SENATE

Tuesday, February 09, 1999

The Senate met at 1.40 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Martin Daly and Sen. Prof. Kenneth Ramchand. Leave of absence for the period February 8, 1999 to March 3, 1999 has been granted to Sen. Carol Cuffy-Dowlat.

SENATOR'S APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Arthur N. R. Robinson
President

To: MR. VINCENT CABRERA

WHEREAS Senator Carol Cuffy-Dowlat is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N.R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from 9th February, 1999 and continuing during the absence from Trinidad and Tobago of the said Senator Carol Cuffy-Dowlat.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 8th day of February, 1999."

OATH OF ALLEGIANCE

Sen. Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

CONDOLENCES

Mr. President: Hon. Senators, I must record the passing of two former Members of the Parliament. Firstly, Mr. Hugo Ghany who served in the 1970s as a Member of the House of Representatives and as Deputy Speaker of the House has passed away quite recently. The other person is former Sen. Winfield Scott who served as an Independent Senator in the period 1981 to 1986.

I think most people would remember former Sen. Scott as a very astute businessman and an even more astute turfite. He passed away on February 1, 1999 and was interred a few days later.

On behalf of this Senate, may I offer condolences to the bereaved families of both former members who passed away. The Clerk of the Senate has been instructed to send appropriate letters of condolence to the bereaved families.

If any Senator wants to pay tribute he or she may do so.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, we on this side record our sympathy on the passing of these two former Members of Parliament and we extend belated condolences to their respective families.

Sen. Nafeesa Mohammed: We on this side also express our deepest condolences to the bereaved families of Mr. Hugo Ghany and Mr. Scott. And as it is often said, it is from God we came and to God is our eventual return.

Sen. Prof. John Spence: On behalf of the Independent Senators, may we express our condolences to the bereaved families of the former Members of Parliament.

The President: We now ask everyone to stand for a minute of silence in tribute to the deceased.

The Senate stood.

PAPERS LAID

1. Report of Fifth Actuarial Valuation of the National Insurance System as of July 01, 1995. *[The Minister of Finance (Sen. The Hon. Brian Kuei Tung)]*

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the St. Patrick County Council for the period January 01, 1991 to September 30, 1991. [*Hon. B. Kuei Tung]*

3. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts and Financial Statements of the Siparia Regional Corporation for the period October 01, 1991 to December 31, 1991. *[Hon. B. Kuei Tung]*.

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the Agricultural Development Bank of Trinidad and Tobago for the year ended December 31, 1997. *[Hon. B. Kuei Tung]*.

1.50 p.m.

DENTAL PROFESSION (AMDT.) BILL

Bill to amend the Dental Profession Act, Chap. 29:54 [*The Minister of Health*]; read the first time.

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

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, instead of proceeding at this time with Motion No. 1 on which we have some small amendments that we are tidying up, I would like to propose, with your leave, that we proceed immediately to the first bill under "Bills Second Reading", and after the introduction by the hon. Minister of Legal Affairs, we will then return to Motion No. 1 to deal with those small amendments.

Agreed to.

LEGAL AID AND ADVICE (AMDT.) BILL

Order for second reading read.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. President, I beg to move,

That a Bill to amend the Legal Aid and Advice Act, Chap. 7:07, be now read a second time.

Mr. President, when Trinidad and Tobago became independent in 1962, sections 4(a) and (b) of our Constitution granted to all our citizens fundamental human rights and freedoms and these fundamental human rights and freedoms include:

"(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;

(b) the right of the individual to equality before the law and the protection of the law;"

That was in 1962 and these provisions are again manifested in our Republican Constitution of 1976. *[Cellular telephone rings]*

In 1978, Trinidad and Tobago acceded to the United Nations covenant on civil and political rights and Article 14 of that covenant provides that all persons shall be equal before the courts and tribunals *[Cellular telephone continues ringing]* and have the right to be informed promptly and in detail, in a language which they understand, of the nature and cause of the charge against them.

Mr. President: Sorry to disturb you. I just want to advise that all cellular telephones should be switched off in the Chamber, please. That is extremely disturbing.

Hon. K. Persad-Bissessar: Article 14(d) of that covenant provides that a person has the right to defend himself in person or through legal assistance of his own choosing, to be informed if he does not have legal assistance, of his right and to have legal assistance assigned to him in any case where the interests of justice so require and without payment by him in any such case if he does not have sufficient means to pay for it.

The implementation of such sentiments showing respect for the rights of all citizens would truly be the hallmark of a very mature and civilized nation state. Fifty years after the universal declaration of human rights, probably not one single nation on this earth has managed to implement the inalienable right to legal representation in order to gain redress that was intended by the framers of that declaration. That, perhaps, explains why over the past 30 years, countries as far apart as Singapore, the United States, Canada and Australia have all enacted some form of free or heavily subsidized legal assistance to those unable to pay for legal advice and representation.

In the United Kingdom, the first legal aid scheme was launched in the 1960s. In the United States, the provision of free or subsidized legal services to those unable to afford them, took the form of either public defender schemes, or *pro bono* principle which requires members of the American Bar Association to provide a percentage of their professional legal services free to those members of the public unable to pay for them.

Here in Trinidad and Tobago, between Independence Day in 1962 and our ascension to the covenant on civil and political rights in 1978, the Government of Trinidad and Tobago should be commended for enacting the Legal Aid and Advice Act, No. 25 of 1976. The purpose of this Act was stated in the preamble to be:

> "To make legal aid and advice in Trinidad and Tobago readily available for persons of small or moderate means, to enable the cost of legal aid or advice granted to persons to be defrayed wholly or partly out of moneys provided by Parliament..."

That Act set up a Legal Aid and Advisory Authority with a director who had to be an attorney with several years' experience and with a board nominated by such bodies as the then equivalent of the present Law Association, the Chief Probation Officer, an officer from the ministry responsible for social security and the National Insurance Board. Their appointments were made by the President.

The authority was, by section 8 of the Act, required to meet at least once a month and was empowered to regulate its own proceedings by way of standing orders. This authority was also able to co-opt individuals to attend particular meetings. Of much more importance, it was guaranteed autonomy by section 9 of that Act, which provided that in the exercise of its functions, the authority was subject only to the general direction of the Minister then responsible for social security.

The general scheme of that Act, was to provide legal services to those who could not otherwise afford them by appointing lawyers from panels created by the authority and paying a very nominal sum for those services. A fund was set up known as the Legal Aid and Advisory Fund to defray the expenses of running the authority and the scheme.

Sections 23 and 24 of the Act which is the existing law at this time in Trinidad and Tobago, provide that a person whose disposable capital was less than $1,000 and whose disposable income was less than $2,500 per year was entitled to a legal aid certificate, and that a person whose disposable capital was up to $4,500 and

disposable income was up to $4,500 was entitled to legal aid on payment of a contribution.

What this means in existing law is that any person whose income is in excess of $1,000 per year would not be entitled to legal aid. I could see Senators laughing at this because it shows how ridiculously low those figures are in terms of the prevailing cost of living in this country today.

So, in real terms, what that means at present as the law stands, is that the person receiving an income exceeding $500 a month would not be eligible for legal aid. Therefore, this excludes all old age pensioners; it excludes all persons under disability allowances and any other person who receives even one cent more than $500 per month. The legal aid, therefore, is not serving the purpose for which it was originally intended because of that ceiling level, that level of income for persons entitled to legal aid, and it means that the majority of citizens living below the poverty line in this country would be cut off from the very scheme which was set up to assist them.

