

*Leave of Absence**Tuesday, April 28, 1998***SENATE***Tuesday, April 28, 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. Cynthia Alfred to be absent from today's sitting of the Senate.

STATE LAND (REGULARISATION OF TENURE) BILL

Bill to secure certain squatters from ejection from state land; to facilitate the acquisition of leasehold titles by both squatters and tenants in designated areas and to provide for the establishment of land settlement areas, brought from the House of Representatives [*The Minister of Housing and Settlements*]; read the first time.

ORAL ANSWERS TO QUESTIONS**Housing Accommodation**

22. Sen. Mahadeo Jagmohan asked the hon. Minister of Housing and Settlements:

Could the hon. Minister advise this Senate:

- (a) Whether there are plans to build and distribute houses to citizens in need of houses in the constituencies of Point Fortin, La Brea, Fyzabad and Siparia?
- (b) If the answer is in the affirmative, could the Minister identify the locations where the houses would be built?

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy-Dowlat): Mr. Vice-President, neither the Ministry of Housing and Settlements nor any of its agencies, namely the National Housing Authority or the Sugar Industry Labour Welfare Committee, has plans at present to build and distribute houses to citizens in the constituencies of Point Fortin, La Brea, Fyzabad and Siparia. It should be noted, however, that at Striker's Village, Point Fortin, the National Housing Authority has serviced lots ready for distribution to applicants who satisfy the eligibility criteria. While La Brea, Fyzabad and Siparia are not

included in the IADB-assisted programme, the Ministry is at present implementing an integrated squatter regularisation sites and services project at Warden Road, Point Fortin.

Of the 700 lots produced at this site, 94 are reserved for allocation to sites and services applicants for owner-managed shelter construction. The remaining 606 lots are reserved for the regularisation of tenure of existing and established households.

It is anticipated that some of the beneficiaries may qualify for financing of the construction of their homes through a Government facility which is managed by the Trinidad and Tobago Mortgage Finance Company.

Part (b) of the question is not applicable.

Sen. Mohammed: Mr. Vice-President, Sen. Alfred has asked me to request that questions No. 23, 24 and 25 standing in her name be postponed for a further week.

The following questions stood on the Order Paper in the name of Sen. Cynthia Alfred:

**Tobago House of Assembly
(Authorisation of Salaries)**

- 23.** Could the hon. Minister of Tobago Affairs advise this Senate:
- (i) who authorized the present salaries for the Secretaries and Assistant Secretaries of the Tobago House of Assembly?
 - (ii) why is the minority leader in receipt of the same salary as a representative without portfolio?

**Tobago House of Assembly
(Salaries Review Commission—Remuneration)**

- 24.** Could the hon. Minister of Tobago Affairs advise this Senate:
- (i) whether the Salaries Review Commission has settled remuneration for members of the Tobago House of Assembly?
 - (ii) If the answer is in the affirmative:

- (a) would the Minister please say what is the monthly remuneration of each member of the Assembly and;
- (b) from which month did each member receive his/her remuneration?
- (iii) If the answer is in the negative, could the Minister please state how soon the Salaries Review Commission is expected to complete its deliberations?

**Tobago House of Assembly
(Constituency Offices)**

25. Could the hon. Minister of Tobago Affairs please state when the representatives of the Tobago House of Assembly are likely to have offices set up in their constituencies?

Questions, by leave, deferred.

**National Insurance Scheme
(Increase of Benefits)**

26. **Sen. Diana Mahabir-Wyatt** asked the hon. Minister of Social Development:
Could the hon. Minister tell this House when the increase in the National Insurance Scheme (NIS) benefits that were promised in this year's Budget will take place?

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, the increase in the National Insurance (NIS) benefits mentioned in the presentation of the 1998 Budget forms part of the proposed reform of the pension system in Trinidad and Tobago. Earlier this year Cabinet appointed a Pension Reform Implementation Team to develop the details from the broad guidelines agreed to by the Pension Review Task Force and to expedite the reform process for implementation by July 1, 1998. The team comprises the persons listed below and has also co-opted other persons to assist in its ongoing deliberations:

Sen The Hon. Brian Kuei Tung
Minister of Finance

Chairman

Mr. Kamal Mankee

Permanent Secretary
Ministry of Finance

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Ms. Jennifer Sampson	Permanent Secretary Ministry of Social Development
Ms. Shelly Collymore	Treasury Solicitor Ministry of Finance
Ms. Sharifa Ali-Abdullah	Economist I Ministry of Finance
Mr. Edward Bayley	Chairman National Insurance Board
Mr. Kyle Rudden	Managing Director KR Consulting Limited
Mr. Tim Kimpton	Principal Partner Bacon, Woodrow and de Souza

Ensuing from its deliberations the Pension Reform Implementation Team has identified a number of projects which must be completed by July 1, 1998 including:

- (i) Harmonisation and integration of the Old Age Pension and the National Insurance Pension.
- (ii) Introduction of a restructured pension regime.
- (iii) Introduction of legislation and regulations to govern the restructured system and the functioning of the pension fund industry.
- (iv) Establishment of an appropriate regulatory body to supervise the pension fund industry.
- (v) Introduction of a fully funded contributory pension arrangement for Government employees: monthly, weekly, daily and hourly.

In view of the deadline of July 1, 1998 for the implementation of the harmonisation of the old age pension and the national insurance scheme pension, it was necessary that the relevant expertise and technical assistance be secured as a matter of urgency. The National Insurance Property Development Company Limited has been given the responsibility for the procurement of the consultancy services and technical assistance for the development and implementation of the Pension Reform Programme and is engaged in activities pursuant to fulfillment of its mandate.

The Ministry of Finance has advised that it is committed to keeping the deadline of July 1, 1998.

Sen. Mahabir-Wyatt: A supplementary question. Could the Minister tell us whether the consultancy services are going to be sourced locally, or are they coming from the international agencies? I am just worried about the shortness of time between now and July 1.

Hon. B. Kuei Tung: Mr. Vice-President, we have already approached the Government's actuaries department in England, as well as the ILO for support and assistance. Presently there are some negotiations going on between the consulting actuaries that we have, Kyle Rudden Associates as well as Bacon, Woodrow and de Souza. So there are quite a few actuaries in the pot, as it were.

STATEMENT BY MINISTER

Mr. Vice-President: Hon. Senators, I have been informed that the hon. Minister of National Security would like to make a statement this afternoon to the Senate. However, I am further informed that such statement is not yet in a ready form for presentation and I have therefore granted him leave to make the statement at 5.00 p.m.

Agreed to.

1.40 p.m.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, as you know, according to the Standing Orders, we should be dealing with Private Business today. However, after consultation with leaders of both Benches opposite, I seek leave of the Senate to deal with Government Business instead of Private Business today.

Agreed to.

NEGOTIABLE INSTRUMENTS (DISHONoured CHEQUES) BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [March 31, 1998]:
That the Bill be now read a second time.

Question again proposed.

Mr. Vice-President: Hon. Senators, please be reminded that the following Senators have already contributed to this debate: Hon. Brian Kuei Tung, Sen. Elizabeth Mannelle, Dr. Edmund Chamely, Sen. Diana Mahabir-Wyatt, Sen. Vincent Cabrera, Prof. Julian Kenny, Sen. Nafeesa Mohammed, Sen. Philip

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Marshall, Sen. Muhammed Shabazz, Sen. Selwyn John and Sen. Danny Montano. Other Senators wishing to participate in the debate may do so now.

Sen. Andrew Gabriel: Mr. Vice-President, I am indeed again very honoured to contribute to the debate on this Bill before the Senate today, one which I personally welcome and fully support.

I have listened to the debate very intently and it seems that there is broad support shown by the Senators who preceded me, therefore my contribution need not be long. In fact, it would be quite brief, but I felt that there was a principle on a broader level which I wanted to mention with regard to dishonoured cheques.

I, myself, in business have been a victim of many bad cheques and know, first hand, what it feels like to have delivered goods and services to a person and have received, for payment, a worthless promise of settlement by way of a bad cheque. Technically, a cheque is quite simple. It is a conditional order, in writing, drawn on a banker and repayable on demand. This means that once a cheque has been written, the banker must repay to any authorized holder, the sum equal to the amount written on the cheque. Therefore, a cheque is able to replace a bank note as a means of payment. This is a very important point, that a cheque is able to replace a bank note as a means of payment.

Mr. Vice-President, whilst technically a cheque is only an instruction to a bank to pay X person, X amount of money, and a cheque technically is not money, to me, a layman, in a non-technical aspect it almost is. For a cheque to represent money it must have at least four major characteristics of actual money. It must be broadly accepted as a method of payment, as cash is; it must be able to store value as cash does; it must represent the recognized unit of account that is understood by all, for example, TT\$, US\$, like cash; and it must represent a standard for deferred payment.

To me, a layman, this sounds very close to the definition of money. In fact, I understand that the economists refer to cheques as “near money”. We have already heard that 60 per cent of all money transactions in this country are done by cheque. This must be a tremendous number of cheques and a tremendous amount of “near money”. My point is that “near money”, “broad money”, “cash money”, “your money” and “my money” exist because of a core and fundamental principle.

Mr. Vice-President, one of the most important inventions of man was money. This use of money took place and endured because there were laws in existence to protect contracts and breaches of confidences as this Bill is seeking to do. Money

represents a tool of exchange of how men value their effort, and the principle that when men wish to deal they must exchange value for value.

Sen. Shabazz: Mr. Vice-President on a point of order, Standing Order 32(6) which states that:

“Except with the leave of the President a Senator shall not read his speech but he may read extracts from written or printed papers or books...”

Has the Senator received your permission?

Mr. Vice-President: I think the Standing Order the Senator referred to is worthy of note and I trust that Sen. Gabriel will take note of it. References to notes, of course, are allowed, but wholesale reading of speeches will not be tolerated.

Sen. A. Gabriel: Thank you, Mr. Vice-President.

As I was saying, money exists as a tool of exchange of values between men or companies. This is the principle that has served the people of this planet well for over 1,500 years. The point is that in view of all that I have mentioned before there is a special type of perversity represented by people who criminalize the use of cheques. They subvert the confidence in the principle of money and why it exists as a tool. A cheque is also one of these tools of exchange. The act by which criminals fraudulently issue bad cheques to illegally lay claim to real goods and services that do not belong to them is robbery. Robbery is a crime and this Bill makes it clear that what the Government is seeking to do with this piece of legislation is to protect companies and people that accept and receive cheques.

When a person accepts a cheque he must have confidence in the instrument that he has received for payment, which is the cheque. He must have confidence in the cheque payment system which would include recourse that he can obtain for a bad cheque when one is received. He must have confidence in the money that that cheque represents to him and to his business.

1.50 p.m.

The Bill subscribes to all the principles that I have mentioned before, exchange of value and so forth. This Bill actually seeks to enforce them by

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law. It not only seeks to protect the person receiving the cheque, but by extension, protects the system and the principles of money as an exchange of value. The Bill acknowledges these principles as it must also apply to money transactions done by cheque, and this is why I welcome and support this Bill.

In fact, the difference between a criminal who burglarizes a business and steals \$5,000.00 worth of goods and the criminal who took \$5,000.00 worth of goods and fraudulently issues for payment a bad cheque, is that the criminal who wrote you the bad cheque has 10 days to make restitution to his victim. If not, this Bill ensures that the perpetrator of the crime will be seriously reprimanded as stated in clause 5 of this Bill. There could be no message clearer than that. Every system needs a process to deal with offenders, and this Bill quite simply is meant to protect the system to deal with and punish its offenders.

Mr. Vice-President, as I said, I would have been very brief. I support the Bill. Thank you very much.

Sen. Prof. John Spence: Mr. Vice-President, I also support the Bill. I agree it is a problem that has to be dealt with by addressing the criminality of it. However, I support the amendment which is to be moved by Sen. Diana Mahabir-Wyatt which suggests that there be an extension of the period whereby restitution will be made. I think we all would have been victims of errors in bank accounts and, therefore, one has, at the same time, to protect the person who is innocent and who has not deliberately set out to defraud, but who is a victim of circumstances such as that. Therefore, my position is that a longer period of grace, if you like, would be desirable.

Sen. Mahabir-Wyatt also has an amendment to deal with transgression on the part of banks. I have had written to me a letter commenting on this by the vice-president of one of the banks. The only point with which I agree in this particular letter—which does not like her amendment to do with the banks—is that they have also suggested that the banks be given a grace period similar to that to be given to the individuals, and I have no difficulty with such an amendment which also gives the bank a grace period.

I want to make a more general point, that is, that this problem with dishonoured cheques really became more apparent after the depression in the mid 1980s, and I have no doubt, just as violent crimes, such as robbery and so forth, are to some extent associated with the best economic conditions, so is the issuing of dishonoured cheques.

In addition to the draft that we may make on it from the criminal point of view, we should also attack it from the social point of view and that is to do everything that we can to ensure that the country progresses economically.

Secondly, we do not have a greater disparity between the “haves” and the “have-nots” which our current economic policy seems to be encouraging. I welcome the initiative which has been put forward by Sen. Dr. St. Cyr to have the economic policies discussed and I believe that the hon. Minister of Finance and Minister of Tourism supported this on the last occasion, and I look forward to that debate.

