honourable Senate today. I am happy to have been associated with supporting the legislation, Mr. Vice-President.

I thank you.

Sen. Prof. Julian Kenny: Mr. Vice-President, I join with the previous speakers in support of this legislation which is obviously long overdue. I have a number of minor concerns. I think Sen. Mahabir-Wyatt has already raised one which I had, which was the question of the 10 days in clause 7. Ten days has a sort of connotation in this country. I once had a little 10-day incident involving a bank, where I transferred a sum of money from my savings to my current account—in fact, I got all the paper work—but the transfer went into the ether and there it remained for 10 days where the funds were untraceable. They left a savings account, in the same bank, and went into a current account to effect a certain particular purchase which I intended to make and it actually was lost for 10 days in the computer.

So when Sen. Mahabir-Wyatt mentions that banks are, in fact, occasionally in error, I suggest that it is quite regularly so. I would suggest that, perhaps, clause 7 be amended to say a month or 30 days, or something to that effect.

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One of the things which bothered me a little about the Bill was the lumping together of someone who writes a cheque on a non-existent account with someone who may, for one reason or another, make a genuine mistake. Not all of us are completely in control over our finances. Many of us have joint accounts with spouses. You go about doing your thing and the other person goes about doing her thing and occasionally signals may get crossed and so forth. I think there are cases where there are genuine errors which can be compounded with genuine errors from the bank. One partner may go to the bank and say, “can we set the overdraft at \$10,000”, another one may say, “let us set it to \$20,000”, and one never really knows for sure, even with the banks, unless they both go and sort out their common business.

2.25 p.m.

I would like there to be a clear separation, because someone who writes a cheque on a non-existent account is clearly out to defraud, therefore, I think the penalty for this sort of thing really ought to be serious. I think that someone who gets caught up in this, for one reason or another, should be treated a little more gently.

Mr. Vice-President, when one writes a cheque for goods or services there is also the other side of it. One goes to the business community, writes cheques and by and large this contract between the writer of the cheque and the one providing the service is honoured, but there are many instances where people write a cheque to obtain goods or services and somehow the provision of those goods and services is dishonoured, as a dishonoured cheque written by a crook. My mind goes back to what is happening with our many parents who in fact, may have written cheques for school books which have proven to be totally inadequate, fraught with errors, and now they are being told that they should start a class action to recover their money.

Somebody in the business community—I do not mean in the bankers’ row—is out there marketing goods that are clearly substandard, but what do individuals do? I know that we have the Ministry of Consumer Affairs and nice words are said about taking group action and so forth, but the people out there who have paid cash for their school books to send their children to school now have a product that really is not worth the money. So, while I support the legislation wholeheartedly, I do think that we ought to think in the long term of protecting the citizens of this country who were delivered fraudulent goods for the cheques they have written.

Thank you Mr. Vice-President.

Sen. Nafeesa Mohammed: Mr. Vice-President, I rise to make a very brief contribution on this particular piece of legislation which seeks to reform the law relating to dishonoured cheques and similar negotiable instruments.

I was rather amused a while ago when I listened to my friend, Sen. Vincent Caberra, speak in this debate. He sounded as though he is now embarking on a course of study in law. He sounded like a law student researching the background to the legislation dealing with negotiable instruments. I must commend him, and perhaps, he needs to leave the trade union movement and get involved in law instead so that he can champion the rights of workers and people in general in this country.

Mr. Vice-President, my colleague on this side, Sen. Mannelle has already indicated our position in terms of the general intent and purpose of the Bill and we certainly support the idea of this kind of legislation, but certainly, I take this opportunity to raise one or two areas of concern. In terms of this particular piece of legislation, I would like the hon. Minister of Finance to, perhaps, render some assistance to us in terms of recent developments in our country which occurred two or three days ago.

I am concerned in terms of the likely impact of this kind of legislation with respect to the issue that I am about to raise; that is, the fact that during the course of the weekend we all read in the newspapers that salaries for teachers were paid out very late indeed; something that is a very unusual occurrence so early in the year. Given the nature of the legislation before us, I am concerned about whether a teacher who may have had commitments to meet last week, and may have issued a cheque, would be deemed to have committed a criminal offence under this piece of legislation when the reason for there not being sufficient funds in the account would have been largely on the part of the Government. Perhaps the hon. Minister of Finance can enlighten us on that and tell us, particularly, why salaries are being paid late so early in the year. It gives us all cause for concern because often we hear talk about the financial situation in the country and the need for there to be confidence in our economy and so forth. These are matters that must arouse some concern in the society.

The other aspect of this piece of legislation I would like to comment upon is that in the course of the Minister's presentation he indicated that his Government is presently looking at the whole area of commercial fraud and he even made mention of computer fraud. We on this side would like to know what is this Government doing with respect to political fraud. I raise this in light of the very

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many instances and events, especially the Deyalsingh Report dealing with the airport fiasco. What is this Government doing with respect to recommendations of that report? We have the Soodhoo affair and the National Flour Mills.