The present Act is also deficient in another regard, that is to say, the legal aid is at present only available for certain kinds of matters in our courts. So, legal aid is at present available in the Magistrates' Courts for all indictable offences and offences where the person charged is a juvenile, for summary ejectment proceedings and for proceedings under the Coroners Act. Those are the matters in the magistrates' jurisdiction. Legal aid cannot be granted at the moment for any matters in the Petty Civil Court, that is to say, where the claim for damages or claim for recovery of a debt is under $15,000.

What this means, in effect is, if a person, for example, is involved in a motor vehicle accident within the fixed income levels, that person applies for legal aid but the compensation they are claiming is below $15,000—because this is the limit in the Petty Civil Court; claims must all be below $15,000—it means that regardless of how small the claim for compensation is, or how large it is in terms of up to $15,000, no legal aid would be granted. Again, no Petty Civil Court claims are at present matters under which the legal aid would be granted.

What is even more important, especially in terms of what we are seeing happening in this country today, last year and over the last several years now, is the high incidence of domestic violence taking place in the country. At present, the Legal Aid Act does not make provision for matters falling under the Domestic Violence Act, so in that regard as well, the present Legal Aid Act is deficient.

When we look at matters that come before the High Court, legal aid is, at present, available for all indictable offences and for civil matters in the High Court, except realtor actions, defamation actions, elections petitions, judgment summons—all those can be gotten at present for High Court matters provided, of course, that the applicant satisfies the means tests of the levels of income.

It will be clear from this outline that the Legal Aid Act is unfortunately, under the existing provisions, not available for the establishment of rights or for the enforcement of many of the important legal rights which touch the lives of our citizens.

When the original Act was passed in 1976, at a time when other countries had such legislation or were enacting similar legislation to ensure that the poor were not disenfranchised from asserting or defending their constitutional rights, simply because they could not afford to pay legal fees, prior to the passing of the Act, the only way a person of little means could get legal assistance was to petition the High Court for a form of assistance in that court, but there was no legal aid scheme provided that that person was worth less than $240 and this worth must include his clothing, his tools and, provided that his income was below $12 per week—that was prior to 1976 I am speaking about—he could get some legal assistance, though in criminal matters, this would only apply to very serious offences such as treason or murder.

So that prior to 1976, in Trinidad and Tobago, there was very little, if any kind of legal assistance at all. During the 60s and 70s, it was clear that some form of public legal assistance must be provided for the poorest members of the society, if the rights were to have any meaning for them or for the rest of the society.

In 1975, Cabinet appointed a committee, chaired by the highly respected, Mr. Justice Brathwaite. Other distinguished lawyers serving on the committee were the Secretary of the Law Society, then Sen. Inskip Julien; Mr. Rupert Archbold—some of us may remember that name or have heard of the famous Rupert Archbold, Queen's Counsel, President of the Bar Association; the Chief Magistrate, Mr. Roopchand; Miss Carrington who was then Treasury Solicitor; Mr. Maharaj who was then Chief Probation Officer; and now, Justice of Appeal, Jean Permanand, who was a representative of the Ministry of Legal Affairs at that time.

This Cabinet-appointed committee was set up and the committee studied three reports, the Sinanan Report, the Permanand Report of 1974 and the Crawford

Committee Report. They also looked at legal aid schemes operating in other jurisdictions. The terms of reference mandated them to come up with an appropriate administrative scheme to determine the categories of cases in which financial legal aid, as opposed to legal advice would be available; to determine where litigants might make a financial contribution, and to consider what contributions the members of the legal profession might make, by making themselves available to represent clients free or at reduced fees. They were also enjoined to draft a bill which subsequently became that Legal Aid and Advice Act of 1976.

2.05 p.m.

Mr. President, in introducing the original Bill to the House of Representatives on May 21, 1976, the then Attorney General and Minister of Legal Affairs, the Hon. Basil Pitt said—I quote from the *Hansard* of that date:

> "Our Constitution guarantees fundamental human rights and freedoms to every person. But these rights would be unavailing if the means of vindicating them are denied the litigant because of his poverty. This Bill, therefore, must be regarded as a fitting supplementary to the Constitution. It is my hope that through the implementation of the Legal Aid Scheme all men will learn to cherish the quality of life vouchsafed to them by the inflexible observance of the rule of law and the impartial administration of justice.
>
> This Legal Aid and Advisory Scheme will not be the privilege of the affluent, but the right of all."

That was May 21, 1976 when the then Attorney General introduced our Legal Aid and Advice Bill.

A few days later on May 25, 1976, Sen. Julien who served on the committee expounded on his philosophy of the Legal Aid and Advice Bill thus in the Senate:

> "If this concept of social and economic justice as expressed in the preamble to our new constitution..."

He was referring to the Republican 1976 Constitution about which there had been a lot of debate at that time.

> "making justiciable any infringement of the rights and freedoms of citizens of this country are to have any meaning whatsoever, or to be of any practical effect in respect of the poor citizens of this country whose rights are infringed, then they must be given, in my view, the means whereby they may go to the

> courts for redress and have their cases properly argued and determined, irrespective of their state of penury, irrespective of their race, colour or religion."

He continues:

> "I say this for in my humble submission, equal justice under the law must imply free legal services for those who cannot afford to pay for them, most especially those segments of our society who dwell below the poverty line."

Mr. President, that was in 1976, and I say today in presenting this amendment Bill to the Senate, I totally agree with the sentiments I have quoted. Those remarks hold as true then as they do today and, in fact, they are even more relevant today than they were over 20 years ago. It is my fervent hope that these amendments will make justice more accessible and timely for those of our citizens in need.

The extension of the Legal Aid Act in these amendments to include domestic violence will, I hope, lead to a reduction in the number of pointless murders and battering of innocent women and children. If this amending Bill achieves that alone, it would have served its purpose, but it does far more than that. I have given a broad outline of the existing Legal Aid Advice scheme as it operates under the existing law, and it will be apparent why amendment is so desperately needed today.

Given the financial limits which put the majority of our citizens outside the purview of the Act even when it was first enacted in 1976, and given the limitations on the kinds of actions for which legal aid is available to the individual, it is hardly surprising that there have been proposals for amendment, including many of those which will be debated today, since at least 1978 proposals have come forward for amending the 1976 Act.

In 1993, the Legal Aid and Advisory Authority held a symposium at the Hugh Wooding Law School to acknowledge the 15 years of existence of the legal aid scheme and the Act and to discuss the way forward. At that symposium, Mrs. Hazel Thompson-Ahyee, the Director of the Legal Aid Clinic at the law school, made a contribution on the future of this service, and I would like to quote Hazel Thompson-Ahyee in describing the shortcomings of the existing 1976 Act. She said:

> "The main criticism is that of the very unrealistic capital and income ceiling qualification. It would seem that only the very destitute can benefit. Outside of the ambit of that is a body of floundering, unaided defendants and would-be litigants who are drowning in a mass of undefended rights."

I do not think I could have put it more aptly than Hazel Thompson-Ahyee did. Even in 1976, there were thousands of Trinbagonians whose legal rights under the Constitution and under the United Nations Convention were being flouted because they could not afford to enforce those rights and could not afford to establish those rights, and yet they were not eligible for legal aid under the scheme as it then existed and as it now exists.

As I mentioned earlier, proposals for the Act started as early as 1978. Nothing was done at that time. However, on December 1, 1993, the then Minister of Consumer Affairs and Social Services, Dr. Linda Baboolal, in her contribution to the budget debate said:

> "We are also looking at proposals to have the Legal Aid and Advice Act amended to widen the powers of the director, to bring the Act into conformity with existing legislation and to increase the qualifying disposable income. We will raise the income so that more people will be able to access the services of Legal Aid."