The present way that we are going, every aspect of our efforts seems, while not deliberately but inevitably, to lead to the rich getting richer and the poor getting poorer. When the debate is taken, I would venture to expand on this but certainly it is my feeling that even current events are demonstrating that tendency within our society. Thank you very much.

Sen. Rev. Daniel Teelucksingh: Mr. Vice-President, I rise to support the legislation before us on this note relating to dishonoured cheques and similar instruments. First of all, I want to identify with the second amendment of Sen. Diana Mahabir-Wyatt, that instead of the 10 days grace period in clause 7 of the Bill, that about four weeks should be allowed for a person to honour a debt on a bounced cheque before criminal or prosecution proceedings begin.

Mr. Vice-President, I want to quote and possibly direct a question out of this to the hon. Minister. The article is taken from the *Trinidad Guardian* of January 28, 1998 and I quote:

“The Attorney General must be highly commended for taking up the challenge in making the issuance of bounced cheques a clearer criminal offence punishable by fines.

I humbly make the following suggestion to our Attorney General on behalf of all of us who are victims of con artists and thieves who issue bad cheques. Please make the measure for the fine and imprisonment of bad cheque writers a retroactive one. Please put it back about five years, so that those of us who have been wronged can at least get back some of the money of which we have been ripped off. Please do this, Mr. AG...Please strike this blow for the decent business people of our land.”

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This is one of the questions I want to ask of the hon. Attorney General whom I presume might respond to this Bill. Also, I would like to ask: To what extent does this Bill cover credit cards which seem to be in widespread use today? It is reported on March 26, 1988 in the *Trinidad Guardian* about a person who used—already they are conquering the system—false credit cards and spent over \$18,000.00. Is this included in the Bill or how early are we going to have legislation to deal with this problem which is before us, for it was only last month somebody seemed to have beaten the system with a false credit card or false credit cards?

Mr. Vice-President, I have a concern which I would like to share with you and that has to do with the thorny issue of law enforcement. How long will the bureaucratic procedures take when a business person or an organization suffers through bounced cheques? Do we need to beef up the Fraud Squad?

I want to quote from the *Newsday* of March 18, 1998 at page 3 in which there is a report of \$1.7 million missing from a state enterprise. Police investigations began in May of last year, almost a year now and it is only now that the fraud squad has been instructed to find a certain person. It is reported in the press, that it is not known whether that person is in the country or has already left.

2.00 p.m.

Looking at the way our system operates, we may want to ask: Why did it take almost one year before action was taken on a matter like this? How many years will court proceedings take to settle an issue that is dealt with by the Bill we are considering? Are we passing bundles of legislation while ignoring mechanisms for the effective implementation of such legislation? Whether it be 10 days or four weeks, we have a problem. It seems as though the investigations continue endlessly covering a period of many years.

Mr. Vice-President, I would like to make a general comment within the context of the Bill. Let us not forget that the use of bounced cheques is a middle and upper-class crime. The monied class invented the bounced cheque in this society. The poor people in this country do not use cheques. They are the low-income earners: they do not qualify for the cheque privilege. They cannot get credit cards. That particular facility within the monetary system requires serious qualification and so many of the poorer people do not qualify for cheques and cards.

I am compelled to raise a very important question that we must not ignore—the prevalence of dishonoured cheques in our community. Is this evidence that something is wrong in the Trinidad and Tobago society? I will not hesitate to say that dishonesty as a type of social disease has reached epidemic proportions among us. For example, last month, March 1998, a bailor was arrested and placed on 45 charges of fraud. No sooner has that month ended and we have entered into April 1998, a Justice of the Peace is placed on 36 charges of fraud.

We ought not only to pass legislation, we have to get at the root of this evil. We have to go back and lay new foundations for honesty in all our relationships, which include problems such as money matters as dealt with by this legislation. Deceitfulness has ravaged our social environment and the bounced cheque is a manifestation of that scourge. The way of honesty is for all citizens. Political, judicial, cultural, social and religious leaders must set the example if such virtues are to be appropriated, particularly by the young people of this nation.

I end by saying that transparency in all our dealings with one another and integrity in the performance of all our duties must never ever be overlooked. I thank you.

Sen. Martin Daly: Mr. Vice-President, I will be equally brief. I just want to swim against the prevailing tide where this question of the grace period is concerned. I think 10 days too long and therefore, by definition, too long for the drawer of the cheque to have time to make good the offence. I am against extending the period. I will explain why.

If we are going to allow a four-week grace period for someone to make good a cheque that bounces, we will open a whole new line of credit. With our customary street smarts—and I thought of this when I was listening to Sen. Gabriel—a person will write a cheque to pay a bill in the knowledge that if he does not have the funds, he will actually get credit for as long as the cheque is out there. The period is too long. We will be opening up a whole new line of credit. We need to be careful.

Frankly, although I am as guilty as anyone else, we are approaching a commercial matter with a high degree of emotion. It appears that many Senators want to protect the consumer and that is why they want to extend the grace period. Those who have spoken in defence of the consumer are all basically honest consumers, but I think it is all a little naive to extend this level of protection to the consumer.

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If anyone calls a bank or a merchant, as frequently happens, and says that in the early part of the year he put 1997 instead of 1998 on a cheque, he is so moved by this that the same or the next day he rushes around to the person to correct the error. I do not think that if any of those Senators who spoke in favour of extending the period found himself in the situation where he made an honest mistake, it would take 10 days to rectify it, save and except he were out of the country. I do not think we can legislate for that, particularly if it will have the consequences that I respectfully contend.

Secondly, before we get all hot and bothered about bounced cheques, we should understand that we are passing this Bill at a time when the incidence of bounced cheques is actually getting smaller. I have some statistics which I forgot to bring with me. The reason it is getting smaller is that nearly everyone who has access to a cheque book has a cheque card which guarantees the cheque at least for a minimum amount—as low as .3 per cent. So, if a merchant gets taken for a sum of money on a bounced cheque, that will only be if he accepts the cheque for a sum of money in excess of what is guaranteed by the card. That has cut down the incidence of bounced cheques. Moreover, the incidence of credit card fraud, which is the modern offence far exceeds this.

We are really dealing with this at a time when cheques are becoming history. I am not saying it is not a good thing that the Government has done it. It is to their credit that much of the legislation that they are bringing we needed 10, 20 or 30 years ago. Better late than never! I think this when I see the Cohabitational Bill and other things that reflect the realities of life in Trinidad and Tobago. If we are reflecting the realities of life of consumer fraud, then I expect the Attorney General, if he joins the debate, or the hon. Minister, when he is winding up, to tell us when the Government will bring legislation to deal with the more common forms of credit card fraud and cheque kiting. That really would deal more readily with the reality in Trinidad and Tobago.

Sen. Prof. Spence: Would the hon. Senator, since he does not like to extend his period, address the problem of an error on the part of the bank, which is a reality of life, and the slow mail service in Trinidad and Tobago, which is another reality?

2.10 p.m.

Sen. M. Daly: I am always happy to be prodded by the senior Independent Senator. I was coming next to the problem raised by the banks with regard to the

mail service, Mr. Vice-President. Anyone in Trinidad and Tobago who has an important document for delivery and uses the mail service, really does not regard the document as important. It is as simple as that. This is rather interesting. In fact, what I have told persons in the banking industry is, happily, they have overtaken lawyers for unpopularity as you can hear from the chorus of voices around me. I do not accept the way you are notified of a bounced cheque through the bank by mail by bank statement and so forth. I hope I live in the real commercial world.

If there is a problem with a cheque, it is very rare you receive a communication about it by mail. Usually, the person who is the payee of the cheque would get in touch with you, which is usually the grocery, if the date is written incorrectly, or the words and figures do not match, or the signature is smudgy, those are the circumstances in which innocent persons bounce cheques; the merchant asks you to rectify it and you do so.

With regard to the point raised by the banks, I will comment on this very sparingly because I have bankers among my clients. All I would say, as the bankers have said, is if this amendment is being insisted upon, then they should have a grace period, too, as they have asked for. In fact, if the amendment is a good one, the same correspondence to which Sen. Prof. Spence referred, they have virtually conceded that they should have a grace period, too. We have to accept the quality of offence and, therefore, if the consumer makes a mistake and he gets a grace period to rectify, then it is only right that if the bank makes a mistake, it gets a period to rectify it as well. I have started drafting some words which would make that plain.

I am afraid, Mr. Vice-President, were we not having the pleasure of addressing you where you are now sitting as opposed to your usual place, you might well rise in your place to support me about the use of the mail service. One has to be crazy to send a document through the mail in Trinidad and Tobago. So if it looks like a greeting card, and it is torn open to see if there are cheques in it, good or bad, do I need to expand on the mail service? I would say that we had such a service.

Perhaps the only time I ever mailed a cheque abroad and it did not reach its destination in the days before the mail service became zero, the only time I lost a cheque which I mailed abroad, was when I got to the mail box outside of Knowsley and happened to meet the mailman taking the mail out at the same time and I handed him the envelope. It was the only time I had ever lost a cheque in the days when I was crazy enough to use the mail. He probably watched me and

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stereotyped me as a Member of this Government and previous governments and said, “This must have money in it”, and it never reached.

Mr. Vice-President, I think it is important to have a light moment. First of all, I would like to ask a drafting question, because I am not a parliamentary draftsman and I am always uncertain about these things. I take it that clause 3(2) where the offence defines that a person obtains property or services by the use of a dishonoured cheque, I assume that the word “property” is wide enough to cover cash because one can frequently obtain cash by means of a bounced cheque as opposed to a box of pampers, or whatever, and you frequently obtain value—sometimes intangible value—by the issue of a cheque. So I am hoping that property or services would be sufficient to cover the obtaining of cash, or intangible, or non-material value, by the issue of a cheque.

When I was listening to the valuable contribution of Sen. Gabriel, which appeared to have some aspects of writing about it, I wondered if he were not here and he endorsed the writing whether it was a negotiable instrument which could be uttered by the lips of some other Member of the Government. So I am hoping that insofar as valuable parliamentary material is the subject matter of writing that they would gain protection from this Bill, both as a negotiable instrument and against fraudulent utterance or endorsement.

I thank you, Mr. Vice-President.

Sen. Mahadeo Jagmohan: Mr. Vice-President, I thank you very much for the opportunity to ventilate two small points. One, I am not dealing with the real technical aspects of this Bill raised by so many learned Senators, but there is a problem which is bothering me and, indeed, is of concern to many persons. In and around several of the industrial estates in Trinidad, all workers receive their wages and salaries by cheques, and a new industry or system has developed where the greater number of these workers do not avail the services of the banks to change their cheques.

There are some business houses which now do thriving business either weekly, fortnightly or monthly. They have "X" amount of dollars cash stacked ready and waiting and there is a charge of \$10.00, \$15.00, \$20.00 and even more on each cheque that is changed. This is of serious concern, because if they go with this cheque to the bank, there is some banking law, or rule, or principle, of which I am not familiar that the cheque must stay in the bank for 24 hours, or some such thing, before it could be considered for cashing, but the business houses are aware of

those persons whose credibility is quite good so they immediately change them for cash and many millions of dollars are lost annually to the working population by this measure.

[Interruption] I do not know, we just got a document on amendments. I did not look at it thoroughly, but what I am suggesting is that system should be looked at very closely to see what can be done to protect the working population, particularly those on the lower rung of the ladder—people who need their money for spending the moment they receive their cheques.

The other point I wish to address—in most of the cases where a person with an account in a bank guarantees a loan for another person and there is a fixed date in the month that the loan payment is deducted from the person who raised the loan, but the guarantor also has his money in the bank and that is a clear case when the person with the loan refuses to pay or does not pay on time, money is deducted from the account of the guarantor because moneys are held for that purpose. A cheque is issued before the date when the moneys are deducted for paying the loan and when the person with that cheque goes to the bank he can no longer get it cashed because there is no money in the account of the person who is issuing the cheque. I am wondering whether this would be a criminal offence, or is there some mechanism on how to deal with it?

Mr. Vice-President, I thought I would raise the matter and some consideration would be given. The time limit referred to here which is in one of the amendments before us, will have some bearing on what I am about to say. I have heard from certain sources that certain persons who have no funds in the bank do issue cheques but there is a mechanism available to them so that the cheque will not qualify to be cashed by not writing the person's name properly and then they go into hiding after such a cheque is issued, and the person to receive the benefits of that cheque suffers. This is an area at which we should also be looking.

Mr. Vice-President, perhaps it happens with the allowances which the Members of Parliament receive. One receives a cheque maybe a week, or several days before it is due for encashment. Should not the law also address that point? That is, cheques should not be issued unless they can be cashed immediately.

Thank you, Mr. Vice-President.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Vice-President, may I express my thanks to you and the hon. Members of the Senate for giving me this opportunity to make a contribution on this measure, although I was

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not in the Parliament when most of the contributions were made, or when contributions were made on the last occasion.

Mr. Vice-President, I had the benefit of a summary of what was stated and the proposed amendment takes into consideration the matters which were raised on which the Government was able to agree. In respect of the other matters, there would be an opportunity, even at the committee stage, to see whether we could be persuaded on some of those matters. May I say that this Bill demonstrates to a great extent how backward our criminal law in many areas has been. As you would probably know in your capacity as a lawyer, most of our criminal law, as far as larceny, obtaining by false pretences and other matters dealing with dishonesty are contained in the Larceny Act of 1916, an Act which was copied from the United Kingdom and it was, in effect, the Larceny Act of the United Kingdom. In 1916, Trinidad and Tobago was in a different constitutional position to the United Kingdom, and, therefore, that Act is the one under which Trinidad and Tobago operated.