Another area of concern which has significance to the piece of legislation that we are debating here today is with respect to an article in yesterday's newspapers which stated that the second shipment of rice has left Brazil. We would like to know what is the position. How is this rice being paid for? Is it going to be paid for by cheque or credit card? How? Has it been paid for? If so, how much money has been paid? What has been the losses incurred so far with respect to the first shipment of rice? When is this shipment of rice going to arrive in Trinidad? In what condition will this shipment of rice be when it arrives? We have read where it is infested with weevil; and that it has been sprayed but there is still some risks and concern. We would like to know the condition of this rice and at what cost to the taxpayers of this country is this shipment being brought into the country. These are very serious matters that affect our financial dealings.

The manner in which we are paying for these acts of mismanagement, corruption and all the other words that they are accustomed using causes us to demand an explanation from the Government as to what is happening. There is too much covering up and smokescreens being created to divert attention from these very serious, important matters that involve taxpayers' money, especially in these times when we are hearing about the fluctuating oil prices and the fact that we really have to be concerned about the state of our economy and the management of our resources. The evidence has shown that it is being grossly mismanaged. We have all sorts of developments and cover-ups taking place and we demand an explanation, especially from the Corporation Sole who would know what is the position with the National Flour Mills.

Mr. Vice-President, in a sense we on this side, in terms of the Bill before us, as my colleague indicated, support the intent and purpose, but we also have to express our concern in terms of the priorities being set by this Government. Here it is the hon. Minister of Finance, in his presentation of this Bill today, indicated that he went into the genesis of the Bill and that requests were made by the business community for this type of legislation. We have no difficulties with that if it is something that would improve our financial dealings. By all means we would support it, but I have to raise the issues of priorities by this Government. When the canefarmers in Central Trinidad called for action with respect to the losses they were suffering at the hands of this Government, to this day we do not know if they

are going to be compensated or what assistance is going to be rendered to these people who are now being marginalized, alienated and discriminated against in the society.

Mr. Vice-President, I just had to comment in terms of the priorities of this Government headed by our Prime Minister whose famous words prior to coming into office was “parasitic oligarchy”. Every day we used to hear and read about the “parasitic oligarchy” and now he is playing golf and brunching at the Country Club and the people in the country are suffering. So, we demand some explanation from the Government.

Thank you, Mr. Vice-President.

2.35 p.m.

Sen. Philip Marshall: Mr. Vice-President, I rise to support the proposed legislation, the Negotiable Instruments (Dishonoured Cheques) Bill, 1997. I have always tried to make what I consider to be pragmatic contributions, and I think it is important for us that although the entire reasoning behind this piece of legislation is to improve the integrity of our payment system, we must also be very careful that the problem being addressed by this specific method of payment, the issuance of a cheque, may really only deal with a small percentage in value on quantity of our commercial or private payment system.

In fact, some research that was provided to me indicates from credit bureaus that 0.3 per cent of all cheques issued are, in fact, returned and that in 1996, we are talking about \$2.36 million, nearly \$2.5 million in total relating to 736 cheques at an average value of \$3,200 per cheque that was dishonoured. We are talking about total payments of \$2.4 million and about 736 cheques.

In 1997, the volume of cheques dishonoured increased to about 1,200 with an average value of \$3,200 per cheque and a total amount of dishonoured cheques of \$3.85 million.

I am sure you would appreciate—and I do not know the volume in circulation at any one time—that the values that I have just gone through represent a very small transaction value in terms of our commercial or private dealings.

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Mr. Vice-President, one of the concerns is that commercial entities have certain commitments to be met and, in fact, the largest issue of cheques I would assume to be that of the Government of Trinidad and Tobago. I am sure that if a person issues a cheque based on that famous promise, the cheque is in the mail, that a person may issue a cheque on the premise that, he in turn, for services rendered or goods delivered, has been promised payment say in two weeks' time. When he writes a post-dated cheque, he would have expected that money would have been in the bank account and that therefore, he did not know that at the point of writing the cheque that he would have insufficient funds.

We have to look at both sides of the coin. We cannot just do it from the perspective of the issuer of the cheque, but from the perspective of the whole integrity of our system of authorizing people to provide us with goods and services and then in turn, after they have done so, in accordance with the specific terms of the purchase contract, for cash flow management purposes, we do not pay them.

I think that the Government, as all governments, has been as guilty of this as any other private sector, individual or organization and, therefore, if a person is going to be faced with the possibility of being imprisoned we have to look at our whole payment system in a very holistic way. If I say that I delivered to you \$10,000 worth of goods, or I extend to you 30 days' credit, it means what recompense do I have against you once I have delivered those goods in a proper manner and you in turn do not pay? As far as I am concerned, that is the equivalent situation of dishonouring a cheque. If we have a contract, and I have delivered the goods and services and you in turn, once I have delivered according to specification, and you do not pay, you have dishonoured the contract.

In fact, what we are really saying in this legislation is, the same way you throw a monopoly dice, you land and go straight to jail, that is what we are really doing. If the person does not have enough funds to honour a cheque he certainly is not going to have enough funds to pay the fine so let us really remove that fine of 10 times and say the person is liable to imprisonment for five years. Really, that is totally an ineffective aspect of consequence management.

What I think, therefore, is going to happen with this legislation, is that it is not going to be enforced unless there is a situation where somebody has stolen somebody else's cheque book and it is really an out-and-out fraud, an intent to defraud. If the purpose of this legislation is that we are trying to improve our commercial, individual and private payments system, it is not going to be effective.