She continued:

> "To extend the application of the Act to include proceedings under the Domestic Violence Act, many women and women's groups in this country are concerned because under the present Legal Aid and Advice Act, a woman or victim of domestic violence cannot get any help."

Mr. President, that was in 1993. Today, in 1999, I am very pleased that we are able to have taken up the calls for amendments that have been made over the years, and I commend Sen. Diana Mahabir-Wyatt along with other women's groups that have been unstinting in their determination to have the Legal Aid and Advice Act include domestic violence as one of the types of matters for which legal aid can be granted. *[Desk thumping]*

It is the intention and purpose of this amending Bill to make legal aid more readily accessible and available to the citizens of Trinidad and Tobago by increasing the income limit so that more people would be eligible for legal aid by increasing the fees paid to attorneys to ensure that more and better lawyers are available to all, and by increasing the range of matters for which legal aid is available and to make it procedurally easier and quicker to obtain a legal aid certificate, and in domestic violence cases, an emergency certificate.

The main purpose of the amendments will be to widen the range of the types of matters for which legal aid can now be granted; by increasing the fees that will be

paid for lawyers who do legal aid work; by increasing the income ceiling to a higher level so that more people would be eligible for legal aid; and finally, by putting in procedural amendments to make it easier and quicker to obtain legal aid.

Mr. President, before I go into the details of the provisions of this Bill, it was very interesting that when I was preparing for this, one of my researchers, Miss Sadie Robarts drew to my attention an article which appeared in the *Trinidad Guardian* newspapers around the same time we were preparing our brief for this Bill. It goes back to 1889. It is an article, an extract from a paper published by Miss Bridget Brereton, the distinguished UWI historian. That paper was entitled, *That Cane the Judge Will Grind*. There has been a series of them appearing in the *Trinidad Guardian* and it describes how the Chief Justice in 1889 meted out his own form of legal aid. It was just interesting and I thought I would bring it to the attention of Senators.

Apparently, the learned Chief Justice in visiting Tobago for the first time in 1889—one would recall it was the time Tobago became a ward of Trinidad—I would use the words of Miss Brereton describing his behaviour on that first visit to Tobago. She wrote:

> "As he had done in Trinidad, the Chief Justice interviewed suitors in his Chambers to advise them whether they had good grounds for an action, and if so, how to drop their suits and apply for a waive of court and solicitor's fees. In other words, bringing a suit as poor man."

She continues:

> "It would be more correct to conclude that the Chief Justice's willingness to allow this kind of suit while waiving court fees and costs and his evident determination to listen to their grievances convinced many Tobagonians that they would receive justice."

Mr. President, I cannot imagine any judge, far less the Chief Justice in today's Trinidad and Tobago, doing likewise. He would not even have the jurisdiction to do it, but perhaps Mr. Gory was a philanthropist at that time. I just thought that was a matter of interest.

From 1889, there have been those lawyers who have been concerned about justice for the poor, and today in Trinidad and Tobago, I know of many lawyers who are willing to give of their services, but the state also has to do its part in terms of rewarding them for putting that kind of effort out. Unfortunately, we did not have any Sir John Gorys in 1976 when the Act was passed, and we certainly do not have them in 1999 when we are debating this Bill.

Mr. President, if I may, with your permission, go through the clauses of the Bill, I will not bore you because you would have read them. I will put them into the kinds of categories and the main provisions, and at the end of my introduction when hon. Senators make their contributions, whatever issues they raise, questions or comments, I can deal with them when I am replying. If there is anything I have left out and they need further clarification, feel free to let me know.

Clauses 3, 4 and 5 deal with changes in title to reflect the fusion of the legal profession in 1986. Remember when this existing Act was passed in 1976, at that time the legal profession in Trinidad and Tobago was divided into solicitors and barristers. With the Legal Profession Act, when the profession became fused in 1986, there are no more solicitors and barristers. So, these are merely tidying up provisions in clauses 3, 4 and 5 to refer to all lawyers as attorneys-at-law.

In addition, since there is now only the Law Association—previously when the original Act was passed there would have been the Bar Association and the Law Society. Since 1986, we now have one body which is one composition of lawyers which is the representative body known as the Law Association, and now that body, the Law Association, will nominate four attorneys to the Legal Aid Authority. So, tidying up clauses 3, 4 and 5, clause 5 inserts a new section which provides that in nominating attorneys to the board regard shall be had to the need for regional representation.

There was a feeling in the past that the membership of the board of Legal Aid Authority was skewed in that there were more persons as always—those of us from the south always feel that there is more of Port of Spain in everything, and there was a feeling that it should be more representative on a regional level and, therefore, take into account Tobago and the rest of the island apart from the north. Obviously, the concerns of attorneys practising throughout our twin-island state need representation on the Legal Aid and Advisory Board.

2.20 p.m.

Clause 9 inserts a new section 5A which provides for the avoidance of doubt that the Authority is to be exempt from all taxes on assets which it acquired for its own use, including VAT on goods imported for its own use. Therefore, the Authority would be able to function without the burden of such taxes.

Clause 6 inserts a new section 3A which provides that the authority should "appoint a suitably qualified person to be its Secretary."

Clause 10 inserts a new section 13A into the Act. This is an amendment that has been proposed for almost 20 years. This provision makes way for the free transfer of staff between the authority and the public service, much in the same way that staff can transfer between such bodies as the regional health authorities and the public service. The purpose of this clause is to ensure that matters such as pension rights and security are preserved, because with the authority standing outside the public service, the staff employed there are denied the benefits that would accrue to them if they are members of the public service. I think some Members may recall legislation being passed with respect to Regional Health Authorities where a similar kind of provision was made for that free transfer of staff.

I am particularly pleased with clause 8 which is related to clause 22, which amends section 23 of the Act. Clause 22 amends section 23 by inserting a new section 23(1A). This new clause provides that when a legal aid certificate is granted, the Director of the Legal Aid Authority may specify, as one of the terms and conditions of the grant, that the applicant must submit to mediation as a means of resolving the matter for which the certificate was granted.

Mr. President, in recent years, the whole topic of mediation and the need for it to be utilized more in our litigation, has come to the forefront. The amendment to the Legal Aid Act has taken cognizance of that fact. This mediation—or as it is called in some places, "alternative dispute resolution"—is a non-judicial method for settling disputes, which has to be agreed to by both parties. It differs from arbitration in that the parties, having subjected themselves to an arbitrator, are both bounded by his or her decision. Thus, where there is alternative dispute resolution, both parties must arrive at the solution themselves, with the assistance of the mediator, so they are not bound by the decision of the mediator; there is no decision made by the mediator. The mediator acts like a facilitator between the two disputing parties.

Mr. President, you are well aware that mediation is a very old technique, coming from many of the ancient civilizations. Here in Trinidad and Tobago, we are all familiar with the panchayat of the East Indian culture as an example, as would be the meetings of the elders of African villages, to bring parties together to resolve disputes without the courthouse setting.

More recently, in developed countries such as Australia and the United States of America, the technique of a form of alternative dispute resolution was developed with the hope of speedier resolutions to all kinds of disputes. A litigant

could spend years waiting at the door of a courthouse with mounting costs, and at the end of the day no satisfaction to any of the parties.