That United Kingdom measure has been reformed from time to time and in 1968, for example, there was the Theft Act in the United Kingdom in which the Larceny Act of 1916 was removed. One has to recognize that in many of the areas in which our present Larceny Act deals, the law has not moved with the times and this is one of the areas. Some of the other areas are those which also relate to what is now called economic crimes and those are some of the matters which were raised by some of the hon. Members of the Senate, credit card fraud, computer fraud and one knows that countries now have to deal with these matters.

2.25 p.m.

Mr. Vice-President, may I indicate to this honourable Chamber, that the Law Commission has started work on a package of legislation to deal with economic crimes which would include computer fraud and credit card fraud. One recognizes that just as at one age people used cash in order to deal with business and at another age there is the use of cheques, one would also have to recognize that in the modern age people are using credit cards, therefore, the law has to deal with those matters.

So I wish to give the assurance to this honourable Chamber that this measure is not a measure which we would expect to be the answer to all deficiencies in the law in this area. These deficiencies have grown over the years and it is a matter in which countries are even finding it very difficult, if not expensive, to deal with, but

they are matters which we have to deal with. The crimes of forgery, fraud, fraudulent conversion, embezzlement are areas of the law which have to be looked at again.

Mr. Vice-President, the point has been made that emphasis should also be placed upon the implementation of legislation. That point is well taken, but in dealing with crime in the present day, as one would have remembered, long ago one could have dealt with the investigation and detection of crime by merely having a police service which would do everything under the sun. One sees however, that countries which have had to deal with these problems have had to, in effect, get the police service specialized in certain areas. The Minister of National Security has mentioned it publicly and is aggressively engaged in taking steps in order to have the police service specialized in particular areas, for example, in relation to the investigation and detection of drug trafficking and money laundering. It is a specialized field and steps are being taken; the Ministry of National Security is in the process of dealing with these matters in relation to fraud, white collar crime and economic crime. Mr. Vice-President we want to give the assurance to this honourable Chamber that the Government is aware of the matter and, maybe, just remind this distinguished Chamber and members of the national community, that we have been there for just over two years and these are problems which have accumulated over the years.

Mr. Vice-President, the support that is given to this Bill is much appreciated by the Government, but I think it is my duty to point out that according to the information we have and the representations which were made to us, the proliferation of bounced cheques has for a great time, and continues to plague the business community in Trinidad and Tobago.

Mr. Vice-President, I wish to indicate to Sen. Martin Daly that the Chamber of Commerce has indicated to the Law Commission that there has been an escalation of this practice in recent times. I do not know if their statistics are as accurate as the Senator's statistics, but based on those facts which were given to the Law Commission, steps were taken to have this Bill done, and it was recognized in doing this Bill, that we also have to work on legislation dealing with credit cards. There is a paper—I have it in my possession—which has been prepared by the Law Commission on credit cards, and steps are being taken in order to draft legislation in respect of credit cards.

Mr. Vice-President, it would be recognized against the background of a growing economy, fierce competition among business persons coupled with the

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easy availability of bank and credit cards, consumers as well as unscrupulous businessmen and women have abused the process by the payment of cheque. What we have attempted to do in this piece of legislation, is to try to mix the relief, that is to say, to try on the one hand to make it a criminal act to issue a cheque which one knows is going to be dishonoured, but on the other hand to take into consideration, cases where people can issue cheques in the *bona fide* belief that they would be honoured or where there is a question of moneys in the account or credit facilities, and to produce a formula or a mechanism whereby when the honest person has done that, there would be a time-frame within which one can make recompense.

Mr. Vice-President, on the point that Sen. Daly made in respect of the time-frame of 10 days and the proposal to extend it to 30 days or 21 days: when the Bill was originally drafted we had 7 days. It is because of representations made we decided to increase it to 10 days. I would like to endorse what was said about this aspect by Sen. Daly, in that if we give a time-frame of 21 or 30 days, one would have a situation where people will deliberately abuse the provisions of the law and it would not serve the purpose for which it is intended.

Mr. Vice-President, in respect of that issue, I would ask Senators to recognize that if a person really and honestly issues a cheque, knowing that he has the credit facilities and he honestly intended to pay, then that period of time would be sufficient for him to be able to make recompense.

Sen. Mahabir-Wyatt: Would the hon. Minister comment; he is going through on this point. In reference to the point, what happens to people who live in an island country who have to travel rather frequently and can, in fact, be out of the country at conferences or seeking discussions with the Privy Council for a period of three or four weeks? If it was a genuine error, it could very well mean—I mean, we are an island nation—that the 10 days would go by and you would still be fined.

Hon. R. L. Maharaj: Mr. Vice-President, what it does show is that an Attorney General who does that, simply cannot afford to write a cheque which he knows or has any reason to believe may be dishonoured.

Mr. Vice-President, it seems to me that one has to recognize that the Bill also creates an obligation on persons who are writing cheques to also take the initiative to ensure that they have facilities in the bank to ensure that the cheques would be honoured. With the modern set-up of telephone, technology, *et cetera*, I am sure

that when one is leaving and there is an indication to that kind of situation, one would have to be able to make arrangements. When one looks at the two sides of the coin and one sees that if one extends the period of time that the law can be abused, it would seem to me that it would be better for persons who are writing cheques—business people, ordinary persons—to ensure that their business is so organized that they would have the credit facilities.

Mr. Vice-President, it is a matter in which I know that we can have discussions for a long time and, perhaps, at the committee stage—we are still open—we can still have the matter discussed. I do appreciate the points which have been made by Sen. Diana Mahabir-Wyatt, but I believe however, that if we extend the period of time, we would not really be doing justice to the situation, in that it would really be abused by persons who can write cheques and get 30 days in order to pay it.

Mr. Vice-President, I wanted to indicate to some extent what is the present law in Trinidad and Tobago and to show how this law has to some extent, been circumvented so that Senators would appreciate in what context this Bill is being passed.

Mr. Vice-President, 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 against the withdrawer and endorser accrues to the holder. This Act does not address the problem created by issuing of cheques for which there are no funds or those issued on non-existing accounts.

Under section 34(1) of the Larceny Act, however, Chap. 11:12, states:

“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 person, is liable to imprisonment for five years.”

Then we have a similar offence which deals with obtaining credit by fraud. What has happened is that when someone writes a cheque in favour of an individual and the cheque bounces, in many cases when there is an investigation, the question arises: would the person be able to say and adduce evidence that he had the honest belief that because of the arrangements he made that the cheque would be paid? There is, in effect, a lacuna in the law in that, virtually almost 100 per cent of the prosecutions which are laid for bounced cheques cannot get off the

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ground because as long as you can establish doubt in the minds of the court, whether it is a magistrate's court, or to the members of a jury, that the person at the time was making arrangements or he thought another cheque would have been paid, it would mean that the offence would not be established.

So what has happened virtually is that persons who have gotten cheques in their favour could not get the police to really launch prosecutions. If these individuals launched private prosecutions, they would, in effect, face the same fate because the court will have to determine before the case goes forward, whether on the totality of the evidence, the prosecution has established a case, proof beyond a reasonable doubt, even on a *prima facie* basis.

What has happened in practice over the years is that these people who are the victims of bounced cheques have had to file civil actions against the persons who have written the cheques. In those cases when you file the action, you would have a defence and under the procedure you cannot take up a summary judgment unless you can show that the person does not have a defence; and this can go on for years.

2.40 p.m.

There will be instances also where cheques have been written by companies which are shell companies. Therefore, even if the person gets a judgment against the company they do not get their money. What has happened is that many persons have lost money over the years; millions of dollars. Business people, poor people, all kinds of people. The situation cried out for some sort of reform. It is in this context this Bill has been introduced in order to try to strike a balance to ensure that people who write cheques but who are not really dishonest can find a way to sort out the problems if, for some reason, the cheque is not honoured; but to also punish people who have written cheques without funds to support them or the appropriate credit facility.

When one looks at the countries in the world which have had to face this problem, one would see how they have dealt with it. For example in the United Kingdom the issue of bad cheques, like in Trinidad and Tobago, is treated as a mode of fraud or deception and the issuing of cheques for which there are insufficient or no funds is not a specific offence as in many other jurisdictions. Bad cheques are not dealt with in the Cheques Act of the United Kingdom of 1957 but rather under sections 1 and 2 of the Theft Act of 1978. Under that Act, if one writes such a cheque and does not have the money, it will be obtaining by deception.

In Australia the law governing the issue of cheques is to be found in the Cheques and Payment Orders Act of 1986. Mr. Vice-President, the long title of the Act describes the Act as an “Act Relating to Cheques and Certain Other Negotiable Instruments.” Like other cheque legislation, this Act does not address the problems presented by the issue of bad cheques. The Australian legislation, like many other jurisdictions, addresses only the drawing of a cheque on the basis of insufficient funds.

In the case of New South Wales, the statute is the Crimes Act of 1900, section 178B which provides that:

“Whosoever obtains any chattel, money, or valuable security by passing any cheque which is not paid on presentation shall, unless he proves -

- (a) that he had reasonable grounds for believing that the cheque would be paid in full on presentation; and
- (b) that he had no intent to defraud, be liable to imprisonment for one year.”

The writing of a bad cheque in itself is not an offence. The offence is committed when one writes a cheque knowing or not having reasonable belief that it will be honoured and one presents it and there is action upon it. The New South Wales criminal appeal court has held that a person accused of an offence under that section has a defense if he can prove reasonable grounds of belief and absence of intent to defraud.

Mr. Vice-President, the Canadian position, like Trinidad and Tobago, has no specific offence of passing a bad cheque. Such cases have always been prosecuted in Canada under section 320 of the Criminal Code which deals with obtaining by false pretences which is differently worded as our particular offence under the Larceny Act. The framers of the Code have made specific reference to the issuing of cheques for which there are insufficient funds. An offence committed under the relevant section is an indictable one and is punishable by a term of 10 years imprisonment.

Under our law we are saying it is to be prosecuted on a summary basis and there are different criminal sanctions. When there are no funds or insufficient funds to meet the cheques drawn, there is a presumption that the credit was obtained by false pretence and the burden of proof is on the accused who must satisfy the court that when he issued the cheque he had reasonable grounds to believe that it would be honoured if presented for payment within a reasonable time after it was issued.

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Mr. Vice-President, one sees, as in our Bill, there are certain presumptions. These are not uncommon in the law of crime or in the criminal jurisprudence. As a matter of fact, one knows that if one is found with stolen goods or goods which are unlawfully obtained and one cannot give an explanation, there is a presumption that one has unlawfully obtained or stolen those goods. There is the law of unlawful possession. There are areas of law with respect to drug offences and there are several areas of law with respect to firearm and the possession thereof.

The question of presumption is a common feature of the criminal law. The fact of the matter is that this Bill does not alter the burden of proof, that is, the burden of proof on the state to still establish the guilt of the person beyond a reasonable doubt. Therefore, notwithstanding the presumptions—and that persons may have to give an explanation—the fact of the matter is that the principle of the criminal law, the golden thread which runs through the criminal law, that is to say it is for the state to prove beyond a reasonable doubt the guilt of the individual. Under these measures, if someone is charged for an offence and the person honestly believed that he had moneys in the account or there were arrangements to get the moneys, it is still open to him to adduce that in evidence to convince the court that he did not have that intent. If the evidence leaves the court in any uncertainty or any reasonable doubt, the person would be entitled to have the benefit of the doubt. Therefore, it does not alter, in any way, the principles of the criminal law.

Mr. Vice-President, I think I should tell this honourable Chamber however, about the French position and I say the French position in respect of bounced cheques. [*Laughter*] I do not know whether my colleagues thought I was going to sing a calypso. Mr. Vice-President, France has had to adopt a more vigorous approach to the problem because of the high incidence of dishonoured cheques. The French laws seek to prevent the use of bad cheques and to bring bad cheques offenders within the ambit of the criminal law and protect innocent bad cheque victims. The English and Canadian approach to the problem of bad cheques has been rejected in the United States and France. France has made the issuing of such a cheque a distinct criminal offence. In France the issuing of a cheque is not seen as an instrument of credit but as currency and thus, for it to achieve the purpose assigned to it by law, it is necessary that it inspires full confidence in the person who receives it. Hence, a bad cheque is like counterfeit money requiring criminal sanctions. In France offenders are punished for the mere issuing of a bad cheque.

A French commentator, Jean-Louis Mouralis, described the matter. He said and I quote:

“Perhaps such sanctions will finally bring users of cheques to realise that to pay ones creditor with a “bad” cheque is to defraud him because to issue a “bad” cheque is like issuing counterfeit currency, a thing which is serious both from the moral and economic point of view.”

Mr. Vice-President, one sees how different countries have dealt with this matter. We are not dealing with it as in France in that the mere fact that one writes a bad cheque and has it in ones pocket is an offence. What we are saying is that if one writes a cheque knowing that it is going to be dishonoured and took steps and presented it and the person has suffered damage, in effect, with respect to the giving of property or services which I am told will include money and all those matters, then the offence is committed.

