

*Leave of Absence*

*Tuesday, March 02, 1999*

**SENATE**

*Tuesday, March 2, 1999*

The Senate met at 10.00 a.m.

[Mr. Vice-President in the Chair]

**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, Sen. The Hon. Ganace Ramdial, President of the Senate, will be absent from sittings of the Senate from March 2, 1999.

**SENATORS' APPOINTMENT**

**Mr. Vice-President:** Hon. Senators, I have been advised by his Excellency, the President, that he has appointed Mr. Dave Cowie a temporary Senator with effect from March 2 and continuing during the absence from Trinidad and Tobago of the said Sen. Ramdial.

I have granted leave of absence to Sen. The Hon. Finbar Gangar from sittings of the Senate from today's date, March 2, 1999 to March 5, 1999.

I have also granted leave of absence to Sen. Philip Marshall from sittings of the Senate from March 1 to March 5, 1999.

I have also been advised by His Excellency, the President, that he has appointed Ms. Elaine Teemul a temporary Senator with respect from the March 2, 1999 and continuing during the absence from Trinidad and Tobago of Sen. The Hon. Finbar Gangar.

His Excellency, the President, has also advised that he has appointed Ms. Nirupa Oudit as a temporary Senator with effect from March 1, 1999 and continuing during the absence from Trinidad and Tobago of Sen. Philip Marshall.

**OATH OF ALLEGIANCE**

*The following Senators took and subscribed the Oath of Allegiance as required by law:*

*Dave Cowie, Sen. Elaine Teemul, and Nirupa Oudit.*

**PAPERS LAID**

1. Audited Financial Statements of the Trinidad and Tobago Electricity Commission for the year ended December 31, 1991. [*The Minister of Finance (Sen. The Hon. Brian Kuei Tung)*]

2. Audited Financial Statements of the Trinidad and Tobago Electricity Commission for the year ended December 31, 1992. [*Hon. B. Kuei Tung*]
3. Audited Financial Statements of the Trinidad and Tobago Electricity Commission for the year ended December 31, 1993. [*Hon. B. Kuei Tung*]
4. Audited Financial Statements of the Trinidad and Tobago Electricity Commission for the year ended December 31, 1994. [*Hon. B. Kuei Tung*]
5. Audited Financial Statements of the Trinidad and Tobago Electricity Commission for the year ended December 31, 1995. [*Hon. B. Kuei Tung*]
6. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the Trinidad and Tobago Racing Authority for the year ended July 31, 1990. [*Hon. B. Kuei Tung*]
7. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the Trinidad and Tobago Racing Authority for the year ended July 31, 1991. [*Hon. B. Kuei Tung*]
8. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the Point Fortin Corporation for the year ended December 31, 1990. [*Hon. B. Kuei Tung*]
9. Report of the Auditor General of the Republic of Trinidad and Tobago on the Accounts of the Point Fortin Corporation for the year ended December 31, 1991. [*Hon. B. Kuei Tung*]

#### AGRICULTURAL SMALL HOLDINGS TENURE BILL

Bill to reform the law with respect to tenure and occupation of agricultural holdings of private and State-regulated bodies; to regulate the relationship between landlord and tenant in respect of such holdings, and for matters related thereto, [*The Minister of Finance*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. B. Kuei Tung*]

*Question put and agreed to.*

#### ARRANGEMENT OF BUSINESS

**The Minister of Finance (Sen. The Hon. Brian Kuei Tung):** Mr. Vice-President, today is not really Private Members' Day but by agreement last week, it should have been Private Members' Day. I seek leave, therefore, of the Senate to

now deal with Bills Nos. 1 and 2 under "Government Business" followed by "Motions" under "Private Business."

*Agreed to.*

**DENTAL PROFESSION (AMDT.) BILL**

[SECOND DAY]

*Order read for resuming adjourned debate on question* [February 23, 1999]:

That the Bill be now read a second time.

*Question again proposed.*

**Mr. Vice-President:** The following Senators have already spoken. The hon. Minister, Dr. Hamza Rafeeq, Sen. Danny Montano, Sen. Prof. John Spence, Sen. Martin Daly, Sen. Prof. Kenneth Ramchand, and Sen. Joan Yuille-Williams.

**The Minister of Health (Dr. The Hon. Hamza Rafeeq):** Mr. Vice-President, when the debate on this Bill was adjourned one week ago, I was making the point that we are faced with a critical situation. We do have a problem to address, and it is because of this that this Bill has been brought before this Senate. It was debated and some very valuable suggestions were made by Senators who spoke. These suggestions have been considered by the Ministry and by the Cabinet and appropriate amendments have been drafted and circulated.

Mr. Vice-President, the amendments came mainly from the suggestions that were made by Sen. Prof. Spence in the amendment that he circulated and, as I said, they have been incorporated into the amendments that we circulated this morning. Before I give some details of the amendments, I just wanted very briefly to respond to a couple of the issues that have been raised in the debate so far.