In giving this power to the director to order the legally aided party to submit to mediation, it is the sincere hope of this Government that we could have a speedier and more peaceful resolution to be found to many of the disputes which would otherwise waste years of individuals' lives, as they wait for their, perhaps, ultimately unsatisfactory day in court.

In light of this, the new section 4A, clause 8, simply empowers the director to prepare a panel of potential and appropriately qualified mediators, in the same way that a panel of qualified and available lawyers is maintained for the different kinds of legal assistance that may be required.

This provision for mediation is novel in our legislation and in my respectful view it is a step in the right direction. We are all familiar with the delays in courtroom litigation and sometimes it goes even further than that. Two parties may be in a dispute, they go to the courthouse and a judgment is handed down that may not be one that either party is happy with.

For example, one person may do damage to another person, whether to that person's property or physically damage limbs. They go to court and the perpetrator may end up being locked away in jail, when what the person needs is, in fact, if you have damaged my car or my person, I may very well need money in order to get compensation to bring myself back on my feet. Sometimes, the decision made by the court may not be the best decision for the parties. Mediation can achieve that end, where the two parties could sit and settle the dispute. Again, I commend this particular proposed amendment and I trust that it would find support in this honourable Senate.

Another new concept that has been introduced with the amendments has to do with programmes that the Legal Aid Authority can put into effect. This is done with the proposed provision in clause 11 which inserts a new section 15A which empowers the Authority to set up programmes to improve the efficiency of the Legal Aid Authority. These programmes may be varied or revoked subsequently.

This is a very important and innovative section that would give the Authority the power to set up schemes such as a duty office scheme proposed in Magistrates' Courts on a trial basis. Under such a proposed programme, legal officers may be employed by the Authority in Magistrates' Courts and in the High Court where they can provide advice to needy individuals, assist the courts in guilty pleas and

advise in respect of consent orders. At the moment, there are no lawyers stationed at any courthouse in Trinidad and Tobago. It does not happen.

In fact, I think the police may be very pleased if there are legal officers attached to police stations or courthouses. Sen. Brig. Theodore and myself have been speaking about this. We are all too familiar, as practising lawyers—as Sen. Mohammed is very much aware—where, because there was no lawyer to advise, the wrong charge was placed on someone and the person goes free at the end of the day.

On the other hand, it may well be that at a courthouse or jail, wherever it may be, there is no lawyer and the person charged, being, in fact, innocent, is in other ways forced to enter a guilty plea. It can work both ways. Certainly, the Legal Aid and Advice Authority would be dealing with those persons who would be in need of legal advice at that point in time, and not just at the point of a trial.

This is one of the kinds of programmes we are thinking of putting into place. What clause 11 does is give the Authority the power to set up schemes such as this. You would not find this scheme within the amendment, but I am giving the example of the kind of programme which we could consider putting into effect. I think that would go a very long way in making justice more accessible to the man in the street, out in the countryside, or the man in a place where a lawyer may not be found for a long distance for a long time. He is brought in, roughed up, or whatever happens, and he has no one to count on. To get his legal aid certificate it may take another day or two, by which time he may not be in a state to even need a lawyer.

I am saying that this clause would allow us to set up schemes such as this one and others with which we can deal. One of the things I have very much in my mind since last year is the whole business of a public legal education programme. I said it publicly, I think on the last day of the year, that we pass laws in this Parliament almost every week. Sometimes we sit here for several days on end, and we keep passing more and more laws, but many people out on the streets have no idea what these laws are, what effect they have on their lives, how they can benefit from them and, of course, how they can be defended by them.

One of the programmes I am very keen and interested in and I would like to set up through the Ministry of Legal Affairs' Legal Aid and Advisory Authority, is one dealing with legal education. That is to say, whether we go to Arima, Point Fortin or different points of the island, we would be able to draw upon a panel of lawyers

who would go into communities and select laws that affect our basic rights, describe them and explain to those members of the communities who would need that advice.

As Members of Parliament would know, and as I sit in my constituency office, I am amazed that the major concerns of persons who come in for help are legal issues. Maybe it is because they know I am a lawyer—I do not know. Perhaps we can have some kind of scheme set up throughout the island where we can have that kind of advice. We should remember that legal aid is not just for dealing at the point of the courthouse, it is also legal aid and advice.

I do not think the Authority has had the means to put into effect the advice part of its jurisdiction as much as it should have. Therefore, that is another kind of programme that we would be looking into. Of course, we would be very happy for any lawyers, including Sen. Mohammed, to assist us in that drive in educating the ordinary citizen with respect to their legal rights and remedies.

Clause 13 of the amendment substitutes a new section 16(4) which provides that where either party to summary court proceedings wishes to appeal to the Court of Appeal, either of them could apply to the Summary Court or the Court of Appeal for legal aid for the purpose of the appeal. Previously, the position as it stands up to today, was that any court granting legal aid could only give it to the party which applied to them. This amendment makes it possible for legal aid to be granted to both parties at the same time. That is to say, if I were a legally aided person, from the start of my matter until it reaches the Appeal Court, then I would be entitled to legal aid.

Remember when you go to an Appeal Court the kind of costs involved are prohibitive, so that in order to have that equality of justice, both parties may be eligible for legal aid.

Clause 13(b) substitutes a new subsection which provides that where a Court of Summary jurisdiction is of the view, on the facts before it, that the applicant is entitled to legal aid, then it may grant it. This new subclause gets rid of the need for a probation officer's report to be obtained on means, followed by a referral to the director which would generally delay matters by six to eight weeks. Thus, right there in the court—and in the Court of Summary Jurisdiction what we are speaking about are criminal matters, because this court deals with criminal matters, offences against the person, summary offences as a whole—at that point in time, if sufficient facts are presented to it, an applicant can be granted legal aid there and then.

At the moment, the requirement is for a probation report and the director's report, and that put grave injustice and hardship not only on the applicant who may be in custody at that point, but also on the probation officer who is required to produce the report on means outside the scope of his employment. That is another very strange thing with probation officers, that at the moment they are doing so many things in the court which are not really within their jurisdiction. This is something we need to look at and try to tidy up, because it is certainly within the jurisdiction of the Ministry of Legal Affairs and we are pulling that out to give the probation officers more time.

This requirement in the past has contributed to the clogging up of the Magistrates' Courts lists and added delays to the justice system. The defendant is before the Summary Court. He may say that he needs legal aid, the magistrate cannot say that he is proceeding with the case and the defendant does not have a lawyer. According to our law, if he needs legal aid then the tests have to be gone through: the means test, the probation officer's report, the director's referral and so forth. There are several matters that must come back to the court within a certain amount of time. When it is adjourned it must come back within a certain time, so each time it comes back no legal aid is granted.

What you are doing is just clogging up the list if these persons are in custody, by having to transport them from wherever they are to take them all over the country to the Court of Summary Jurisdiction or Magistrates' Court. There are many other resources being wasted, whereas if the court itself, at that particular point in time, could grant legal aid right away, then you would be able to proceed faster. This amendment would introduce into the Magistrates' Court a system similar to what happens in the Assizes, whereby reporting means is only required if the magistrate orders it. I am very pleased to say that, after consultation, the Magistracy has already indicated its approval of this change we are proposing.

There is another area which, again, would be very beneficial for persons who are in need of legal aid. The provisions are to be found in clause 14 of the Bill. This inserts a new section into the Act providing that in emergencies the director, without reference to the court or the Legal Aid Authority Board, would have the power to issue an emergency legal aid certificate.