In order to complete my short analysis of the situation of the French position, I think that I should mention that the French decided to introduce two statutory defences in order to temper the severity of the law. It says that where a cheque is dishonoured for a lack of funds the drawer must prove that he reasonably believed that he had funds with the drawee, which is the bank, at the time he issued the cheque and a drawer is allowed a grace period of 20 days after notice or protest is sent to him by the drawee to make good his bad cheque. I do not know whether Sen. Mahabir-Wyatt got the additional data from France but they obviously seem to think that 20 days is a reasonable period.

Mr. Vice-President, I merely wanted to state what the amendments are so Members will have an idea of what is presented at the committee stage. One would see that in clause 2 there is a proposed amendment. In the other place clause 2 was amended to insert a new subclause (5) to extend the purview of the Bill to apply also to a postdated cheque. Since that was done, it meant that the definition of cheque in clause 2 had to be amended to make it certain that postdated cheques were not excluded. That explains the purpose of the amendment to clause 2.

Mr. Vice-President, in respect of clause 3 there is an amendment to, in effect, put the word ‘will’. It seeks to change the words ‘may’ and ‘shall’ to ‘will’ both in subclauses 2 (a)(ii) and 2 (b)(ii). In the other place the word ‘may’ was changed to ‘shall’ because it was felt that since the law was now being changed to make uttering or passing of a dishonoured cheque a criminal offence, the belief of the drawer or representative drawer that when he uttered or passed the cheque the

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payment shall be refused upon presentation. The use of the word 'may' would suggest some doubt or discretion and 'shall' indicates certainty. Therefore, it was suggested by the draftsman that 'will' should be inserted instead of 'shall' or 'may'.

Clause 4 of the Bill is redrafted to take into consideration some of the comments made in the Senate. In substance, the clause is the same but I should say that the drafting has been done in order to take into consideration some of the matters. It is to be noted that clause 4(2) in the proposed amendment seeks to impose a duty on the drawee bank to ensure that the payee, that is the person who presented the cheque for payment, is given a copy of the notice or protest that was sent by the drawee to the drawer. This is essential to ensure that the payee is made aware that the cheque was dishonoured and it allows the payee to decide whether to report the matter to the police or accept the arrangements made by the drawer.

In keeping with the concern expressed by some Members of the Senate, clause 4(4) of the proposed amendment imposes a three-day period within which a person who stopped or countermanded payment or otherwise caused a cheque not to be honoured, to return the property or value of the services obtained by the use of such a cheque. There were criticisms that there was no time period and the Government believed that a period of three days in those circumstances could be inserted. This short time limit would, in effect, attempt to answer some of those criticisms.

Clause 4(3) deals with the manner by which a drawee will seek to prove that the cheque is a dishonoured cheque. It shows two options: a notice of protest or an affidavit. The notice of protest must be issued and duly served on the drawer by the drawee. The other drafting matters are matters which can be dealt with in the committee stage.

2.55 p.m.

Mr. Vice-President, may I say that this Bill represents the Government's commitment to deal with this problem. It recognizes that it has not been an easy matter with which to deal. As a matter of fact, may I say although it is a Bill to redress what can be regarded as a simple issue, it is a Bill that has taken us some time to draft and redraft. We have had consultation with the banking community, with the Chamber of Commerce and with other organizations. Even when it was drafted, you would notice that in the House of Representatives, there were amendments. You would notice that from this honourable Senate, there would be amendments and one sees, therefore, that enacting legislation at times, even for simple matters, cannot be easy.

This is the importance of the Parliament, the Members of the Parliament would be able to express views so that the Government can consider these views and, in effect—

Sen. Daly: I thank the Attorney General for giving way. May I ask him a totally unfair question? In the light of what is falling from the Attorney General now, would the Government consider bringing forward the new Minimum Wages Order to a positive resolution of Parliament, given that it is so badly drafted? Would they give it serious consideration? It needs debate.

Hon. R. L. Maharaj: I see that Sen. Daly wants to get me into difficulties. I am sure that the Senate would have an opportunity of debating that matter and I am sure in the debate the expressions of the Senate and of the House would be considered. I see it is on the Order Paper; it has been tabled and it is subject to negative resolution. I am sure with representations made, the matter can be debated.

Sen. Daly: Well, I am making the representation now and I am asking the Government to consider seriously bringing it forward. I do not expect an answer now, but I am asking the Government seriously to consider being the initiator, instead of leaving it to one of us to figure out what is a negative resolution.

Hon. R. L. Maharaj: Mr. Vice-President, I am sure the Senator knows that the Minister of Public Administration and Information is very committed to ensuring that the parliamentary process works properly, and I sure with discussions between both sides, some arrangement can be arrived at. I see no difficulty with that.

As I way saying, one sees the importance of getting the views of the parliamentarians and I would like to express thanks to both the Members of the Opposition and the Independent Benches for the suggestions and the criticisms made. They have helped us tremendously in looking at this Bill again, and we still have an opportunity at the committee stage to try our best to see what can be done in order to have a proper Bill with this matter.

Thank you very much.

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I rise to make a small contribution on this very important Bill before this honourable Senate, the Negotiable Instruments (Dishonoured Cheques) Bill, 1997.

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This Government has always committed itself, both when we were in Opposition, and now that we are in Government, to attack and to deal very seriously with the issue of crime. Clearly, wherever it rears its ugly head, the Government is prepared to address it. The Bill before us today is a reflection of this commitment to deal with crime.

In this instance, we are talking about commercial fraud, commercial crime and dishonest acts and I think that, for instance, the Bill ought to be seen in the context of the Government seeking to assist the business community. Mr. Vice-President, if I may say, the business community is in support—from the information I have picked up, from the letters I have received—of this piece of legislation; the business community welcomes it because it is a long awaited and much needed piece of legislation to deal with the reform of the law with respect to dishonoured cheques.

As I said, it deals with commercial dishonesty where people obtain goods and services and bad cheques are issued causing many people to be dislocated as a result. It is a very serious situation. I think that many of us in this Chamber may have been victims of this particular kind of event and from reports I have received, no particular institution has escaped from this particular development.

I have received correspondence from business people and they make reference to dishonest acts committed by all sorts of people and institutions. I know of a particular instance where I was informed that a particular organization in the religious arena—and this is no offence to the relevant religion or the institution itself—but here it is I was informed in writing that this particular institution went to a particular business place which dealt with foodstuffs; actually took about \$20,000 worth of foodstuff from this particular business operation and issued a cheque, only for the businessman to find out when he went to the bank to cash this particular cheque, that it was a bad cheque.

What I am saying is, it is a very serious matter we are addressing today and it affects, as I said, the business community at large and this Government is committed to protecting one and all in this particular context. I think it is a matter that has been long in the making. It is unfortunate that the previous regime was unable to bring this piece of legislation forward. It is legislation for which people have been crying out for years, this piece of legislation, and in spite of the fact that they were there for 33 years, they never brought a piece of legislation like this.

I just think that the Government is standing on very good ground to bring this piece of legislation and to have received the support of the business community on

this particular matter. It is showing equity, fair play and balance on the part of the Government. This Government, as you know, is committed to equity, justice and fair play on all sides of the divide, so we are addressing the concerns of the business community and we are also addressing the concerns of ordinary people.

Earlier, Sen. Daly requested a debate on the Minimum Wages Order, maybe we can discuss it and determine for instance—well, you know we always have to discuss things behind the Chair, we do not have to discuss everything before the Parliament. That is a request. I recall when I was on the other side, at the time the PNM government—

Sen. Daly: I thank the Minister for giving way. Would he indicate whether he is sympathetic to such a debate, whether he is going to recommend it?

Hon. W. Mark: Of course, Sen. Martin Daly. I have no difficulty whatsoever. I am very sympathetic; but when the present Opposition was in government, it brought that very disgusting and infamous wages order to deal with the security personnel in the private security industry. It tabled that order and I recall when I was sitting where Sen. Nafeesa Mohammed now sits, I had to move a motion under the Standing Orders of Parliament, in an effort to get that particular Minimum Wages Order debated. If I had not done that, we would not have been able to debate it properly.

Now this is a Government that is willing to hear, that is caring, that is considerate, that is sympathetic. I feel at the end of the day, what we may be able to achieve, if or when such a debate takes place, is whatever areas, as Sen. Daly said, we may have some limitations and shortcomings, because the Government has already gone on record as saying that this matter would be reviewed within one year, given, for instance, all the concerns that have been expressed by all the various constituents and so forth on this matter.

This Bill seeks to address dishonoured cheques. It seeks to prosecute in a very serious way anyone who knowingly and consciously passes a cheque from a non-existent account. I think it is only fair that if someone issues a cheque to you, Mr. Vice-President, or to any Member of this Parliament and you put that cheque into your account, you expect to have funds released. It is very, very disconcerting for the business community and for any citizen of this country to be going through an

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experience where cheques are issued and there is no cash to back up that particular arrangement. It is fraudulent; it is criminal; it is offensive for anyone to engage in that kind of activity and I think that this Bill has long been in the making, it has now arrived in Parliament and with the various concerns that have been expressed and with the various amendments that have been put forward, we would seek to take on board all the concerns of both the Opposition and the Independent Benches, to see how best we can arrive at a solution.

I have always maintained up to this time that wherever there is a problem, we can find a solution. We must have the will, we must have the commitment and the dignity—

Sen. Mohammed: The honesty.

Hon. W. Mark: Of course, honesty. This is an honest Government, so we have no problem in ensuring that we move forward in dignity and decency, as we seek to address this question.

So, Mr. Vice-President, I rise in full support of this particular Bill before us and I am certain, at the end of the day, taking into account all the concerns expressed and amendments put forward, we will arrive at a happy compromise and certainly move forward with this very important piece of legislation. The business community is looking forward with eagerness to this Bill being passed.

I want to thank you for this opportunity to make this short intervention.

The Minister of Finance and Minister of Tourism (Sen. The Hon. Brian Kuei Tung): Mr. Vice-President, let me thank this honourable Senate and Members, firstly, for their support as intimated for this measure, a measure which, as I said when I was on my feet earlier on, as a former businessman I had identified with mainly because I had known of many instances where cheques had been used to defraud people and in particular, people who sometimes, can least afford it.

I think, from the onset, what I would like to mention, having listened to the number of arguments on both sides, that one of the things we have to understand that this measure is seeking to do, is to address the criminal aspect of dishonoured cheques. We should distinguish the criminal aspect from the human error part of it. I think we have to be careful, as legislators and as parliamentarians, that we understand that whilst we can address the criminal element, we really cannot legislate human error. We cannot tell people that they must no longer make errors as human beings because if they do, they will be penalized and punished. So, we must be careful that in seeking to pass this legislation, we find a way to distinguish the criminal from the human error.

3.10 p.m.

Mr. Vice-President, I say that in particular with respect to the comments made on an approach which seems to want to criminalize banks. It is not that I am defending banks, but I think we want to be sure that if, as a result of human error there is a problem, one does not seek to make the bank appear—bear in mind some of these things could end up being public record and with a misunderstanding public one could easily say that a bank is guilty of a criminal offence. One has to think about the whole confidence—and I know Sen. Montano is going to jump to his feet when I talk about business confidence—of the financial system when one thinks about legislation which addresses banks and the way they operate.

I, therefore, caution us very carefully that in passing laws, we do not make ones, that in hindsight we may live to regret because we were trying to protect persons and found that we lumped criminals with some wrongdoing as a result of human error. I use that term deliberately because there may be a bank clerk who makes a genuine error, and one has to distinguish that from what I think, the wording which has been used is: “dishonours a cheque falsely”. I am not too sure what falsely really means or how one proves falsely, whether one should go to court to determine whether there is an element of falsehood or whether it should be regarded as pure human error.

We also have to remember that today the issuance and acceptance of cheques are pretty much normal routine transactions. I say that because we have to understand the mountains of transactions which take place in any given bank. If there is a small margin of human error it could create much frustration and a great deal of hardship, in some cases. Sometimes just to untangle that web takes a little time. If one associates that human error with falsely dishonouring a cheque, I think we would end up with some serious problems.

Mr. Vice-President, I now start on the premise that a bank really stands as an intermediary in a transaction. There is a payer and a payee and he says, I have this money in the bank and I authorize the bank to pay you this money. That basically is what a cheque represents in terms of a negotiable instrument. I am saying that for value received, I am giving you the authority to go to my bank and I am authorizing the bank to release funds to you. The bank, therefore, stands pretty much as a third party—a very objective party—in this whole transaction and, in my view, cannot really be subject to any kind of wrongdoing, because the bank is merely facilitating a transaction between two parties. To suggest that the bank would falsely do something is really stretching the transaction a little far. If one

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does that, one begins to incriminate a bank which is nothing more than a provider of a service in this whole scenario. To suggest that the bank would falsely dishonour a cheque, in the first place, is to suggest that banks are dishonest. That is where I have difficulty in some of the amendments being proposed today.

I see Sen. Rev. Teelucksingh is smiling. I am sure I am getting through to him to understand that we are trying to criminalize a person, in my view, who is really an innocent bystander in the transaction.

In addressing some of the problems of bounced cheques let me also address something that Sen. Rev. Teelucksingh said. I do not believe that white collar crimes are only in the purview of the middle and upper classes. Over my years in dealing with business, I have come upon many criminal elements who, literally, find blank cheques. I have also come upon persons who have stolen manager's cheques from banks. In my days, a manager's cheque from a bank was as good as cash, because generally speaking it went through a series of procedures which ensured that it was good as cash.