However, I congratulate the Government on recognizing the importance of a piece of legislation like this. We have talked about Trinidad and Tobago being the financial leader in the Caribbean; we have talked about the possibility of off-shore sectors and the one aspect of really realizing that dream in an off-shore sector or whether we are really talking eventually about a Caricom Stock Exchange, is the integrity of the payments system. People must know that in a financially secure environment, when they receive payments, the end aspect of the transaction would, in fact, be properly constituted and their moneys would be received.

So the significance of this and what I recommend is that we continue to look at other aspects of our payments system so that in doing business in Trinidad and Tobago, no one can ever say that is the type of environment that I do not want to operate in because of the lax legislative and consequence management issues in the commercial or private environment.

Another comment I would like to make is that owing to changes in technology, we use credit cards, we have debit cards, electronic transfers. With the increasing sophistication and volumes, it is quite possible that something can go wrong and that a sum of money that is supposed to be credited at the specific time through no fault of the drawee, that is the bank, but due to some technical problem, the amount is not credited and the bank is then also faced with a very significant fine.

2.45 p.m.

My understanding is that there is already recourse to the bank in the civil law. This Bill needs to be broadened and to take into consideration that many of the payment systems are electronic, or other means than the payment of cheques.

The recipient of a cheque or seller of goods and services may give possession to someone whom he thinks is an honest customer. A problem may be that at the time of the transaction, he may not know enough about the creditworthiness of that customer. Maybe, one of the things that should be done is that the whole issue of bank confidentiality and the sharing of information about bad credit risks should be allowed to a greater extent among banks. The person selling the goods can have some sort of enquiry into a credit bureau that represents the accumulation of the payment history and habits of the entire commercial community. It should not be simply information held by one person or one credit bureau that may blacklist that person—but unknown to the seller of the goods or services—who may be slowly building up in a very diversified way, a bad payment and credit record.

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The Government should look at whether more official sharing could be allowed by the law, for confidential information relating to a person's credit history. What would happen if a bank, to protect its portfolio in some way, decides to dishonour a cheque because the past history of that person issuing the cheque would indicate that it is a bad risk? Maybe on that occasion when the cheque is dishonoured, one would find that for some reason the person had the money, and the bank was in jeopardy. Had it been done the other way by honouring the cheque, there would be another situation eventually of never being able to recover the cheque. It flows through the entire system where we have to look at all the stakeholders involved in a commercial transaction.

I would end by saying that we should look at the Government allowing the sharing of information about credit risk or bad payers; the whole situation about the increase in technology and, more importantly, the whole issue relating to the fact that where work is done for another party and that work has been delivered according to specification, the person who subsequently has comments to make and cheques to write can do so on the knowledge that in terms of other transactions carried out by them, they can rely on those parties.

In the past, even in the boom days, we have seen companies going into receivership; people losing their moneys and situations where insurance companies did not honour claims. We have seen where people have been grievously injured. We have passed legislation in the House for third party liability. Think about that situation where a breadwinner is grievously injured and cannot work. He might be unable to write cheques because somebody else did not pay a claim that is due to him. This whole payment system is very pervasive throughout the entire commercial environment. We should look at that in the longer term. I lend my support to the start of this improvement in the reliability and integrity of our payment system.

Thank you.

Sen. Muhummad Shabazz: Mr. Vice-President, as all other Senators on this side have indicated, it is our intent to support the Bill. From what we see here, a Bill like this must be supported because its intent is to bring people in line with the financial institutions in this country. We have looked at certain issues in the Bill. The question of how many times payment of a fine and the imprisonment term came up. I support Sen. Mannette that there should be a certain figure and not a fixed figure for if someone should be in a situation like that. We feel that should be looked at.

We understand that if someone signed a cheque and felt that their intent was good, but some action was coming against them, taking the person to court would be a way that people can get justice. We feel that the court would deal adequately with whatever situation comes up. Maybe it is brought in a Bill because at present, the situation is not as quick as it should be. We do not want a situation where somebody signs a dishonoured cheque but the court system may take two or three years for it to be determined. These are the relevant issues we need to look at.

A person who has no money in his/her account and signs a cheque is corrupt. We accept that. That type of corruption must not be encouraged. When we speak on one side there are other sides to look at it. This is why I must go with Sen. Prof. Kenny who brought up the situation about the payment for the school books. That is an important issue to note. Some people may have paid for their school books by cheques. After paying for these school books by cheques, the Government found out that they were not good and were not supposed to have been in the schools because the children cannot use them. Parents who are in a very tight position as far as finances are concerned, cannot now get back their cheques to put into the account. Situations like this make the whole scenario different when looked at from the other angle.

We can look at it from one angle and say people must be jailed, but we have to look at what happens when it goes on the other side. People see what happens in the system by looking at those who are supposed to be exemplars.

2.55 p.m.

At the tax office, there is a fine for not sending in one's return early. If a person has to pay a fine, the Government would be down on him to pay that fine. If he does not pay it by a certain time, he can be taken to court or imprisoned. I ask the Government to look at this. In the future, if the Government does not send a person his cheque in the time it was supposed to be sent, some action should be taken. It should not remain like that. This is the angle from which we need to look at this.