Mr. President, as a lawyer yourself, I am sure you would appreciate how important this is. Those Members who work with women's groups dealing with domestic violence, would see how essential such a provision is to provide emergency certificates. Because of the nature of domestic violence, amendment of

the Act to allow legal aid would be pointless, unless emergency relief could be obtained.

Firstly, we are saying that domestic violence is now included as one of the matters for which legal aid would be available. But secondly, if a person has to take eight weeks to get a legal aid certificate she may be battered at that point before the certificate is granted. We have put in this provision to allow for emergency certificates to be granted forthwith for cases where they are required. This new clause is a great step forward, in my respectful view, for battered spouses, especially when we read it in conjunction with clause 32 which amends the First Schedule to the Act to include applications under the Domestic Violence Act for the first time. This means that not only can battered women and battered men at last get legal aid to enforce their right to physical safety under the Constitution, but it also gives that security for themselves and their children in terms of having the matter dealt with quickly.

2.35 p.m.

The provision for emergency certificates to be issued means that they can get to court the next day, to get the protection they need instead of having to wait for the normal six to eight weeks for the application to be processed, their needs tested and, of course, as I have said before, it may well be too late by the time they obtain the certificate. This emergency certificate lasts for a minimum of six weeks and a maximum of three months and it can be extended by the Authority if that becomes necessary.

Mr. President, clause 27 deals with the situation where a legally aided person discharges the lawyer assigned to him by the director. Under section 32 of the existing law, no provision was made for the director to discharge the legal aid certificate where the legally aided person discharges his or her attorney. Subclause (2) of clause 27(b) now provides for that.

I remember in my own private practice, you might have been appointed lawyer for a legally aided person and that person fired you. He or she decided that he or she did not want you any more. I had clients who would come—who had another lawyer and for whatever reason they discharged that lawyer—and they would be legally aided. At the moment there is no provision to allow for the director to discharge that certificate and put a new one in place. What is interesting, is that there are many practices that have been built up in the Legal Aid Authority by the directors and the persons working there, to do things which are not provided for in

the existing legislation. So, at the moment, even though there is no provision for discharging, of course if that happened, it had to be done. So we are in effect placing the legal authority for that to be done within the amendment.

Clause 15 amends section 17 of the Act by extending the time during which a person committed for trial in the High Court may apply for legal aid for his defence from 14 days to three months. This is a very sensible amendment in. my respectful view, and it has been on the list of proposed amendments for almost 20 years. Under the existing law, if a person is committed for trial, that person has 14 days within which to apply for legal aid. If for some reason it did not happen within the 14 days, you can see the hardship and injustice that would be caused. So that time-frame has now been extended to three months.

Clause 16 is also a very straightforward amendment. It amends section 18 of the Act, so that an application by a convicted offender for legal aid, for the purposes of appeal to the High Court or to the Court of Appeal, may be made to any judge of the High Court or of the Court of Appeal, instead of only to the judge who sentenced him. At present, when a single judge sentences a defendant, the matter goes into the Court of Appeal and, at present, the law is that, that defendant has to apply to the same judge for the legal aid. Can you imagine if that single judge becomes ill or is unavailable for other reasons, the delay there would be in making an application for legal aid and the kind of grave injustice that such an individual would face? Of course, it also contributes to the clogging of the courts. So, this is a very good amendment, in my respectful view, in that, that person can now apply to any judge of the High Court to get legal aid for the Court of Appeal proceedings instead of only to the particular judge who sentenced him.

Mr. President, clause 7. There are various amendments within the Bill dealing with the quantum and the manner and payment of fees to the lawyers who served on the Legal Aid Panel. I commend those lawyers—I have done it before—who have, over the years, worked at very nominal fees in the Legal Aid Scheme. I commend them for their commitment and for the justice that they help to bring to those persons in need of that justice. I also use this opportunity to make a call to other lawyers who have not contributed to the Legal Aid Scheme, to please give some of their time to those persons who are not able to pay the kinds of fees that are normally required for certain types of matters and by certain lawyers. So I am using this opportunity in two ways, Mr. President, with your leave, to commend those lawyers who worked for next to nothing.

I, myself, did it for many years, and I would do it again. In fact, in my own constituency, I have been amazed, I have called upon lawyers from all over Trinidad, not just from my own area, and asked them to do a Legal Aid Clinic and they have done it at eight schools in my constituency. One Sunday morning, they came and they worked for about three to four hours and we had about 3,000 people from the area, given the eight venues, who came to access that service. So, lawyers, please, those of you who can spare the time, give some time for those in need. You do not do *pro bono* work. There are many lawyers who do *pro bono* work but I think we need more lawyers to come forward and do some *pro bono* work.

In fact, if we look at the Regulations under the Legal Profession Act, Mr. President, there are provisions in there for lawyers not just to take from the system, but also that they should give something back to the system. I am saying that there are many who do, but there are not enough; we need more. So what we have done as an incentive to get more lawyers to come forward to offer their services in the Legal Aid Scheme, is to increase the quantum of fees payable to lawyers. Clause 7, amongst other things, deletes the existing section 4(5) and substitutes a new subsection to provide that the director may determine what fees to be paid to a lawyer giving an opinion on the grant of legal aid. Formerly, this fee had to be negotiated between the director and the lawyer.

Clauses 17 and 18 amend section 19 of the Act so that Attorneys are to be paid fees as set out in the First Schedule to the Act. The Minister is given power to subsequently alter both the level of those fees and the range of proceedings for which legal aid may be given under section 16 of the Act. The Minister's Order in respect of these schedules is subject to negative resolution of Parliament. So what it means is that we would not necessarily have to go through the whole amendment to the Act in order to change those fees in the schedule at some later point when more money is available to the state and, of course, when the cost of living may rise again. So we may not have to wait for such a long period from 1976 to 1999. Almost on the brink of the new millennium, we are operating with 1976 scale of fees which were already defective at that point. Since 1976, they were already so bad, so poor, so that as we approach 2000 they are totally inadequate.

So, in respect of Part II of the First Schedule, the fees for representing individuals under paragraphs 1 to 4 are increased from $125.00 to $500.00; again not remarkable changes, but they do make a differences; in paragraph 2, as amended by clause 32, the fee for appearing in indicted matters is increased from $500.00 to $1000.00.

Finally, where lawyers are assigned to a prisoner under section 19(4) of the Act, their fees are increased by clause 32 to a maximum of $2,500.00, unless the presiding judge certifies that the case was of an unusual length or difficulty, in which case the fee may be increased to $7,500.00. So that the upper scale is now a maximum of up to $7,500.00.

With respect to appeals, Mr. President, there are also some changes. Clause 19 amends Part IV of the Act to allow for the inclusion of applications to the Court of Appeal in all civil matters.

At present, legal aid can only be granted for civil matters in the Court of Appeal where legal aid was initially granted in the High Court and the applicant seeks to prosecute an appeal. This amendment allows for legal aid to be granted, for the first time, for a matter in the Court of Appeal, as well as to allow legal aid to defend an appeal. What this does, Mr. President, is to say, if you did not have legal aid at the High Court level in civil matters, that will not preclude you from applying for legal aid to prosecute or defend an appeal.

2.45 p.m.

At present, you will only be allowed legal aid for your Court of Appeal matter if you were prosecuting the appeal, not if you were defending. It now allows the person defending an appeal as well to be eligible for legal aid.

Clause 20 amends section 20 of the Act, so that by the new subsection, the Minister is given the power to amend the Second Schedule. This deals with the granting of legal aid in Civil High Court matters, subject to negative resolution of Parliament.