However, even cash is being counterfeited, and I think the hon. Attorney General talked about counterfeit money. Manager's cheques have been stolen and counterfeited. In cases like that, banks are at pains to deny that those managers' cheques were not issued by them because they have been accepted so widely that they are considered as cash. Banks have special machinery through which these cheques are passed and special encoding methods are used to ensure that the paper used is almost equivalent to paper. Therefore, when the underprivileged use these things to perpetrate a crime, they are perpetrating a crime as if they were the holder of funds which they do not have.

Now the challenge seems fairly simple; how do we distinguish the criminals from the error? I said it seems fairly simple because there are really two areas where one is criminalizing the issue of a cheque. The first is where a person issues a cheque knowing he has no bank account. Now that is a criminal element, that is not an error. One cannot make an error saying, I thought the cheque was mine. The cheque carries Mr. A G's name, but I thought it was mine. That is not an error, that is clearly an intent to defraud.

Mr. Vice-President, I want to go back to the question of the bank, please understand that we really should not attempt to criminalize banks in the whole transaction. If we do that, we are doing a disservice to the banks.

The other area is where a guy might have thought he had an arrangement for credit or presumed he had such an arrangement but, in fact, did not have it in

place. Again, there is a lot—I use an expression I have heard from time to time—that takes place between the cup and the lip. Generally speaking, persons do not understand the responsibility imposed on them with respect to the requirement to operate a bank account and a chequing account. What we are doing here today is to ensure that responsibility comes through clearly to them. One has a responsibility to ensure that one knows whether one has money on one's account or not.

Sen. Prof. Spence: Mr. Vice-President, could I suggest a third possibility? Suppose one has money on one's account and the bank makes an error an hour before the cheque goes to it and deducts that money, in error, from one's account so there is nothing left. That is another possibility that could occur because banks make mistakes and take moneys out of one's account in error.

Hon. B. Kuei Tung: Surely not every error is made recklessly or falsely. One has to presume, firstly, that the error was made out of pure human weakness. That is where I am coming from and what happens then is if the person is prosecuted—

Sen. Mahabir-Wyatt: Mr. Vice-President, does the hon. Senator not accept the fact that occasionally there are instances when persons who work in banks could be guilty of fraud? It does not criminalize the bank, but one cannot help but have noticed over the last 10 years, on a number of occasions fraud has been committed by persons in banks. That is really where the worry is. I accept, entirely, what the Minister says about criminalizing and keeping it to fraud rather than mistake, but persons in banks do commit fraud.

Hon. B. Kuei Tung: Mr. Vice-President, I find myself in the dilemma where one takes a bank which has trusted employees and one misguided employee recklessly damages the reputation of that entire bank, for personal or whatever other reason he might have. I have a little difficulty in saying that the whole bank's reputation goes down the drain because it has trusted an employee, falsely or wrongly, and that employee has acted recklessly. I am really having great difficulty in criminalizing the bank merely because of one bad employee, knowing that the bank is there to do its job and it is playing a part in the whole financial structure. That could be said for any organization, the bank has a spirit, culture and mission, and it does not set about, generally—and I am talking about big organizations—to do wrong things.

As I said, I am having great difficulty in penalizing a bank merely because it has a poor employee. The bank has a responsibility to purge itself of that employee. It takes the action that it would need to in terms of disciplining that employee or taking him to court or whatever it chooses to do, but it surely should not be that it is penalized.

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3.20 p.m.

Now, I understand what one is seeking to do. One is trying to say, if the person suffers—I am more into the question of the transactions between two persons, there is a payer and a payee. If there is consequential loss by that citizen, I feel the bank should make some kind of restitution, but I do not know if the restitution is to pay the courts 10 times the amount of money because of a reckless employee. I really have great difficulty—I keep coming back to that—in criminalizing a bank. Unless we sit here and think that the banks are criminals. In essence what you are saying is that when one finds a criminal bank, charge it 10 times that. It really is going to be stretching it where, from time to time, a bank has to put its reputation on the line by defending itself and saying, “Well, I did have a bad employee, but I can assure you it was not falsely, reckless, deliberate and so forth”. It really is putting a number of institutions through the ringer there in trying to do what you seek to do. I wish we could find another alternative to do what you are seeking to do. If it were that we wanted to start talking about fraud among employees, maybe that is a different angle, but certainly, not to take the whole institution and put the institution down because of one or two bad eggs or fairly bad transactions. I think if the bank has caused someone to suffer the monetary loss, the bank has every responsibility, and I am sure the bank will shoulder its responsibility.

Please, I beg, do not attempt to criminalize banks by saying that if the bank does something falsely, it really is going to be almost impossible to prove—the bank will have to spend its entire resources. It has nothing else but its good reputation. It has no alternative but to spend every last ounce of energy and every last dollar to protect that reputation, because without that the bank is out of business.

Just think about consequential action. A bank has done something recklessly and people perceive that the bank has been charged 10 times the amount, it was a huge amount, it made the headlines in the newspaper, “Bank charged \$10 million”, because it was a \$1 million transaction, it was 10 times the amount. People begin to withdraw their money from that bank, because they feel that bank is reckless. Just think about it. We could have a run on the bank before you know it! That is why I am asking to please understand the repercussions from this kind of amendment really can be very severe.

Sen. Jagmohan: *[Interruption]*

Hon. B. Kuei Tung: You just woke up? [*Laughter*]

What I would attempt to do therefore, in winding up, is mention some of the other points that were made in the contributions and see if I could put it into context. I missed part of the Attorney General's contribution.

I did know that Sen. Mannette raised—I am sure she may not have remembered—the question of why it was specified as a fixed amount that it was 10 times the amount and five years in prison, and not up to a maximum of. I am no legal draftsman, but I am informed and I am subject to correction, that is really the maximum and courts always have discretion, but they are liable up to and they could always exercise that discretion. I am subject to correction, but I think the spirit of the law was intended that it is up to a maximum and they should not exceed that maximum.

Much debate was given to the question of the period being too short to correct a mistake; it should not be 10 days, it should be up to a period. Again, we are really back to the area that I talked of. I know I have spoken at length about the question of criminal intent as opposed to error. From where I sit, if ever one lengthens that period, one is, by legislation extending credit, and I am worried about that. Normal credit is already being given, and one can hurt the system more than help it by extending that period. I will give an example. What happens is that, if I give one time to pay something, I give one a specific time, and one could keep using false or dishonoured cheques as a mechanism to buy another 10, 20, 30 days or whatever we legislate here, and I think that is not the intent of it. The intent really is that if there is an error, we have a period, as short as possible to correct that error and, therefore, we do not begin to extend undue credit into the whole system by having everyone issue—I mean, if I did not have money in the account and I could raise the money in 10 or 20 days, I could give you a cheque now, knowing fully well it is going to be dishonoured, and then make efforts to make sure that I get the money back into the account, because I have another 10, 20 or 30 days.

I think 10 days seems to be a reasonable period to correct an error. When one goes past 10 days—and I do not understand some of the arguments that have been used like, “Yes, we have pay periods” and stuff like that. I think 10 days tend to be fairly reasonable. If one is unable to correct a mistake within 10 days, I think one has gone into the realm where one is trying to correct the criminal part of it. That is my view. Because it means that one had a deliberate intent to buy more time or

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to defraud. If we get into too long a period, we are allowing someone to make good, something that he really could not have made good within the given time.

Sen. Mahabir-Wyatt: Mr. Vice-President, I wonder if the hon. Senator would clarify something. He is saying that if an error has been made, one should be able to correct it within 10 days or otherwise it proves fraud. Does it take into account the situation, genuinely, where someone is out of the country or where one's pay period is that one is monthly paid, the money does not go through them, it goes directly into the bank, and there is many a slip 'twixt cup and lip, as you have pointed out, and for some reason there is an error and the money does not go into the bank, but you have assumed that it would? To allow less than one normal pay period means that you are penalizing the individual on both sides.

Unless you can assure me that 'introduction of evidence of notice' means that the individual must have received notice in writing, and actually held that notice in her hand, that 10 days after that the procedures take place. If that is the situation then I would not worry, I would think that if one happens to be out of the country chasing the Privy Council or whatever it is one is doing, it is 10 days after one returns and gets the actual notice in one's hand. I am not sure of the legal interpretation of the word 'notice', and I am wondering if you can help me with that.

Hon. B. Kuei Tung: As I said, I am not, myself, a legal draftsman, but during the committee stage, can we address that and see if we can get a proper interpretation. We will then be able to determine. I, myself was not too sure whether 10 days meant 10 working days or 10 calendar days—it is 10 calendar days, so it is really, in effect, as much as 14 days, basically.

So, as I said, my own feeling is that if there are kinks, we can work out precisely how those kinks can be addressed.

I think Sen. Marshall had asked the question about postdated cheques. I think that has been addressed with respect to the amendments that have been included, that postdated cheques are included in this. Just a few other things that Sen. Teelucksingh had raised with regard to retroactivity. I thought Minister Mark addressed that, that if this law had been passed many years ago as it should have been, the law would certainly have been retroactive, but I think it is almost impossible to pass retroactive legislation, and the Attorney General is advising me that it is not good legislation.

I just want to spend one minute to share with you a little experience I myself have had with the question of cheques and how cheques can be used. Many of us think that bounced cheques mean that someone issued a cheque deliberately either to defraud or swindle money or something like that. I will share very quickly with you a little experience I had. When I used to be the manager of an insurance company, I recalled that a young man, early 30s, had died and his widow came to make a claim at the insurance company where I worked. The claims supervisor at the time told the young lady who, incidentally, was a very poor person, and had been eking out her living on the docks as a vendor, and had an insurance policy—I think as much as \$100,000—which, for a poor person, it must have been a tremendous amount of money to come into having lost her husband and what have you. He told her, “I am sorry, but based upon the available documentation the company is not going to pay that claim because your husband was drunk at the time of his death”. The policy said no such thing. At the time he was trying to convince the young lady that she was not entitled to the proceeds of any claim. The scam he was working was that he wanted the lady convinced that he could convince the insurance company to pay the claim, but in return for something.

The reason I mentioned cheques is because of what he was able to do. I do not remember in how many instances he had done it, because apparently he had done it a number of times. He was literally preying on these hapless widows who tend to be fairly ignorant of business proceedings and procedures and who would think nothing about the kind of transaction that he did. What he did was have the documentation prepared, the cheques prepared for the ladies and everything, and all the documentation at the insurance company was correct. The lady signed the release, a discharge, or whatever it is called, she got a cheque for \$100,000, but he would tell the lady that because she was not entitled to the claim she had to share it with him. He asked for an excuse from the office, took the lady to the bank and had the bank exchange the company cheque for two cheques; one made payable to the lady and one made payable to him, and had the lady endorse the cheque. I just mentioned this to you quickly, so that you would understand that people will find all kinds of ways to defraud other people. Incidentally, I called in the Fraud Squad and the bank was willing to co-operate with us, the Fraud Squad charged the person and the case went to court and all that. That is because the insurance company that I managed really was not going to tolerate that kind of nonsense.

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Incidentally, one small postscript about that whole thing; that is it came to me by pure accident. An agent went to sell the lady more insurance, because one of the best prospects an agent has is someone who just received a claim. She said, "I do not want to deal with your company, it is rotten, it is corrupt and I am not going to buy another policy with you." She explained the situation and that is how I was able to track the whole transaction. So, when we think of cheques and dishonoured cheques, we think that the only criminal aspect of dishonoured cheques is the issue of cheques being dishonoured.

I mention this because I did say in my introduction of this Bill that one of the things we want to do is to bring forward other forms of fraud with respect to other instruments, and not only things like cheques, but with respect to things like debit and credit cards; Rev. Teelucksingh mentioned it. I know we talked about computer fraud. The very wide use of ATMs too, would suggest that there is need to look at frauds from an ATM. Computer fraud is going to become even more critical, because, more and more we are hearing about more computer frauds taking place in places where there are electronic transfers of funds and electronic use of equipment to settle instruments.

So, I hope I have been able to address all, if not most of the problems that we have had with the contributions that have been made. I hope I have been able to convince my colleagues here this afternoon that I would like to keep away, Sen. Mahabir-Wyatt, from attempting to appear as if we are criminalizing banks. If we can, I would really want us to avoid these kinds of amendments. I hope I have been able to explain the role that the banks play, and I do know that many of us, at times get very frustrated and upset with the workings of banks. Please understand that banks use bank clerks who are subject to many human errors. Many of them do things and, therefore, I really would hope that we can address employees, of the kind that I just described, in other ways and not prosecute the company or institutions themselves and so disrupt the whole financial system unduly, which may have repercussions from which we may live to regret.

Mr. Vice-President, with these few words, I beg to move that a Bill entitled, "An Act to reform the law relating to dishonoured cheques and similar negotiable instruments" be now read a second time.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

3.35 p.m.