Sen. Cabrera said that workers should not be paid with dishonoured cheques, and I agree. If a worker, having done his duty, is paid with a dishonoured cheque, in a sense that is fraud against the worker. In the same light, we say that if a man works and he should not be working and the Government pays him by cheque, something should be done. The cheque with which they are paying is from the taxpayers' money. They are taking the people's money to pay a cheque to a man

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who came into a situation in which he should not have been—I am talking about Mr. Soodhoo. A next monthly cheque will be paid to him by this Government from taxpayers' money; nobody says or does anything and nobody can take action against the Government. Is that an honourable cheque? We need to look at things like that.

When we on this side talk, we understand that when they bring legislation the legislation is the law. We also seek the spirit of the law, which is very important and which will continue to be important to us on this side. It is the spirit of the law and not so much the law that affects people.

Mr. Vice-President, I would just like to make the point of how a law can be passed just as this law concerning dishonoured cheques will be passed. Understand how the taxpayers will look at it and whether the law is good for all. These are the things with which people are concerned—whether the law will be administered by people who have fair hearts and minds. A man went to court, pleaded guilty to a marijuana charge and was convicted. He went back to the court because he wanted to go abroad to study. In an era when crime was crime and one must serve the time, this man went back to three judges; two of them said to free him and one said that he could not be freed because all people are entitled to the same privilege under the law. This man appealed again and received freedom.

I bring this in light of this cheque legislation. Will the law, as far as dishonoured cheques are concerned, be applied in the same way to everyone in all strata of society? Will we now say that because someone is a certain person, he cannot get that privilege? I just made reference to a case where a man is freed from a charge for marijuana. The point is: Would the law be administered in such a way as to be fair to all concerned? Will it be administered in such a way that when the Government does something and the people at the higher levels of society do something that is not proper, they will be dealt with in the same way? Would it be said that when they signed the cheque, they did not know that they had no money because their spouse had taken out the money without their knowledge? Would he have to go to court? Will it be held against him? Would it be said that he is an honourable man, while Mr. John Thomas from Diego Martin or Beetham Estate who did the same thing is not so honourable? Will the matter then be taken to the Privy Council? How far will we go to convict this man?

This is what we are speaking about when we speak about dishonoured cheques. We are not dealing with the law itself. The law is good. It is the spirit of

the law. Will all citizens feel that they are getting the same privilege and benefit under the law? This is what we are taking into consideration.

People talk about taxpayers' money. Why did we not take a cheque to India first? I do not like to use the word "India" because I do not want to connote anything. Why did we buy rice from a country and bring it in, only to find out that it is not good? Could we not have had them send it in on a Letter of Credit and then paid them by cheque? When that rice had reached here, we could have said that we would not pay for it because it was not good. It comes back to different services.

Should I get goods and services that are not good, pay my cheque for it and not get it back when there are problems? That is what is happening in this country. We have paid for goods and services that are not good. I do not want to say what kind of rice it is. I will not eat it because I do not want to be barking. Should we not have waited for the goods to come in before we used our cheques to pay for it? If we are paying by cheque, will this be honoured? Will we get our cheque back?

This is the taxpayers' money. There are too many issued cheques that have been paid and cannot be returned to us. That is the people's money. Who is accountable? Who will take action? It is in this light that we look at the dishonoured cheque situation. We have no quarrel with this Bill, except for the few changes that we feel must be made. Will this Bill seeking to make cheques honourable be dealt with by honourable people? Are the people who are implementing this Bill honourable enough to do so? Will we see differences, which will make it difficult when a situation dealing with a bad cheque goes to these people?

In winding up, Mr. Vice-President, I know that I have been cautioned to stay out of Baptist people's business. I want to tell Sen. Rev. Burke that a number of people did not play Play Whe yesterday because they did not want to collect a cheque as a result of betting on a public holiday. They did not want to bet on a Baptist holiday, which was more a people's holiday, because no one is allowed to bet on religious holidays in this country. People did not want to take a chance to win a cheque on that day because they felt that collecting a cheque from betting on a Baptist holiday would not have been honourable.

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I bring this up to show the thinking of the people. When we on this side see another angle, people can look at that angle. Most times, when we do not see both sides, this is where the problems come in.

Again, I hope that this Bill will be administered by men of honour; men who will understand that the law is good, not only for one part of the community, but for the community as a whole.

I thank you.

3.05 p.m.

Sen. Selwyn John: Mr. Vice-President, the Bill before the Senate, the Negotiable Instruments (Dishonoured Cheques) Bill, 1997 is a long-awaited and much needed piece of legislation to deal with the reform of the law with respect to dishonoured cheques.

The Bill deals with commercial dishonesty, namely obtaining goods and services by a person who issues a cheque for the payment of these goods and services when:

- (a) he does not have an account with the bank;
- (b) he has no funds in his account;
- (c) the amount of funds standing to his account is less than that needed to cover the cheque; or
- (d) he has no credit facilities to cover the cheque.

Mr. Vice-President, I feel that we in Parliament as law makers ought not to go galloping in areas that would bring us to some discredit in debating and enacting laws.

On the question of whether the law would be administered with equity, it is the intent of the Parliament that whenever laws are passed, the people who administer those laws would do it with the integrity that one would feel embraces the law.