This means that the amendments to the types of matters for which legal aid may be granted, by order of the Minister, as the need arises, would get rid of the need for further amendment of the Act. There are only certain matters, right now, for which a person can be granted legal aid; a very restricted range of matters. For example, the Act was passed in 1976, Domestic Violence is one of those matters. The Domestic Violence Act was passed in 1991, so there is no amendment to the 1976 Act and, therefore, that new law would not have been taken into account.

What this does, is to allow the Minister to add to the schedule depending on what new legislation comes into effect. It is a very practical amendment that is being proposed. In the same way, matters under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, passed in 1981; matters under the Status of Children Act, passed in 1981. All legislation passed after 1976; all the new

rights and remedies created after 1976, by legislation, would not have been within the existing 1976 Act. It could only have been changed by coming to Parliament and making the amendment as we are doing today. However, with this amendment that we are proposing, it means that the Minister can include any new rights and remedies that may arise after this set of amendments. Those can be added and, of course, it will be seen by Parliament; subject to negative resolution of Parliament.

Clause 21 provides for an application to be made by someone else on behalf of a person with a mental disability, as defined in Order 77 of the Rules of the Supreme Court. At present, a person who is mentally incapable of making an application to the Legal Aid Authority just would not have any. It is such a practical thing. If you are already mentally incapacitated, how could you ever make an application? So all persons with mental disabilities can now have someone else make an application on their behalf. Again, giving justice to those persons who, in effect, were denied justice under the existing law.

Income limits have also been increased. This increases the eligibility for legal aid. Clauses 23 and 24 amend sections 24 and 25 of the Act, so that legal aid may be granted to persons with capital up to $5,000 and disposable income up to $7,000. The Minister is given power to amend these sums, subject to negative resolution of Parliament.

Clause 24 amends section 25 of the Act, with the insertion of a new definition of disposable income. New cash limits and allowances, which even though still modest, are more in keeping with the cost of living in 1999.

It is also proposed that the statutory deductions be increased as follows: At the moment, in computing means to see whether you are eligible for legal aid or not, there are certain deductions that can be taken into account so that your income is not really your gross income but can be considered as net income. Even though your gross may be high, after these deductions it will go down to a smaller amount. Now, you can deduct for a dependant up to $600 and up to a maximum of $1,800. At present, it is $200. The deduction for rent is increased from $360 to $2,400 per annum. We can also have deductions for national insurance payments, income tax payments, old age pensions, public assistance and disability benefits.

The effect of these changes, Mr. President, is that old age pensioners, for the first time, will be eligible for legal aid. Persons under disability allowances will also be eligible for legal aid. In effect, any person, who receives an income of $900

after tax, or less per month, will now be within the legal aid limits. This means that persons previously living below the poverty line were ineligible for legal aid because of the very restrictive limits but those persons can now be eligible for legal aid. Persons on very small National Insurance pensions, they too were not eligible but they can also now apply.

With respect to the panel of attorneys and the applicant's right to choice of attorney, clause 25 amends section 29 of the Act to clear up the ambiguity which existed as to whether or not the director had to assign an applicant, the attorney of his or her choice. The new section empowers the director to assign from the panel, and to take into account the wishes of the applicant. It no longer requires the director to assign the attorney named by the applicant.

In the past, there was a solicitor selected by the aided person, in section 29. That was interpreted to mean that the aided person could insist on having a lawyer of his choice. Can you imagine if the legal aided person insisted on having Sen. Daly as his or her choice! The director may be well-hamstrung and would not be able to so provide that person. The director now has the authority. They may insist as well—*[Interruption]*.

Mr. President: Madam Minister, you just have five minutes to conclude.

Hon. K. Persad-Bissessar: Thank you, Mr. President. I am saying that now, there would be increases in the income levels to allow more persons to apply. There is an increase in the types of matters, which I would like to go through very quickly. This is a very important amendment. Now, in the Summary Courts, all offences, except motor vehicle offences in those courts; this means that we can now get legal aid for all offences laid pursuant to the Summary Offences Act. For example, simple assault and battery, obscene language offences, praedial larceny, holding public meetings, marching without permission, resisting arrest, disorderly conduct, obstruction in the streets, illegal vending offences, charged but not guilty until it is proved. For all these offences you can now be eligible for legal aid. They were not available before.

In addition, contempt proceedings are also now included. A new paragraph 2 is inserted into Part I of the First Schedule, so that legal aid is now available for proceedings under the Status of Children Act, the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, Domestic Violence Act and Attachment of Earnings Act. These changes are very crucial for many women and children in

Trinidad and Tobago because all these pieces of legislation passed after 1976, relate to the rights and remedies for women and children in Trinidad and Tobago. The hardship of many mothers left to support children with no financial support, under all these pieces of legislation, they can now obtain aid in order to pursue for maintenance, attachment of earnings, establishment of the paternity of a child, and so forth.

There are also provisions under the Rent (Dwelling Houses) Act, and these are now included. You will be eligible for aid for matters falling under the Rent Restriction (Dwelling Houses) Act.

Finally, clause 33 is very important, since it amends the Second Schedule by extending legal aid to all matters in the Petty Civil Courts, in which the damages claimed are not less than $240. As I said before, at present, if you get in a motor vehicle accident, you cannot go for legal aid; you have no money and you are injured, you cannot get any money for legal aid. You can now claim legal aid, for what we call running down actions. All matters under the Petty Civil Court: matters for breach of contract, to recover debts, to collect arrears of salary, and such matters, once your claim is under $15,000.

One of the most important amendments, is allowing legal aid for applications for grants of probate or letters of administration, where the value of the estate is more than $4,800 but below $100,000. Legal aid was never available for letters of administration or grants of probates. There was tremendous hardship. Persons are left with an estate by parents or grand-parents worth less than $100,000 but could never find the means to go and apply for the letter of administration or grant of probate. This will benefit persons who are to inherit modest estates.

In closing, it is my respectful view that legal aid in Trinidad and Tobago must be seen, not only as a constitutional obligation on the part of—I have two minutes so I do not know if I will get injury time.

2.55 p.m.

Sen. Montano: Mr. President, perhaps the Minister could advise the Senate what the anticipated annual cost of this whole programme will be.

Hon. K. Persad-Bissessar: Unfortunately, I cannot do that at this time. Of course, it will be of tremendous added cost, but I am unable to give you a figure at this time. That is certainly something we will have to sit and work out with the hon. Minster of Finance. We may not be able to implement all of those matters

immediately but, certainly, those that we can, we will put into effect. Perhaps you can help us with your accounting skills. You may be able to assist us in coming up with some kind of cost factor. We look forward to your legal aid, as well.

Mr. President, I believe the legal aid is not merely a constitutional obligation on the part of the state. We must also see legal aid as part of Government's social contract with the people of Trinidad and Tobago. It must be part of Government's social policy and it must be part of our war against poverty. Legal aid must be seen as an essential part of our legal system if we are committed to upholding the rule of law, and if we are committed to democratic traditions. If there are no mechanisms to facilitate justice for all, it is my respectful view that there can be no democracy in our nation at all. In other words, Mr. President, legal aid can be seen as a herald of a message of progress as we count down to the year 2000.

Consequently, Mr. President, we propose these amendments which, in my respectful view, are far-reaching and will reach far in terms of the ordinary citizens of Trinidad and Tobago.

The Bill seeks to increase the range of matters for which legal aid can be obtained. These now include: domestic violence matters, petty civil court claims, appeals where the applicant seeks to defend an appeal, grants of probate and letters of administration where the value of the estate does not exceed $100,000.00, all offences in courts of summary jurisdiction, applications on the Family Law (Guardianship of Minors, Domicile and Maintenance) Act, and applications under the Status of Children Act.