Senate in committee

Mr. Chairman: Members, we have before us the Bill which has 7 clauses. Maybe I can draw to your attention that there are amendments which have come from the House of Representatives, from their sitting of January 23, 1998 which have been adopted as part of the Bill before us. In addition to that, four different amendments have been circulated, by the hon. Attorney General, Sen. Mahabir-Wyatt, Sen. Martin Daly and Sen. Montano.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Mr. Maharaj: Mr. Chairman, there is an amendment in respect of clause 2 which reads as follows:

- A. In subclause (1), in the definition of ‘cheque’, delete the words ‘which is not post-dated with respect to the time of utterance’; and,
- B. In subclause (3), after the word ‘he’, insert the words ‘endorses and’.”

In the other place there was an amendment which stated:

“The provisions of this Act, apply also to a post-dated cheque at the date of its dishonour.”

So it is in those terms that we wanted that amendment.

The purpose of the other amendment is to ensure greater clarity in the Bill. Clause 2(3) as it presently exists, merely states that a person passes a cheque when he delivers it to another person. The concept of endorsing a cheque is an integral part of the passing of a cheque apart from actual delivery. This amendment is to make it clear that a person passes a cheque when he endorses and delivers it to another person.

Question put and agreed to.

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

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, there is a proposal to amend clause 3 which reads as follows:

- “A. In subclause (1), delete the words ‘a person’, and insert the words ‘Notwithstanding any other written law, a person’;
- B. In subclauses 2(a)(ii) and 2(b)(ii) delete the words ‘shall’ and ‘may’ respectively and insert the word ‘will’; and
- C. In subclause 2(b), delete the words ‘representative drawer’ and insert the words ‘payee, holder or bearer’.”

The purpose of the amendment at “A” is to eliminate any doubt that a person who commits an offence may be prosecuted for it under the Act.

In the other place, in clause 3(2)(a)(ii), the word “may” was changed to “shall” because it was felt that since the law was now being changed to make the uttering or passing of a dishonoured cheque a criminal offence, then the belief of the drawer or representative drawer, that when he uttered or passed a cheque, payment shall be refused upon presentation; the use of the word “may” suggested a doubt or discretion, whereas “shall” indicated a certainty or would show knowledge that such a result will occur. However the drawer or representative drawer cannot be certain that payment shall be refused because that is a future act and it is doubtful. The drawee may accept the cheque for other numerous reasons apart from an existing credit facility.

So to say that payments “shall” be refused by the drawee seems to mandate that he must refuse payment, when, in fact, he may choose to honour the cheque. So the use of the word “will”, therefore, is preferred because it allows the drawee to decide whether or not to accept the cheque and indicates the state of doubt in the mind of the drawer, as to whether the cheque will or will not be accepted. He can never be certain that payment will be refused by the drawee.

In summary, the draftspersons believe that the intention of the Bill would be better served by having the word “will” instead of “may” or “shall”.

Sen. Mahabir-Wyatt: Mr. Chairman, I wonder if the Attorney General could define “a person” for me. Does “a person” include a company?

Mr. Maharaj: Yes. In the Interpretation Act, wherever “a person” is referred to in the statutes, it refers to—

Sen. Mahabir-Wyatt: Then “will” makes sense rather than “shall”.

Mr. Maharaj: It would include a company. Section 16(1) of the Interpretation Act says:

“Words in a written law importing, whether in relation to an offence or not, persons or male persons include male and female persons, corporations, whether aggregate or sole, and unincorporated bodies of persons.”

I think this would be of great interest.

Sen. Montano: It makes sense as it is, unless I am not reading it right.

“As a payee, holder or bearer,—

(i) he passes a cheque knowing that the drawer has insufficient funds..”

Is that how it is going to read?

3.45 p.m.

Mr. Maharaj: Clause 2(3) will now read:

“A person ‘passes’ a cheque when as a payee, holder or bearer of a cheque which has been or purports to have been drawn and uttered by another person, he endorses and delivers it..”

Sen. Montano: And clause 3(2)(b) which originally read:

“as a representative drawer—

(i) he passes a cheque knowing that the drawer has insufficient funds..”

Now it reads:

“payee, holder or bearer he passes a cheque..”

Mr. Maharaj: Because of the definition of “passes” in clause 2(3) only “a payee, holder or bearer” can pass a cheque. So what we wanted to do in clause 3(2)(b) was to say that if “a payee, holder or bearer” passes a cheque and not limit it to a representative drawer. It is a consequential amendment of what occurred. In the concept of passing a cheque it was to include a person who endorses it and therefore you had to have there as a “payee, holder or bearer” and not limit it to a representative. A representative drawer is dealt with above.

Sen. Montano: I am with you.

Mr. Maharaj: Mr. Chairman, I therefore propose that clause 3 be amended in terms of the circulated draft which reads as follows:

“A. In subclause (1), in the definition of ‘cheque’, delete the words ‘A person’, and insert the words ‘Notwithstanding any other written law, a person’;

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- B. In subclauses 2(a)(ii) and 2(b)(ii) delete the words 'shall' and 'may' respectively and insert the word 'will'; and
- C. In subclause 2(b), delete the words 'representative drawer' and insert the words 'payee, holder or bearer'."

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I propose that clause 4 be amended as stated in the circulated list of amendments:

"Delete clause 4 and insert the following new clause:

Presumptions
and prima facie
evidence

- (1) Where the drawer of a dishonoured cheque is charged with an offence under this Act, the following provisions shall apply-
 - (a) when the drawer or representative drawer of a cheque has insufficient funds with the drawee to cover it and other outstanding cheques at the time of its utterance, the drawer or representative drawer, as the case may be, is presumed to know of the insufficiency:
 - (b) a drawer or representative drawer, as the case may be, of a dishonoured cheque is presumed to have intended or believed the cheque would be dishonoured upon presentation by a person if -
 - (i) the drawer or representative drawer had insufficient funds with the drawee at the time of its utterance to cover it and other outstanding cheques; and

- (ii) the drawer or representative drawer had insufficient funds with the drawee at the time of presentation.
- (2) Where a cheque is dishonoured because the drawer has insufficient funds, a notice or protest may be issued and duly served by the drawee to the drawer of the cheque with a copy to the person who presented the cheque through his drawee.
- (3) Where the drawer of a dishonoured cheque is charged with an offence under this Act, the prosecution may seek to prove the dishonour by the production in evidence -
- (a) of the notice or protest of the dishonoured cheque; or
 - (b) of an affidavit of the drawee or the authorised representative of the drawee together with a copy of the notice or protest declaring the dishonour.

and this shall constitute prima facie evidence that the cheque is a dishonoured cheque.

4. Where a drawer or representative drawer, without the consent of the payee, stopped or countermanded the payment of a cheque, or otherwise caused the drawee to disregard or dishonour the cheque, and failed without reasonable cause to return or tender the return of the property obtained or the value of services rendered within a period of three working days from the date the cheque was stopped or countermanded, or otherwise caused to be disregarded or dishonoured, this shall constitute prima facie evidence that

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the drawer or representative drawer had the intention to stop or countermand payment or otherwise to cause the drawee to disregard or dishonour the cheque at the time of its utterance.”

Mr. Chairman, as indicated to the Senate, clause 4 has been totally redrafted to take into account what was said by Senators and to achieve a greater clarity in the section.

Subclauses (i) (ii) and (iii) are merely redrafted and renumbered without changing the substance of those provisions.

Subclause (4) is a new substantive draft but with clarity and to incorporate the suggestion of Senators.

Clause 4 still contains the four subclauses. The opening umbrella words are inserted to link the presumptions contained in clause 4(1) to an offence under the Bill.

Clause 4(1) and (2) as they stand presently appear to hang by themselves and were not clear and in direct connection with the Bill and the redraft seeks to eliminate any such doubt.

Mr. Chairman, to explain it further to hon. Senators, it is to be noted that clause 4(2) in the proposed amendment seeks to impose a duty on the drawee, which is the bank in many cases, to ensure that the payee, the person who presented the cheque for payment, is given a copy of the notice or protest that was sent by the drawee to the drawer. This is to ensure that the payee is made aware that the cheque was dishonoured and it allows the payee to decide whether to report the matter or not.

This point, Mr. Chairman, arose from discussions held with the Central Bank officials and in keeping with the concerns expressed by some Senators, clause 4(4) of the proposed amendments imposes a three-day period within which a person who stopped or countermanded payment or otherwise caused a cheque not to be honoured, to return the property or value of the services he obtained by the use of persons who would deliberately seek to obtain property or services and then stop or otherwise cause a drawee to refuse to honour the cheque.

Clause 4(3)(b) deals with the manner by which the drawee seeks to prove that the cheque is dishonoured.

Sen. Mahabir-Wyatt: Mr. Chairman, before we move on, could I just get clarification on clause 4(2)? On the question of notice, did I understand the hon. Minister correctly to say that in line 3 the word “notice” means that the drawee actually has to receive notice in his/her hand? In other words, they have to have personal notice of the protest? Do they have to receive it first? It is not just something that is sent by registered mail and that is considered notice? What is the interpretation of notice in this subclause?

Mr. Maharaj: Mr. Chairman, I should say that since it would incur criminal liability we thought it best that it should be served on the person.

Sen. Mahabir-Wyatt: This was the reassurance I was seeking. In other words, notice cannot be sent out by registered mail and it will not be assumed that the person has received it because somebody in their household has signed for it. The person has to actually be served the notice according to the Interpretation Act.

Mr. Maharaj: It will ensure that the person received it. *[Interruption]* Let me just check the Interpretation Act.

Sen. Daly: Section 59.

Mr. Maharaj: I think it is that registered mail will be included too. It seems that Sen. Daily knows this Interpretation Act inside out. Section 59(2) states that:

“Where a written law made after the...service of that document may be effected either—

- (a) by personal service; or
- (b) by post in accordance with subsection (1); or
- (c) by leaving it for him with some person apparently over the age of sixteen years...”

So, it does not limit it to personal service, as I was advised.

Sen. Mahabir-Wyatt: You know what 16-year olds are like. By leaving it with someone apparently over the age of 16 years, you are criminalizing that person. I am not an unreasonable person and I do not want to upset Sen. Kuei Tung and criminalize the banks, but this is criminalizing a person. It is not beyond the “reasonable doubt” concept. Does your criminal law demand that this should be a personal service?

Mr. Maharaj: I think that in any event it would be difficult if we limit it to personal service. It can produce difficulties, I suppose because it would mean that in every case you would have to find the person. So one can see the logic of omitting it to be served.

Sen. Mahabir-Wyatt: But you are slapping a criminal charge on the person, are you not? Usually in criminal charges, do you not have to have a bailiff or somebody? The person is served personally.

Mr. Maharaj: Under our law there are provisions where a summons can be left at the residence of a person or where an indictment can be served at the last address that a person has. So, the law does provide in respect of the criminal law one can give notice by leaving it at the person's place of abode. The question is that if steps are not taken to ensure that the person is personally served or there can be proof of service, it will be difficult to establish a prosecution.

Sen. Mahabir-Wyatt: Mr. Chairman, I am not one of the sisters of the law, so could the Attorney General explain the new amendment that is there under clause 5 which states:

“A drawee who recklessly issues a notice or protest under section 4(2)...is liable on summary conviction to a fine of ten thousand dollars.”

Would this take care of the problem I am looking at? Does that take care of my concern?

3.55 p.m.

Mr. Maharaj: I should mention that was an amendment which was in the House and which was redrafted for clarification.

Sen. Mahabir-Wyatt: I realized that.

Mr. Maharaj: It does put the fine at \$10,000.00 and it says:

“(2) A drawee who recklessly issues a notice or protest under section 4(2) or swears to an affidavit...”

Sen. Mahabir-Wyatt: Does that take care of the concern that I have?

Mr. Maharaj: No, it does not. If I may help. If one has to go with a prosecution, one would have to ensure that there is proper service. So that great care would be taken to ensure the document was served because one would not be able to deal with the matter unless there is proper service. If for some reason

something is done and there was no proper service or the person was not informed of it or had no notice of it, then, steps can be taken to set aside whatever...

Mr. Chairman: The previous clause 4 is totally deleted and is replaced by this new clause 4 which has four subsections.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move, that clause 5(2) be amended as follows:

“5 Delete subclause (2) and inset the following new subclause—

- (2) A drawee who recklessly issues a notice or protest under section 4(2) or recklessly swears to an affidavit under section 4(3)(b) commits an offence and is liable on summary conviction to a fine of ten thousand dollars.”

I know that this is one of the sections on which there would certainly have to be discussions. Some Senators feel that it should be more than \$10,000.00 and that it should be a greater punishment.

Sen. Mahabir-Wyatt: Mr. Chairman, I wonder if I may ask a question about the drafting before we move on. As this reads it is “A drawee who recklessly issues a notice or protest under section 4(2) or who swears to an affidavit.” Would this not mean recklessly swears to an affidavit?

Mr. Maharaj: It does, but for safety, I have to go with “recklessly swears to”. I am sure Sen. Daly would say the Interpretation Act covers...

“Recklessly” is used because there is a concept in the criminal law that reckless conduct is much more than ordinary negligence. One can be negligent but one is not reckless. Reckless involves a total disregard.

Sen. Mahabir-Wyatt: Mr. Chairman, I can understand that. I accept the point that you want to keep things to fraud, and one of the reasons I had suggested the words that Sen. Kuei Tung was unhappy with, ‘dishonours a cheque falsely’, I suppose what I was really trying to talk about was maliciously. Falsely can be a mistake in law. Can it not be? Recklessly can be a mistake but, if you maliciously do something, I am thinking of the example that the hon. Minister of Finance and

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Minister of Tourism gave about someone who, working for an organization which was an honourable organization I am sure, committed a fraudulent act. This does not penalize the organization but the individual committing the fraudulent act was penalized. My concern is where such an act takes place. Is there such a word as malicious? You see it in Acts all the time.