Sen. Shabazz spoke about the law being good for this one and not for the other. He has to presume that the magistrate, the judges, the prosecutor, and the persons who police the law would do it without any question of favour on the part of "A", "B" or "C". I say so because most of us have gone through the experience of having to deal with dishonoured cheques. In my profession, the trade union, we have had workers who had received severance pay with dishonoured cheques.

When one tried to get the employers who issued the cheques, they have long gone from the country and closed their accounts with the banks.

As a matter of fact, presently, we are on the look-out for such an employer who committed the very act in Barbados and one of the last things he said is that he prefers to settle in Trinidad and do his business here. This Senator, as a trade union leader, is on the look-out for him, so if he is discovered here we would not wait for him to issue a dishonoured cheque for the law to apply, we would get him even before he settles in.

These are the experiences at which one has to look, and ensure that the legislation is dealt with in the way in which it ought to be dealt; not whether in fact, you are dealing with persons who commit the crime of issuing dishonoured cheques, whether the judge would be lenient, or whether he could appeal to a higher authority under section 68, or other sections of the law.

Mr. Vice-President, when a person issues a cheque to a person in payment of goods and services, he is, in fact, representing to that person, that he has funds to cover the cheque, and if he does not, when he issues it, then by doing so he is making false representation. The making of false representation is a crime, and so it should be, and any person who commits such a crime, should be punished.

Like all crimes, punishment only follows within well-defined circumstances, and in this way, the law would not fall into disrepute. The Bill has taken cognizance of this fact and accordingly, stipulated the circumstances under which a cheque, when issued, would constitute false representation.

Clause 7(1) of the Bill states:

"Where a person obtains property or services by uttering or passing a cheque and the uttering or passing is not accompanied by any false representations other than a false representation that there are sufficient funds to his credit with the drawee to cover the cheque, he may not be prosecuted under this Act if he makes satisfactory arrangements with a bank to honour the cheque within ten days of the dishonour, and no prosecution shall be commenced by any means until the expiration of that period of ten days."

The Bill therefore seeks to strike a balance between a false representation which is an outright dishonest act, and a false representation which was unknowingly made. This really answers some of the contributions which some of the Senators have been making. In the former case, there would be a prosecution,

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whereas in the latter case, there would be no prosecution where arrangements are made to honour the cheque.

The Bill is one which is welcomed by the business community which had for a long time been advocating for such legislation, and had been a victim of this form of commercial dishonesty which is, in fact, a white collar crime.

Mr. Vice-President, commerce is the life blood of a nation and it is based on trust and honest dealings between the business community and the public, and in this regard, it is the duty of any responsible government to ensure that commercial transactions between the business community and the public are conducted fairly and honestly. Broadly speaking, this is what this Bill seeks to achieve and I therefore support it.

Sen. Danny Montano: Mr. Vice-President, before I begin, I would like to apologize to the Minister for being late, and not being present for his presentation. It was absolutely unavoidable. I had certainly left in ample time, Sir, but there is a development at the corner of Richmond and Park Streets where there is a construction site which has moved one third into the road, and I sat at that junction for 25 minutes and could not pass. I do beg your indulgence, Sir, but I do wish that something could be done. The encroachment on the road is something which is completely illegal.

To return to the matter at hand, I address one or two of the points, some of which had been already made. While I support the legislation and its intent, I had difficulty in terms of the perpetrators being all lumped into one category, which I think is inappropriate.

There are three basic separate situations, firstly, where there is a non-existent account, and there is a clear intent to defraud the vendor. There is another situation where one might, in fact, have a stolen cheque book, which again is similar, but is a different situation. There are situations where cheques have been stolen from employers, and this is something which I encounter with a disappointing frequency. Cheques have been stolen from employers and written, and if the employer finds out about it before they actually reach, the cheques are stopped and, of course, there are no goods to return as would be contemplated under clause 4(4).

Then there is the third situation where someone may have inadvertently overdrawn an account which is what Sen. Kenny referred to. I have much difficulty with the Bill treating all those situations as if they were one type of situation when,

clearly, the intent behind the circumstances is all completely different and there seems to be a virtual mandatory sentence of five years. I do not know under the law whether a judge could bring that down.

This Bill has completely shifted the burden of proof, and under this Bill, one is now literally guilty until he has proven himself innocent. While I have no difficulty with the intent of the legislation, I find that the drafting and the way in which it is done is awkward and inappropriate, and it is going to cause more confusion than is really intended. I urge the Minister to look seriously at that.

There are other things which I thought of when I was going through this Bill and I could not understand why, all of a sudden, we have a piece of legislation like this because it does appear to have been drafted in a rush as I have just indicated. It seems that all the circumstances have been lumped into one type of situation. If we are going to have hastily drafted legislation, there are very pressing issues which need serious attention.

Just a few days ago in the newspapers, there was a report where a woman was badly mauled by a pitbull, and it is obvious that situation needs to be seriously addressed where there are lives involved. Within the life of this Government, we have already had one person who has been killed and several others badly mauled by these dogs and I am not hearing anything from the Government side. Instead, what we have is a piece of legislation which is necessary, yes, but nobody's life is in danger as a result of it. It seems to me that the balance of priorities seems to be badly skewed.