Further, the amendment Bill will allow more of our citizens to be eligible for legal aid by increasing income limits, liberalizing deductions in computing disposable income, which is the criteria used in granting legal aid.

Mr. President, the Bill also makes provisions for the concern expressed by lawyers assisting in legal aid schemes, for increasing the fees that would be payable to all. Those amendments were discussed with respect to procedural changes to make it easier and faster to obtain legal aid.

Mr. President, I commend this Bill to this honourable Senate and look forward to suggestions, comments and the support of hon. Senators to ensure that this amendment Bill can assist in bringing greater access to justice to those of our citizens who cannot afford to pay for legal advice, and for the establishment and enforcement of those rights.

I beg to move, Mr. President.

Mr. President: Hon. Members, you will recollect that you had agreed that the Minister would be allowed to make her presentation and then we will go on to Motion No. 1, under Government Business, on the Order Paper. So I shall not propose a question for debate at this stage.

MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) REGULATIONS

[THIRD DAY]

Order read for resuming adjourned debate on question: [February 02, 1999]:

Be it resolved,

That the Motor Vehicles and Road Traffic (Amendment) Regulations, 1998 be approved. *[Sen. The Hon. S. Baksh]*

Question again proposed.

Mr. President: Before calling on the Minister to continue his response to the debate, I wanted to mention a procedural matter. As you know, this is a Motion and not a bill. A bill would go to committee where Senators can make suggestions for amendments and we deviate them and so forth. In a Motion we do not go to committee and when the mover of the Motion responds that is the end of the debate and the question is put.

In the course of the debate on the last occasion there were suggestions for three amendments by Senators: Sen. Dr. Mc. Kenzie, Sen. Alfred and Sen. Yuille-Williams. But these were not formally proposed as required under Standing Orders where you put your suggested amendments in writing, therefore, they could not be properly put before the Senate. However, when the Minister was responding to the issues, he indicated that he was willing to accept those recommendations as proposed by the three hon. Senators and has circulated a new set of amendments incorporating the three suggested amendments with those that he had originally proposed.

Before calling on the Minister to continue his reply and to propose the added amendments, I would like to get the consent of the Senate that he be allowed to do it, because it is a shift from the normal procedure. Do I have your affirmation?

Assent indicated.

Mr. President: Mr. Minister, you may continue.

The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh): Mr. President, when the Senate adjourned on the last day, I was in the process of outlining the policy in respect of refusal of a test certificate to indicate roadworthiness of a vehicle. The main aspects are as follows:

The consumer pays $165.00 to have each vehicle inspected. In the event that the vehicle fails the inspection, the consumer is required to have the vehicle repaired and presented for further examination of the defects. Once the vehicle is presented within the six week period following the date of the first inspection no additional fee is to be charged.

Where the six-week period referred to has lapsed, the consumer would then be required to pay a fee of $100.00 plus VAT for a complete re-inspection.

Mr. President, I now wish to propose the following amendments to the Motion:

I beg to move that the Motion be amended by adding the following words at the end of the resolution:

"Subject to the following amendments to the Regulations—

"In Regulation 3:

A. Delete paragraph (b)

B. In paragraph (dd) delete subparagraph (iii).

C. Delete subparagraph (nn).

D. In proposed regulation 27(1)

(a) Insert between the words "a" and "motor" in line one the words "public service".

(b) delete the word "biannually" in line nineteen and substitute the word "biennially".

E. In proposed regulation 27(12) delete the words "six months" and substitute the words "one year".

F. In proposed regulation 27D(1) insert after paragraph (d), the following new paragraph:

"(e) is found to be in breach of his duties under the Act".

3.05 p.m.

G. In proposed regulation 27N(3) by deleting paragraph (b) and substituting the following:

"(b) if the vehicle is removed from the vehicle testing station in consequence of a notice of refusal of a test certificate but within six weeks of the date of issue of the notice it is brought to and left at that vehicle testing station for further examination there shall be no fee payable in respect of that further examination; however—

(i) if the vehicle is brought back to the same vehicle testing station outside of the six-week period, a fee of $100.00 shall be payable; and

(ii) if the vehicle is brought to another vehicle testing station the amount payable in subregulation (1) shall be payable.

Renumber accordingly."

Mr. President, as we agreed to incorporate these suggestions by Senators on both Benches on the opposite side to enhance the private garages, we see it as incorporating all the ideas possible to ensure that this major shift—

Sen. Yuille-Williams: Mr. President, sorry to disturb the hon. Minister. Before he concludes, I wonder whether at this point we can ask questions of the hon. Minister pertaining to the Motion. After he has made his presentation, there might be some areas on which we are not quite clear. I am talking about questions here concerning what he said in his summing up, if that is possible.

Mr. President: Yes.

Sen. Yuille-Williams: Thank you very much. Can I ask a couple questions of the hon. Minister? I did indicate to him before that I would like to ask a couple questions, having looked again at—

Mr. President: I just wish to point out to the Senator that any question she wishes to ask should be related to the amendments because I think he had already spoken on A, B, C and D, and when we adjourned on the last occasion, it was for the Minister to deal with the proposed amendments by the three Senators whose names I called earlier. The Senator will be so guided. Are you with me, Senator?

Sen. Yuille-Williams: No.

Mr. President: I think when we adjourned on the last occasion, the Minister had dealt with proposed amendments A, B, C and D. Is that so, Minister?

Assent indicated.

Mr. President: So that those amendments suggested by the three Senators could have been incorporated in the Minister's amendments. Those are now before us. Now, maybe I should explain something else. I will permit, at the end of the Minister's response, any Senator wishing to speak again on E, F and G, but you must be strictly confined to E, F and G. You will not be allowed to go outside the parameters of those three proposed amendments.

Sen. Yuille-Williams: I do not want to keep back the Senate at all. At least when I made the suggestions on the last occasion, he was doing his summing up and just before he ended, I took the opportunity to ask a couple questions. They really were not totally related to the amendments.

Mr. President: On A, B, C and D?

Sen. Yuille-Williams: No. The questions I asked were general to the Motion itself because he had not addressed certain things, so that before he ended his contribution, I wanted to ask him about things he had not addressed. That is what I was actually doing at the time. This is one of the things.

Mr. President: All right. Okay. Yes, go ahead.

Sen. Yuille-Williams: Thank you very much. Let me very quickly ask questions about things he had not addressed, just for information purposes.

In the same new regulation 27 put in there, I would like the hon. Minister to just tell us where he would have included the rented cars and goods vehicles which had been left out but which were in the original regulation 27. Where would those be examined, whether it is the Licensing Authority, or at the proprietor? Those were in the original regulation 27 before and have been taken out. I do not see them here and I do not know whether we are going for one or two years. That is one.

I will just give my other queries. Two, in the same new regulation 27 put in, the Minister said a registered owner, but according to the Motor Vehicles and Road Traffic Act, there are several types of owners and the other regulation just has an applicant. Now, he is saying a registered owner and I am wondering what

happens to the other categories of owners and whether it should not be just an owner.

Because, for example, if I had a car on hire purchase, it is registered in my name; something went wrong and it was taken back by the bank and during that time the bank was using it, then it is not in my name again but I am responsible at that point. There are several other categories; there are five categories of owners and the one we have here is a registered owner specifically. I ask the Minister why they chose to use just a registered owner and not just an owner.