Mr. Maharaj: There is a word malicious. False imprisonment or falsely and maliciously, malicious is used in the law of libel and so forth.

Sen. Mahabir-Wyatt: I am probably using the wrong word, but do you understand what I mean? Deliberately and with malice aforethought.

Mr. Maharaj: 'Malice aforethought of' is referred to in murder.

Sen. Mahabir-Wyatt: What about fraud aforethought?

Mr. Maharaj: Malice is the intention to kill or to cause grievous bodily harm.

Sen. Mahabir-Wyatt: What about maliciously and with the intention of committing a fraud? To what extent is an organization responsible for the acts of its servants?

Mr. Maharaj: I understand what you are trying to say. In other words, you do not want it to be mere negligence, and it must be something with an intention to defraud by someone. Recklessness is the word which they are using now in the criminal law because it does not mean ordinary negligence if you are careless. In other words, if I am driving down the road and I am careless and someone dies, it would not amount to dangerous driving which means reckless conduct, a total disregard and knowing fully the consequence, that you did not take steps to make enquiries which you knew or you ought to have made the enquiries when you saw it in your face.

Sen. Mahabir-Wyatt: Mr. Chairman, that surely is less serious an import than someone who had deliberately intended to defraud. I am thinking of Sen. Kuei Tung's example where a woman goes in to a bank and she writes a cheque. She has money coming into the bank because she is an elderly person who gets money from abroad from her son or daughter or whoever who lives abroad, and writes a cheque and is told by an employee fraudulently, you wrote this cheque and you do not have funds to cover it. Although we have the cheque or the remittance from abroad, it takes six weeks, I am going to dishonour this cheque unless you let me share in the proceeds. This is theoretical, but Sen. Kuei Tung has shown us that these things happen.

Mr. Maharaj: Sen. Kuei Tung is an expert in the banking sector.

I know you are thinking in terms of something malicious...

Sen. Mahabir-Wyatt: With intention to defraud. I do not know if malicious is the right word. I do not know the right words. I am hoping that the drafters can suggest something.

Mr. Maharaj: I have looked at this. As a matter of fact, I spent some hours with the draftsman on this matter and I have been assured that “reckless” is the word. We have had the Law Commission involved with it also. This is one of the areas that I looked at and I have been assured that this is the right word.

Sen. Mahabir-Wyatt: I will have to accept your word for it.

Mr. Chairman, I propose an amendment to subclause (3) which reads as follows:

Insert the following new subclause (3):

A bank that dishonours a cheque falsely will be liable to pay to the drawer of the cheque an amount equivalent to ten times the value of the cheque and be liable to a fine of the same amount.

Sen. Daly: Mr. Chairman, I also propose an amendment to clause 5(3) which reads as follows:

Insert the following new subclause (3):

A bank that dishonours a cheque falsely will be liable to pay to the drawer of the cheque an amount equivalent to ten times the value of the cheque and be liable to a fine of the same amount unless the bank makes arrangements to honour the cheque upon re-presentation of it within a period of three (3) working days after it is falsely dishonoured.

Mr. Chairman: On reading these two amendments, it appears that Sen. Daly’s amendment enlarges the first amendment by adding an additional sentence to the end.

Sen. Mahabir-Wyatt: Mr. Chairman, I think Sen. Daly’s amendment is an improvement on my amendment. I therefore withdraw my amendment.

4.05 p.m.

Sen. Daly: I only sought to mitigate Sen. Mahabir-Wyatt's draft. The question is whether the provision will be made at all. I do not want the provision. I am just seeking to mitigate it. [*Interruption*] I do not want Sen. Mahabir-Wyatt to withdraw hers.

Sen. Kuei Tung: I hope, Sen. Daly, that I have been able to impress upon Sen. Mahabir-Wyatt and yourself that the whole issue seems to be redundant. I make a serious plea not to appear to be criminalizing banks and, therefore, I hope that you and/or Sen. Mahabir-Wyatt would withdraw the amendment.

Sen. Mahabir-Wyatt: Mr. Chairman, I do not want to criminalize the banks. I thought that clause 5(2), which we have just done, did that.

Sen. Kuei Tung: Not really. In this case, the bank has an opportunity to take action. The bank would have to protect itself as to whether it fostered or did not foster something like this, that is why I used the word "criminal".

Sen. Mahabir-Wyatt: Does someone have to prove the recklessness of the issuance of the notice? The drawee is the bank, is it not?

Sen. Kuei Tung: If the bank has to take an action and does that falsely, I agree with you. In this case, a bank, in the normal course of events, is clearing cheques. If, by mistake, a reckless employee clears a cheque, I am more concerned about how it is being perceived in its normal duties. In the other one you are covered somewhat. If the bank does something deliberately, then it should suffer for the consequences. In this case, the bank is like a clearing-house and errors will take place. From time to time people may seek to prosecute the bank if they think it was deliberate, then the bank would have to defend its reputation. That is the point I am making.

Sen. Mahabir-Wyatt: If the bank says that it is not going to honour a cheque, it cannot do anything about it though until it has issued the notice. My concern is that if it has issued the notice recklessly, it is just the next stage of the process. I did not really expect to get away with the bank paying 10 times the amount to the individual. I just wanted to make sure that action would be taken if it were reckless. You are saying that my point is taken, but at a further stage down the process. I accept it then. I withdraw my amendment.

Amendment withdrawn.

Sen. Daly: I also withdraw my amendment.

Amendment withdrawn.

Mr. Maharaj: Mr. Chairman, I was told that the Law Commission saw what was proposed and they have no objection.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clause 6.

Question proposed, That clause 6 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 6(1)(b) be amended as follows:

- A. After the word “order”, insert the words “the”; and
- B. After the word “which”, insert the word “may”.

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7.

Question put, That clause 7 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 7 be amended as follows:

1. In subclause (1)—
 - A. Delete the words “only by the false representation” and substitute the words “by the *bona fide* belief”.
 - B. In paragraph (b), after the word “with”, insert the words “and satisfactory to”;
 - C. Insert after the word “cheque” the words “and the cheque is dishonoured”; and
2. In subclause (2)—
 - A. Delete the words “A person” and substitute the words “Subsection (1) does not apply to a person”; and,
 - B. Delete the words “may be prosecuted immediately under this Act or any law”.

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I will read the whole subclause:

- “(1) Where a person obtains property or services by uttering or passing a cheque and the uttering or passing is accompanied by the *bona fide* belief that there are sufficient funds to his credit with the drawee to cover the cheque and the cheque is dishonoured he shall not be liable to be prosecuted if...”

Sen. Mahabir-Wyatt: Should the word be “dishonoured” or “noticed”? The person issues the cheque in the genuine belief that there are funds to cover it. If he genuinely believes that, he may not be prosecuted. As it reads now, it is talking about making satisfactory arrangements with the bank to honour the cheque within 10 days. Surely there is notice to dishonour, rather than dishonour. Dishonouring means that the bank has gone through all the processes.

Sen. Prof. Spence: There may be a time lag between the time the bank dishonours the cheque and the person receives the notice. That cuts into the 10 days.

Mr. Maharaj: The amendment goes on. I probably should read the whole thing:

- “(2) A person who obtains property or services by uttering or passing a cheque and the uttering or passing is accompanied by the *bona fide* belief that there are sufficient funds to his credit with the drawee to cover the cheque and the cheque is dishonoured, he shall not be liable to be prosecuted if—
- (a) he pays to the payee the amount of the cheque; or
 - (b) makes arrangement with and satisfactory to the drawee or payee to satisfy the amount represented by the cheque within a period of 10 days after he receives notice or protests at the dishonour from the drawee and no prosecution under this Act shall be commenced until the expiration of that period.”

4.15 p.m.

I understand that it was there originally but the House amended it; but it sounds better in (b):

“he makes satisfactory arrangements with the drawee or payee to satisfy the amount represented by the cheque.”

instead of

“he makes arrangements with and satisfactory to the drawee.”

Sen. Mahabir-Wyatt: Mr. Chairman, just for the record, I agree with this except that I would still maintain that it should be a period of, if not 10 days at least 15, which under the Interruption Act will give you almost enough time to get your pay cheque in.

Mr. Maharaj: I should mention 10 days is really two weeks because it is really 10 working days.

Sen. Mahabir-Wyatt: Under the Interpretation Act it is 10 working days, is it not? Which means—

Mr. Maharaj: It is 10 clear days which is 14 days.

Sen. Mahabir-Wyatt: Fourteen calendar days, yes. You still do not get paid unless you are bi-monthly paid or fortnightly paid; you still get paid—

Mr. Maharaj: Clearly, Sen. Mahabir-Wyatt does not give up easily.

Sen. Mahabir-Wyatt: No, I do not.

Sen. Daly: Mr. Chairman, are we not eliminating all discretion on the part of the prosecuting authorities? If you give a long and elastic period to take care of the innocent consumer, that would benefit the crook. The fact is, if the time period, however short it is, the innocent consumer can persuade the police that he will be making arrangements in another few days, the police will give him a discretionary period of grace. We cannot write the thing down so that the prosecuting authorities cannot judge each case on its merit. It does not mean that they will automatically prosecute at the expiry of the period; they may decide to give a few more days grace.

Mr. Maharaj: Mr. Chairman, I must confess, this matter has engaged our attention a lot at the ministry. The difficulty which arises in this matter is that when one listens to the various views outside from the different interests and then one sees what the Bill is intended to achieve, it really seems to go the road of giving a longer period which would really facilitate a misuse of the law. I think enough protection and safeguards are there because even though one mentions the 10 days, it would seem—

Sen. Mahabir-Wyatt: Is that not going to give it to the *bona fide* people?

Mr. Maharaj: It would seem to me that it should have really been a shorter period.

Sen. Prof. Spence: Are we not giving the privilege only to those persons who have made a *bona fide* mistake? You are not giving it to everybody; you are not giving it to the criminal. You are only giving that grace period to people whom you have adjudged to have made a *bona fide* mistake.

Sen. Daly: The final act of *bona fides* is the making of the arrangements.

Mr. Maharaj: That is the point.

Sen. Daly: It is the final act of *bona fides*.

Sen. Dr. St. Cyr: Mr. Chairman, if I may add, if you are *bona fide*, your bank will extend your little credit.

Sen. Daly: So will the police, and make a judgment

Mr. Maharaj: I think Sen. Daly made an important point, that you really cannot postpone the law enforcement authorities from doing its job for a longer period than is reasonably necessary in a matter like this. I would really like to ask Independent Senators who are not in agreement with the 10 days to let us go with it, and if for some reason there are problems we can always come back. [Interruption] I do not know why 10 days; it has nothing to do with URP.

Mr. Chairman: We also have another amendment suggested to the said clause 7(1).

Sen. Montano: Mr. Chairman, the Government's amendment to clause 7 is quite satisfactory and it removes the offensive part that I absolutely did not like.

Mr. Chairman: We have another amendment to subclause (2). I will take the liberty to read subclause (1) to ensure that we have it right.

Clause 7(1) will read as follows:

“Where a person obtains property or services by uttering or passing a cheque and the uttering or passing is accompanied by the *bona fide* belief that there are sufficient funds to his credit with the drawee to cover the cheque and the cheque is dishonoured, he shall not be liable to be prosecuted if-

- (a) he pays to the payee in cash the amount of the cheque; or
- (b) he makes arrangements with the drawee or payee to satisfy the amount represented by the cheque...”

Mr. Maharaj: Within a period of 10 days.

Mr. Chairman: "...within a period of ten days..."

And subclause (2).

Mr. Maharaj: Subclause (2), Mr. Chairman, is merely to ensure that the prosecution is limited under the Act. It says:

- "A. Delete the words 'A person' and substitute the words 'Subsection (1) does not apply to a person'; and
- B. Delete the words 'may be prosecuted immediately under this Act or any other law'."

It should read:

- "A. Subsection (1) does not apply to a person who obtains property or services by uttering a dishonoured cheque if at the date of the utterance, he 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; or
- B. He did not have an account with the drawee."

Mr. Chairman: So we have amendments to subclause (1) and subclause (2) as outlined.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendments, read the third time and passed.

Mr. Vice-President: Hon. Senators, the time is 4.25 p.m. I propose to take the tea break now and we will resume at 5.00 p.m.

4.25 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

STATEMENT BY MINISTER

Mr. Vice-President: Hon. Senators, earlier on in today's proceedings I sought to obtain your leave to defer item 11 on the Order Paper, Statements by Ministers. I now call on the hon. Minister of National Security. [*Desk thumping*].

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**MR. JULIAN ROGERS (CCN)
(DENIAL OF WORK PERRMIT)**

The Minister of National Security (Sen. Brig. The Hon. Joseph Theodore): Mr. Vice-President, I wish to apologize for causing a delay in the start of the sitting this afternoon. I thank hon. Senators for their patience. The statement I am about to make is in connection with the denial of a work permit opportunity for the employment of a non-national to fill a post in radio and television at Caribbean Communications Network.