Mr. Vice-President, while I am very sympathetic to merchants and retailers, certainly as a professional my livelihood depends on them, the fact of the matter is, it is not entirely a one-way street. The reality is that there are many merchants and vendors who are really not doing their job properly at all. I will give you one instance that I know of which involves a worker who had purchased a second-hand motor car for about \$25,000 and had it insured. On the day of the purchase, the insurance was paid and all the cheques were written and so forth. On her way home, on the Solomon, Hochoy Highway she had a terrible accident and the car was written off on the same day it was bought. Thank God, she was not hurt, and no one was injured in the accident.

The cheque for the insurance had been written on that morning, but when the time came to settle the claim, the insurers took off 20% of the value of the car so she got only \$20,000. A car for which she paid \$25,000 on that morning, and

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which the insurance company accepted, on the next day paid her a cheque for \$20,000. That seems to be an extraordinary set of circumstances, but the fact is, it does happen. It happens in other ways too. A person goes to a vendor and buys a television, a video, a refrigerator, a stove or whatever, and pays for it by cheque. They get the appliance and while it is the one which they had selected with the brand name, it is defective in some inherent way and does not work the way the purchaser expects it to work.

3.20 p.m.

What does he do? Under this Bill he cannot stop his cheque because the whole appliance is not worthless; basically, it is working. It may be that the refrigerator is cooling things down but it is not making ice. We are talking about the workers who do not really have recourse to the courts or to a lawyer every time they buy something. However, the merchant does because he is bigger, stronger, heavier and he has the weight of the law with him. At this point I would ask this administration to address those needs, because they are just as important.

There are retailers and merchants here who are some of the best shoppers in the world. They go all over the world and buy at close-out sales or slightly damaged goods and they get good deals on them. They bring those items here, sell them at a lower price and as a result their trade is more rapid. However, the result is that many of the goods are slightly substandard. One would find that the purchaser of the goods who has worked hard for his money cannot really do anything about it. He has to put up with a colour television which only shows red and green. He cannot see blues and pinks. Mr. Vice-President, the root of the situation here is value for an exchange of services; value for money and value for one's appliance or whatever it might be.

While we are talking about that, I want to touch on another issue. In terms of value and the exchange of money for a good or a service, I draw to the attention of this Senate the advertisements of alcohol and tobacco. What is happening there—and I have serious objection and difficulty with it—is that we are allowing giant corporations to advertise to our young people in a manner which causes them to do things that are inappropriate; whether it is to consume alcohol or tobacco, we all know that it is wrong.

The Minister of Finance, in his budget speech, spoke about making government buildings smoke-free and so forth, so I know that the sentiment is there. However, the reality is that it comes back down to this issue of payment in

cheques. Our youngsters are paying moneys for a product that is dangerous and harmful. We know it and we are doing absolutely nothing about it.

Mr. Vice-President, I would like to draw the attention of the Senate to two last points. The first one relates to the point I made in my opening statement about an account which may have been, inadvertently, overdrawn. Mr. Vice-President, while clause 7 allows restitution and appears to be clumsily worded, I do not think it is going to accomplish what is intended, but we can deal with that in the committee stage of the Bill.

I want Senators to understand clearly that there are situations where many cheques, particularly in business, are written on the basis of receipts; cheques which one has received. One does not necessarily wait the 10 or 15 days, or whatever it is, to make sure that all the cheques one has received have been cleared. One makes the natural presumption that everything is going to be cleared through one's account.

However, there are situations where somebody issues a cheque to you, you assume that it is perfectly all right and you put it in your account. You write your cheques on the cheque you received; cheques such as rent, PAYE, VAT or whatever it is. That cheque you received bounces on your account and all of a sudden the cheque you wrote is no longer good. It was good when you wrote it, but it is not good by the time it hits your bank. This Bill is really making no provision for that.

It is for these reasons, Sir, I say that the Bill is clumsy. It has good intentions, but I do not see it working in a practical sense. I see it fraught with difficulties. As I mentioned a while ago, when we get to the committee stage we can talk about clause 7 which is not going to do what is intended.

I thank you, Mr. Vice-President.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I have not risen to intervene in the debate but to simply say that having regard to some of the contributions made and some of the proposed amendments advanced, that we would like to look at those amendments and some of the views which have been expressed. As a result, we are proposing that debate on this Bill be adjourned to the next sitting of the Senate.

We are now proposing that we proceed to Bill No. 2 on the Order Paper which deals with an Act to establish the National Library and Information System to provide for the development and co-ordination of all library and information

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services in Trinidad and Tobago and related matters, in the name of the Minister of Planning and Development.

Sen. Prof. Spence: Mr. Vice-President, would it be at the next sitting of the Senate or the one after?

Sen. Mark: The next sitting is Private Members' Day. It would be the one after.

Agreed to.

NATIONAL LIBRARY AND INFORMATION SYSTEM BILL

Order for second reading read.

The Minister of Planning and Development (Hon. Trevor Sudama): Mr. Vice-President, I beg to move,

That a Bill to establish the National Library and Information System to provide for the development and co-ordination of all library and information services in Trinidad and Tobago and related matters, be now read a second time.

I, myself, intend to be very brief this afternoon in introducing this Bill. I wish to intimate to this Senate that this proposal has been with previous governments for a very long time and it is now our duty to have this Bill proposed and passed by the legislature.