Then, on (4) in the same regulation 27, I ask the Minister: Who inspects the trailers, whether it is the Licensing Authority or the proprietor? Because, in regulation 27(1), the trailer is for the Licensing Authority; in regulation 27(4), the trailer is to be inspected by the proprietor. So, I am a little confused in terms of that. Can the Minister just tell me about that?

In regulation 27D, on page 10, the authorization—dies, commits an offence, adjudged bankrupt, becomes mentally incapacitated. I am wondering where blindness would be put which is something from the Motor Vehicles and Road Traffic Act, which is something we have all the time there. That is not part of determination of the authorization of the proprietor and I looked at all the aspects of the Motor Vehicles and Road Traffic Act and blindness is there, but there is mentally incapacitated and blindness is not there. There is even something in there about the one-eyed, so I am just asking if that is to be included.

There is one final question I want to ask. On page 31, in regulation 28(iii), there is something about lamps. I am not too good at this but I looked at the original and they are approved with two lamps at the front. Now, this new regulation here, sub-paragraph m(i), talks about with a minimum of two lamps which means, to me, a person could now spread any number of lamps at the front of a vehicle. To me, it contradicts something I read here in (k) which says:

"There shall not be affixed in the front of a vehicle no more than two lamps".

That is in the old regulation (k). So, when you say a minimum of two, it is now left quite open and I do not know. I ask the Minister to tell me something about that.

Finally, I ask the Minister: In regulation 100, they have deleted "Licensing Authority" and we have now said that the Minister may erect and maintain light signals for the control of vehicular traffic. So the whole business of traffic light signals has been removed from the Licensing Authority and it is now stated that

the Minister would do that. I would really like the Minister, if possible, to tell me about that.

I heard the Minister talking about the fees paid for testing and when I look at the Wrecking Act, it tells how much money is paid, but it also tells us how it is disbursed: how much money goes to the owner of the vehicle and how much goes to the Government. We did not understand why, in these regulations, they just said fees, but we did not know how they were disbursed or distributed.

Sorry about that. Thank you, Mr. President.

Sen. The Hon. S. Baksh: Mr. President, during my presentation I did make some statements in terms of the fees in that $100 would go to the private proprietor, $50 for the Licensing Authority and $15 VAT.

In addition to that, in terms of the traffic lights and the responsibility, a long time ago the responsibility for traffic signals was removed from the Licensing Authority and now comes under the Traffic Management Division of the Ministry of Works and Transport and, as such, it no longer applies.

In terms of lamps, long have gone the days with two fixed lamps at the head of a vehicle and, whereas additionally fitted lights will not be encouraged under the law, additional lamps now form part of the new modern designs of motor vehicles and all we did in that case was to ensure that there is a minimum of two, but not limited by the manufacturers' designs in that all inspections will be to inspect items as per specification from manufacturers and not additionally fitted lamps by any person. In fact, the reason for inspection is to inspect the car to ensure that it remains in the design state and also to maintain the type of safety and roadworthiness that is acceptable.

In addition to that, in terms of goods vehicles and rented vehicles, those will form part of the public service vehicles and, as such, be part of the responsibility of the Licensing Authority. Only private vehicles, as the Motion indicated—the Regulations are for private garages to inspect private vehicles and, as such, all public service vehicles and trailers will be inspected by the Licensing Authority.

Sen. Yuille-Williams: You should take it out from there.

Sen. The Hon. S. Baksh: So, those will address all the major issues brought up by the Senator.

Sen. Mohammed: So, a pick-up—

Sen. The Hon. S. Baksh: All public service vehicles, goods vehicles will be dealt with by the Licensing Authority; only private vehicles will fall under these Regulations.

Sen. Yuille-Williams: I am not trying to be technical or difficult, but I have looked at it. What I notice is that they took it out of the original because it had said private motor vehicles, goods vehicles and rented cars—that was specifically stated—but in (4) I think when they said the proprietor should examine the motor vehicle or the trailer—it is still in regulation 27(4). I mean to say, the other place will have to turn it up, but it is still too much.

Sen. The Hon. S. Baksh: In addition to that, in terms of blindness, I am certain that because a proprietor does not need to be an inspector, he could only do business and can go blind and still have people employed within his organization to carry on the business and, as such, blindness did not enter in terms of a proprietor.

Mr. President, having answered those queries, it is our wish in the Ministry that this new move to private garages will, in fact, ensure that roadworthy vehicles do ply the roads of Trinidad and Tobago and we will benefit from the safety that it will now encompass.

I beg to move.

3.20 p.m.

Question on amendment proposed.

Mr. President: I cannot put the question yet. I must permit anybody who wishes to raise any matter specifically with reference to (E), (F) and (G).

All right, in the absence of any further comments, you may move.

Sen. The Hon. S. Baksh: Mr. President, I beg to move.

Question on amendment proposed.

Question put and agreed to.

Question on amended Motion proposed.

Question put and agreed to.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before moving to adjourn this honourable Senate, let me just put a few matters on the agenda for consideration.

First of all, we are adjourning at 3.30 p.m because tomorrow there is a very important seminar being arranged by the local branch of the Commonwealth Parliamentary Association, and from my information, we need to vacate here so that there can be proper arrangements for Parliamentarians tomorrow when the programme begins at 9.00 a.m. Hence, we can allow the workmen to actually proceed in re-organizing the Parliament.

Also, I would like to bring to the attention of my senatorial colleagues that the next time we meet will be on Tuesday, February 23, 1999. It is Private Members' Day, but I have asked my colleagues—both Sen. Prof. Spence and Sen. Nafeesa Mohammed—to allow the Government to proceed with its business on that day and we will in turn return the Private Members' Day a week later, and they have both agreed.

I want to just indicate to the Senate that on February 23, when we return, there are some very important matters with which we would like to proceed, and I would like to alert the Senators to prepare for a very long day. We are going to proceed with the Dental Profession (Amdt.) Bill, an Act to validate the Third Report of the Elections and Boundaries Commission under the Municipal Corporations Act, 1990 and the Elections and Boundaries Commission (Local Government) Act, Chap. 25:50 for the purpose of Local Government Elections. They are going to be in the order I have mentioned.

We are also going to proceed with a very small Bill, but it is very important, and Minister Kamla Persad-Bissessar emphasized this to me before she left. It is Bill No. 3 which lapsed in the last session, and we have brought it back on the Order Paper. It is entitled "An Act to validate the effect of certain international applications under the Patent Co-operation Treaty designating Trinidad and Tobago". After that, we shall continue with the Legal Aid and Advice (Amdt.) Bill.

I am serving notice on the Senate that when we meet at the next sitting this is the order in which we are going to proceed with these matters. I want to also indicate that we shall start at 10.00 a.m. and possibly go until 10.00 p.m. I also serve notice that if we were unable to complete these Bills on that evening we may have to come back during the course of the week. I want to serve notice to my colleagues because they are very important matters.

I want my colleagues to have a very peaceful, comfortable and happy Carnival, and make sure that when we come back we are in for a long session in terms of the debates.

Sen. Nafeesa Mohammed: Mr. President, the hon. Senator did, in fact, speak to us and I know we were still deliberating in terms of the Dental Profession (Amdt.) Bill as to the continuation of that Bill. I know he said there was an agreement and certainly, on that particular issue, there was no agreement. I just wanted to state that for the record, but he has already stated his position.

Sen. The Hon. W. Mark: Mr. President, I beg to move that the Senate do now adjourn to Tuesday, February 23, 1999 at 10.00 a.m. and I wish all my colleagues a very happy, peaceful Carnival.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 3.31 p.m.