At the last session of this honourable Chamber reference was made to the decision of the Work Permit Advisory Committee of the Ministry of National Security in response to the application by Caribbean Communications Network for a sixth extension to the one-year work permit granted to that organization in 1993, to allow the employment of a non-national in the position of Broadcast Manager with the now defunct Prime Radio.

The hon. Senator's submission on the matter suggested, Mr. Vice-President, that even in this place which is expected to be a forum of deep reflection and reasoned argument, there is a need for Members to be fully enlightened on some matters on which we rise to speak. If this is viewed within the framework of the laws of the land and the lawlessness which has for so many decades pervaded the society, it would suggest to all of us that the time has come to draw the line and to make it absolutely clear that ours is a society governed by law.

The issuance of work permits to non-nationals is a matter of the law; nothing more, nothing less. But over the past few weeks various commentators, accommodated and facilitated by certain media operatives, have conducted an intensive campaign alleging that the position taken by the Work Permit Advisory Committee of the Ministry of National Security was a politically directed attack against the press. Mr. Vice-President, it is easy for vocal partisan activists to drown out the voices of reason on any issue. When this happens, no account is given to the views of the silent majority which is usually the vast majority in any society.

Mr. Vice-President, over the past few weeks we have seen a calculated campaign to mislead the public through the suppression and manipulation of information in the work permit issue. It is necessary to put the real issue in accurate perspective. It is also necessary to examine the role of certain operatives of the media over the few weeks.

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Immediately after the decision to deny Caribbean Communications Network a seventh work permit to a non-national to continue to work in a position that could be filled by competent and qualified nationals, the leader of the country's body of journalists and other media workers issued a statement declaring *inter alia* that the decision was a political decision and vowing to do all in the Media Association's power to see that every forum would force the Government to reverse the decision on the CCN work permit. This was without any examination of or reference to the facts, the truth of the matter. The head of the Media Association immediately went into action and missives went out forthwith inviting media groups of other CARICOM countries and elsewhere to condemn the Government of the Republic of Trinidad and Tobago.

Mr. Vice-President, on April 11 of this year the Caribbean News Agency (CANA) transmitted a report on the work permit matter to all of its subscriber news organizations. That report was factual and gave the background to the succession of six work permits that had been granted to CCN for the same individual under varying job titles in radio and television. My information is that only one of the country's 14 radio stations carried the CANA report. No newspaper carried that report. The *Independent* however, carried a full report on the Ministry of National Security's exchanges with CCN on the unending applications for new work permits to fill the posts for which nationals are qualified.

This, Mr. Vice-President, is an industry that is supposed to have an obligation to balance fact and truth. As far as I have been able to establish, no media operative in this country has examined the need for nationals to be given the training and the opportunity to hold the positions for which CCN has been seeking and receiving work permits. To cloud the issue the crusaders have moved the matter from a legal context to a spirit of CARICOM proposition. I will deal with that presently.

No media operative has represented the national interest in the matter. This must be the first time since our independence that a trade union has insisted on foreigners being employed before its own members. If anything the media, most vocal in this matter, and the political activists and others who have jumped on the bandwagon have shown their true colours. Those colours, Mr. Vice-President, are certainly not red, white and black. It is unfounded and unfair for certain media operatives to raise issues about alleged journalistic lapses of which Mr. Julian Rogers may have been guilty. Nothing of that nature, actual or imagined, has played any part in the entire process which has led to the Ministry of National

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Security ratification of the Work Permit Advisory Committee's position that it could not accept CCN's claim that there is no national who is competent or who could have been trained for and appointed to the relevant positions, none of which had ever been advertised as is required by law.

Mr. Vice-President, I turn now to the letter which the Ministry of National Security sent to the Caribbean Communications Network in response to that organization's request for a review of its decision. The letter with attachments clarifies the position regarding the free entry of CARICOM nationals to take up employment and residence in Trinidad and Tobago. I will read from the letter which was sent out today addressed to Mr. Craig Reynald, Chief Executive Officer, Caribbean Communications Network Ltd., Express House, 35 Independence Square, Port of Spain. This letter is signed by the Permanent Secretary in the Ministry of National Security, Mr. Desmond Thornhill. The letter goes on to state and I quote:

“Dear Sir,

Re: Application for the extension of the work permit to Mr. Julian Rogers

I wish to acknowledge receipt of your letter dated April 15, 1998 pertaining to the above subject, the contents of which have been noted and to advise as follows:

Mr. Rogers has been on a work permit since April 1, 1993. The permit was issued for one (1) year as Broadcaster Manager, Prime Radio on condition that a national would be trained as an understudy, and that Mr. Rogers would be invited to leave at the end of the period.

At the expiration of the above mentioned work permit another request was made for a further work permit in a new capacity, as General Manager, Prime Radio. After due consideration this application was also approved and issued with the same condition, that a local understudy should be trained to assume the duties of the office at the expiration of the original work permit.

At the expiration of this permit, a further request was made for renewal. This request was again granted on condition that a local understudy would be trained to assume the duties of Mr. Rogers.

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This pattern continued until an application for another one (1) year extension of Mr. Rogers' work permit was refused on September 3rd, 1996. However, further communication received from the Company identified Ms. Elizabeth Solomon as the national understudy. As a consequence, a six (6) month extension of Mr. Rogers' work permit was approved.

At the end of the above mentioned period, a request for another six (6) month extension was refused. However, following a meeting with the then Chairman of CCN it was agreed to grant the six (6) month extension of Mr. Rogers' work permit on the same condition that previously obtained. At that Meeting, the then Chairman of CCN informed the Committee that Ms. Solomon had resigned to free-lance."

5.20 p.m.

"A list reflecting the number of work permits granted in favour of Julian Rogers from April 1st, 1993 to April 30th, 1998 on condition that a national would be trained as his replacement is provided below:

WORK PERMIT NO.	DESIGNATION	PERIOD
1.	Broadcast Manager Prime Radio	1 year from 1.4.93—31.3.94
2.	General Manager Prime Radio"	1 year ext. from 1.4.94—31.3.95

You will note, Mr. Vice-President, we moved from Broadcast Manager to General Manager, Prime Radio.

3.	Broadcast Manager Caribbean Communi- cations Network Ltd. (CCN)	1 year ext from 1.4.95—31.3.96
4.	Broadcast Manager CCN	6 mths ext from 1.4.96—30.9.96
5.	Consultant, CCN	6 mths ext from 1.10.96—30.4.97
6.	Broadcast Manager CCN	1 year ext from 1.5.97—30.4.98"

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The letter goes on:

“The above table demonstrates that ample opportunity was given to your company to identify and train a person to take over the duties of Mr. Rogers.

It is instructive that an understudy and possible replacement for Mr. Rogers in the person of Mr. V. Salandy, now deceased, was not identified until November 6, 1997, despite the fact that each work permit granted was done so on condition that a national be trained as an understudy.”

I would like to proceed, Mr. Vice-President, and quote briefly, extracts from the Immigration (Caribbean Community Skilled Nationals) Act, the section which refers to the matter of movement of Caricom nationals.

“With respect to the Immigration (Caribbean Community Skilled Nationals) Act, No. 26 of 1996, it should be noted that while it has not yet been proclaimed by the Government of Trinidad and Tobago, it is used as a guide in considering applications for entry into Trinidad and Tobago for nationals from the Caribbean Community.

In this regard, it should be noted that the Act calls for the possession of a Degree recognized by the University of the West Indies or:

- ‘(d) a certificate from the Secretary-General of the Caribbean Community attesting that university level qualification possessed by the applicant satisfy the conditions for recognition of Caribbean Community skills qualification, such certification to be issued on the recommendation of the University of the West Indies; or
- (e) a certificate from any authority, designated by the Minister by Order as an accrediting authority for the purposes of this section, attesting that university level qualifications possessed by the applicant satisfy the conditions for recognition of Caribbean Community skills qualification, such certificate to be issued on the recommendation of the University of the West Indies; or
- (f) any qualification or combination of qualifications in a list—
 - (i) compiled from time to time by any authority designated by the Minister by Order as an accrediting authority for the purposes of this section, on the recommendation of the University of the West Indies; and

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- (ii) prescribed by the Minister by Order, on the recommendation of the University of the West Indies, as a list of qualifications and combinations of qualifications satisfying the qualification requirement of this Act.”

The letter continues:

“It should be emphasised that the legislation was never intended to deprive qualified nationals of job opportunities within their own territories. The relevant section from the proposed legislation is attached for ease of reference.”

We have attached and I do not know if I need to go through it, but with your leave, Mr. Vice-President, I would like to read the full contents of the correspondence.

“The Ministry is not aware that CCN is exempt from the conditions and qualifications for a work permit under the Immigration Act.”

The extract from the Immigration (Caribbean Community Skilled Nationals) Act, No. 26 of 1996 deals primarily with section 8 which sets out the requirements under the Act to satisfy the conditions for entry. Section 8 of the Act states:

- “(8) (1) The following qualifications satisfy the qualification requirements of this Act:
- (a) a degree of the University of the West Indies, of the University of Technology, Jamaica, or of the University of Guyana, designated as a Bachelor’s, Master’s or Doctor’s degree; or
 - (b) a degree of Doctorandus, Meester, Licentiatu or Doctor of the University of Suriname; or
 - (c) any University degree which is recommended by the University of the West Indies to be at least comparable in academic standing with a qualification in 8(1)(a) to 8(1)(b); or
 - (d) a certificate from the Secretary-General of the Caribbean Community attesting that university level qualification possessed by the applicant satisfy the conditions for recognition of Caribbean Community skills qualification, such certification to be issued on the recommendation of the University of the West Indies; or

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- (e) a certificate from any authority, designated by the Minister by Order as an accrediting authority for the purposes of this section, attesting that university level qualifications possessed by the applicant satisfy the conditions for recognition of Caribbean Community skills qualification, such certificate to be issued on the recommendation of the University of the West Indies; or
- (f) any qualification or combination of qualifications in a list—
 - (i) compiled from time to time by any authority designated by the Minister by Order as an accrediting authority for the purposes of this section, on the recommendation of the University of the West Indies; and
 - (ii) prescribed by the Minister by Order, on the recommendation of the University of the West Indies, as a list of qualifications and combinations of qualifications satisfying the qualification requirements of this Act.
- (2) For the purposes of subsection (1)(d), ‘authority’ includes—
 - (a) any institution or other body whether or not—
 - (i) incorporated;
 - (ii) established under the authority of the Government of Trinidad and Tobago or of any other qualifying Caribbean Community state;
 - (iii) established under any written law;
 - (iv) situated in Trinidad and Tobago.
 - (b) any person designated as holding an office in any institution or other body in paragraph (a); and
 - (c) any public officer;

appearing to the Minister to have technical expertise in the assessment of qualifications.”

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Mr. Vice-President, these are the facts of the matter. I would take this opportunity to place on record, that what is outlined in today's letter to Caribbean Communications Network is the full story.

There will, no doubt, be continued efforts by the leaders of the Trinidad media and by self-serving commentators to carry on the prosecutorial campaign against the Government in any matter involving the media.

Sen. Jagmohan: That is a new word, boy!

Sen. Brig. The Hon. J. Theodore: Prosecutorial. You see, there are prosecutors and know not prosecutors.

Until the law changes, the Government has no option but to uphold the present law, particularly in highly publicized cases, such as certain media operatives have made this one.

I would also place on record, Mr. Vice-President, the fact that the Government of the Republic of Trinidad and Tobago has always granted, and will continue to grant free access to Caricom journalists and other media workers carrying out news, current affairs and feature assignments in the country.

Long term employment and permanent residence is another matter, requiring applications in designated categories, using the prescribed forms, in accordance with the laws of this country. And no one is above the law. Caribbean Communications Network is not a law unto itself in these matters.

For those with a short memory, the Immigration (Caribbean Community Skilled Nationals) Bill, 1996, which was passed after debate in Parliament, relied entirely on Schedule 8 which lists the qualifications required under the Act. The Act has not yet been proclaimed, but I have the assurance of the Minister of Foreign Affairs that shortly this will take place.

I wish to conclude with an assurance to Mr. Julian Rogers, and to all other journalists, that they have no enemies in the Government of the Republic of Trinidad and Tobago, and I wish to assure Mr. Rogers that he is welcome to practise his profession here, as the circumstances warrant and justify, provided the laws of the country are not violated.

Finally, Mr. Vice-President, it is timely to end with an observation for the benefit of those media practitioners, and other commentators, who cite freedom of movement among member countries of the European Union, as being relevant to the Julian Rogers case.

Mr. Julian Rogers (CCN)
[HON. J. THEODORE]

Tuesday, April 28, 1998

In every decision of any importance, every member country of the European Community has gone to national referendum. No single matter determined by Caricom has been decided by referendum, plebiscite or national election in member countries. Some may see this as food for thought.

Citizens of our Republic, individual and corporate, including those who would cross all borders as regional entities, must recognize that they are not above the law of any country.

I thank you, Mr. Vice-President.

ADJOURNMENT

The Minister of Public Administration and Information (Sen. The Hon. Wade Mark): Mr. Vice-President, I beg to move that the Senate do now adjourn to Tuesday, May 5, 1998 at 1.30 p.m. at which time we will address Private Members' Business. There is a Motion in the name of Prof. John Spence and we would, in fact, be debating that matter at the next sitting of the Senate.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 5.33 p.m.