The Bill seeks to repeal three existing pieces of legislation dealing with public libraries and to establish a statutory authority called the National Library and Information System. One would see that the current system through which public library services are offered is governed by three Acts and three different institutions. The laws with respect to these institutions date back to quite a long period of time. These are the Central Library of Trinidad and Tobago Act 1949, the Public Library Act of 1851, and the Carnegie Free Library Act of 1919 which deals with the operation of the Public Library in San Fernando.

3.30 p.m.

The Bill proposes to co-ordinate the Public Library activities of the libraries and information services in the public sector to bring them under one authority and to afford the organization the flexibility of making improvements, of dealing with the human resources within the system in a very progressive manner and to really improve the level of services that are being provided at this point in time.

For a very long time it was felt that this ought to be done but for one reason or the other it did not reach to the stage of Parliamentary approval. As late as June 1993, the previous administration appointed a committee on the integration of

public library services of Trinidad and Tobago. The committee reported in July of 1993. While that report was before the Government, really not much action was taken and the previous administration went out of office.

When we came into office we decided to look at the issue again and we appointed an inter-ministerial committee which looked at the previous draft Bill. Having looked at it we thought we would make some minor amendments and then present the Bill to the Parliament. In fact, the Bill was put out for public comments for three months. Comments were received and to the extent that we thought they were valid, those comments were incorporated into the new draft.

The Bill, as I said, seeks to provide for development and co-ordination of library and information services in Trinidad and Tobago. It is divided into five parts. I would just briefly go through some of the major elements of the Bill. We believe that this is a satisfactory approach to deal with this problem of co-ordinating the library and information services.

Mr. Vice-President, Part II, clause 4 outlines the functions of the National Library and Information System. It sets out at clause 4(d) the purposes and functions of the system. It reads:

- “(i) by facilitating library and information services to schools, government ministries and agencies; and
- (ii) by providing the link for the co-operation between public sector libraries, libraries of tertiary institutions and the private sector and the National Archives.”

It is also intended that this statutory authority, which is called the National Library Information System, will also engage in consultancy services to the public and private sectors; it will, among other things, assume responsibility as a designated legal depository; it will provide a national referral service for information, promote literacy skills and awareness and provide a central co-ordinating point for research in library and information services; it will also manage the national human resources of the library and information science personnel in public sector bodies.

I think it is necessary to explain what this involves. This means that the National Library Information System (NALIS) will look at the human resource development issues throughout the public service bodies. The National Library Information System will not be involved in the day-to-day operations of the libraries, whether it is in a ministry or in any other public sector. It will get into a

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memorandum of understanding with the Permanent Secretary or Chief Executive Officer as the case may be, of these institutions.

With respect to items such as training, human resource development, opportunities outside the agency or the ministry, it will look at that and see how the people involved there could avail themselves of opportunities outside, either for training, for improvement in their education or expertise; to look at the human resource from that point of view so that the opportunities which may be limited in the single organization for certain specialized skills such as library and information skills could be utilized in a wider sphere.

I thought I have explained what that function really meant in clause 4 so that we would not spend a lot of time debating exactly what is meant by that and whether the National Library Information System will be a kind of central agency that will direct library personnel throughout the public sector and have day-to-day responsibility for their operations.

Mr. Vice-President, clause 5 points to the powers which this statutory authority will have, what it can do, what services it can operate, what powers it will have to contract to purchase, lend, lease and borrow library material, the power it will have to accept gifts, the power to deal with real property, the power to dispose of land and make suitable investments in technology and so forth. The National Library Information System will have the power to receive gifts, and indeed, to raise money for carrying out its purposes, but it will require the approval of the appropriate Minister to raise money.

Clause 6 defines how it is going to operate within the various ministries and agencies. Here provision is made for the National Library Information System to enter into arrangements with the permanent secretary, head of departments, head of statutory authorities or the appropriate Secretary of the Tobago House of Assembly to formulate memoranda of understanding for the management of the library for which that permanent secretary, head of department or head of the statutory authority may be the accounting officer.

It is in that memorandum of understanding that the role of the National Library Information System will be defined and it is within that framework it would carry out its co-ordinating activities. The National Library Information System, of course, will have interaction with the National Archives and other places where information is stored.

Mr. Vice-President, the National Library and Information System as a statutory authority, will be governed by a board. The composition of this board is clearly outlined in the schedule to the Bill. We have looked at the composition of the board and we felt that it is a satisfactory combination of expertise to control, direct and provide policy for the operation of the National Library Information System. We felt that eight members should be appointed by the President and the Executive Director, of course, who would be an *ex officio* member.

The people who are appointed to the board will be people who will have special qualifications and expertise in certain areas. We have outlined those and the disciplines involved in library services. People who have knowledge and experience in information technology, education, law, science and technology, corporate business, financial management, human resource management, culture, public administration or any other area which the President considers would advance the interest of the National Library Information System. One would see that particular attention was paid to the scope of expertise that we can draw from in order to compose the board of directors.

The board will have, as other boards, that measure to operate but, of course, in the final analysis the board will operate through any directions which the Minister may give in writing. Of course, it is standard in all such legislation that it is the Minister who has the final responsibility for the operation of these institutions. Therefore, in the final analysis, if the Minister feels that specific directions ought to be given to the board on a policy feature, that provision is made in the legislation.

The day-to-day operations of the statutory authority will be carried out by staff who will be employed. The two main persons would be the Executive Director, whose qualifications, manner of his appointment and duties are stated in Part III and, of course, the Deputy Executive Director. In the event the Executive Director is unable to carry out his function, the operation of the National Library Information System would not be left in abeyance or to the discretion of the board as to when they meet in order to appoint someone to carry out the day-to-day functions. That responsibility will devolve on the Deputy Executive Director.

3.45 p.m.

Mr. Vice-President, the National Library and Information System will have the options of employing the existing staff in the libraries which are under the purview of the Central Library, Carnegie Library and the Public Library when this legislation comes into effect. Within six months of the Act coming into force, the existing staff will have the option of either seeking appointment on transfer to the

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National Library and Information System, seeking to be seconded to the National Library and Information System or take up employment in the public service in an office and at a salary commensurate with what they were holding prior to the commencement of the Act. We have looked into this and we have had the experience of what happened with respect to the regional health authorities. With respect to the provisions for pensions and so forth, all this is taken care of in the Bill before us. As you see, under clause 22, the provisions are made with respect to the new pension arrangements or continuation of existing pension arrangements for those employees who may wish to transfer or be seconded.

A very important element of the Bill is the establishment of a fund which will give the National Library and Information System that flexibility which a department of government, for example, does not have. The composition of the fund is clearly spelt out in clause 23. It is basically those sums which are to the credit of the existing libraries which will come within the purview of the National Library and Information System. Any sums that will be appropriated by Parliament for the purposes of the National Library and Information System and such amounts which may be provided by foreign governments, international organizations, multilateral agencies—and then, of course, there are a number of people who are willing to give donations to institutions such as libraries from their estates—will go into this fund and whatever moneys are borrowed. Clause 4 outlines in detail what these moneys are to be used for. It is all recorded there.

Very importantly, since we are giving this statutory authority power to utilize funds, the accountability question is very important. You will see that in clause 28(2) the board will design rules and procedures for tendering but in clause 29 the board shall also make rules for the control of the system of accounting and financial management including a proper system of internal auditing. The accounts of the National Library and Information System will be audited on an annual basis by the Auditor General and, of course, the National Library and Information System is supposed to provide an annual report of its operations and activities together with financial statements and so forth. This report has to be laid in Parliament. All these elements comprise a system of accountability for the operation of this proposed statutory authority.

Sen. Prof. Spence: Mr. Vice-President, I apologize for interrupting but the hon. Minister said that the Auditor General would do the auditing. Does clause 38 not refer to exclusion?

Hon. T. Sudama: If the Senator would look at clause 29(3) he would see that it makes provision for the annual auditing of the accounts to be done by the Auditor General. As I said, there is the need for an annual report to be prepared and presented through the Minister to Parliament. All this, Mr. Vice-President, forms part of the accountability system for the operations of this statutory authority.

Another issue which we had to deal with was the bargaining body for employees who are currently in the system. As you will see in clause 31(2) we have made provision for the union which presently represents employees to continue to do so on the coming into effect of this Act. Therefore, there is provision for continuity of representation. Of course, those employees who come in directly into the employ of the National Library and Information System will have the option of joining whichever representative body they wish; and, indeed, those who are within an existing union after the coming into effect of this Act will have the option of either staying or exercising their right to be represented by another body. The right of representation remains firm and the question of continuity is dealt with.

Mr. Vice-President, Part V deals with a number of issues relating to the continuity of activities which obtained under the existing libraries. The question of property, the transitional provisions and so forth.

It is our view that this is a necessary piece of legislation; something that was the intent of previous administrations going back a number of years but which, for one reason or the other, did not see the light of legislative day, so to speak. It is the opportunity afforded this Administration to bring this piece of legislation before the Parliament, to provide for the development and coordination of all library and information services in Trinidad and Tobago as part of the thrust for rationalizing the services provided by the Government and the public sector; as part of the thrust to have a developed information system which is going to be a critical function and service as in the past and will continue to be of even greater importance. As we enter the information age, having adequate information and accessing that information will become very vital for the development of Trinidad and Tobago.

It is with that objective in mind that it was felt that we needed to engage in this exercise of rationalization and coordination and, indeed, to provide a better and improved service for the benefit of all.

Thank you very much, Mr. Vice-President. I so beg to move.

Sen. Dr. St. Cyr: Mr. Vice-President, I was going to ask the hon. Minister, before he completed, whether he would help us to understand the significance of clause 38, please.

Hon. T. Sudama: This is specific to the Exchequer and Audit Act and it provides for certain exclusions which we thought necessary in order to facilitate the functioning of the statutory authority. But we can deal with this in committee stage at some point in time.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I beg to move that this Senate be adjourned to Tuesday, April 7, 1998.

May I inform hon. colleagues and Senators that next Tuesday we are addressing Private Members' business and we have the continuation of the debate on Sen. Prof. J. Spence's Motion.

I would like to also advise that the following Tuesday, which will be the 14th, if I am not mistaken, I would like Senators to focus on the following Bills because they may come in rapid succession. We are going to continue Dishonoured Cheques Bill, National Library and Information System, Waterworks and Water Conservation, Interpretation (Amdt.) Bill. We will want fellow Senators to prepare themselves accordingly as we may have to deal with these in rapid succession.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.00 p.m.