Sen. Prof. Spence in his address alluded to the fact or his perception that the Ministry of Health and the interim council were both incompetent in the handling of the functions of the interim council. Mr. Vice-President, I must take objection to that particular statement because the Act was assented to on October 26 and by then we had informal communications that the members of the Dental Council had resigned. We had no formal communication from members of the council and we thought that we could well find ourselves in some kind of legal tangle if we took the informal communications into consideration.

Because of this, therefore, we did what the Act asked us to do and that is to wait for one month for the council to call an election and by that time it was November 26. Mr. Vice-President, we did put the interim council together in December but we did not give them their formal instruments of appointment because they had quite a lot of work to do, and bearing in mind the holidays that were coming up and so on in December, we decided to give them their formal instruments of appointment on the first working day in January and so they were appointed on January 4, 1999.

**10.15 a.m.**

Mr. Vice-President, Sen. Prof. Spence also said that if we had handled this properly, we would have had the opportunity to have two elections in the month if one did not work out. This was definitely physically and logistically impossible. That would have meant that on the first day of appointment of the new council, they would have needed to have all the invitations for the elections circulated. It was logistically impossible to have all the invitations delivered to the dentists, get the lists, prepare the invitations and to have them delivered by then. The very next day the same thing would have had to be done, bearing in mind the life of the interim council was only four weeks, which is one month. It was really logistically impossible to have two elections within the one-month period.

The interim council worked very hard and diligently, and did everything that was expected of it. The members consented to serve when many senior dentists did not, and I think instead of castigating them, I want to express today my thanks, gratitude, and appreciation for the work done.

One of the issues raised by quite a few Members who spoke was about the armed guards at the election. I think this was already dealt with by Sen. Ramnath, but I would mention that the interim council realized that there was only one opportunity to hold these elections and it wanted to do everything possible to ensure that it went smoothly. There were many rumours circulating, one of which was that the dentists would do everything to ensure that the election did not take place. The interim council would have been irresponsible if it did not put plans in place to ensure the smooth running of the election. Because of this, they approached the Ministry of Health. Anyone who has been to the Ministry of Health, including the dentists, knows that as soon as you enter you are faced with armed security guards on the ground floor—and three of those guards were asked to assist in maintaining order at the Medico Dental House for the elections.

There was no question of intimidatory tactics. They did not intimidate or threaten anyone, nor was it fascist or dictatorial as Members would have us believe. I want Members to know that this was not a regular election of the Dental Council, it was a special situation and we had to take everything into consideration.

Mr. Vice-President, I would make one further point, and that is, when Sen. Daly spoke he did say, or at least the gist of what he said—and I hope I am quoting him correctly—was that this Bill was brought here because of the involvement of one of the relatives of a Government Senator. I am sorry if I misquoted him, but that is what I gathered from what was said. I give the assurance that nothing done by this Government, as far as health is concerned, is motivated by political considerations. The issue began before my time, and several meetings and discussions were held even before I came into office. When I came into office we continued the discussions, and having failed at every point, we came up with this Bill to attempt to deal with the problem.

The final point I would make is that the impression being given to the population is that the dentists who have paid their fees to Medico Dental House are practising illegally. I did make the point, when I piloted the Bill last week that no dentists are registered to practise in the country at this point in time. *[Interruption]* The Dental Profession Act—

**Sen. Prof. Spence:** Mr. Vice-President, I just want to confirm that the hon. Minister did say registered, as opposed to having paid the practice fee. He said, I believe, that they were not registered. Would the Minister repeat that? That they were not registered?

**Dr. The Hon. H. Rafeeq:** Yes, I said that they are not registered to practise.

The Act says in the Regulations, section 22(1) and (2):

- "(1) A dentist shall pay to the Council an initial fee of six hundred dollars to engage in the practice of dentistry and an annual practice fee of six hundred dollars.
- (2) A dentist who pays the annual practice fee is entitled to a Practice Certificate valid for the year in respect of which the practice fee is paid."

We have had legal advice on this which suggests that if the fee has to be paid to the council, if there is no existing council then the fee cannot be paid. A practising

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certificate has to be issued by the council, if there is no council there is no practising certificate and therefore the dentist is not registered to practice. He can practise only on the receipt of a practising certificate. I just wanted to clarify that point. [*Interruption*] He is not licensed to practise.

I would just briefly mention that we did take into consideration the suggestions made, particularly those by Sen. Prof. Spence and Sen. Martin Daly, who assisted us in the drafting of the amendments before us this morning. We had suggested in the original Bill before the House that the Minister be empowered to appoint an *ad hoc* council for a period of one year with an option to appoint another council for the period of another year. It was suggested by Prof. Spence that we appoint a council for a period of six months, and the amendments do reflect that; that is, that the interim council will be appointed for a period of six months. The interim council, however, will be asked to hold elections for a council within the period of six months, but during the period of six months that they are in office, they would also be given the power to register dentists under the Act.

This is the final document that we have come up with. I hope that in the interest of settling this issue expeditiously, we would have support from all the Members of the House.

Mr. Vice-President, I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in Committee.*

**Mr. Chairman:** Hon. Senators, we have before us the Bill as amended. The original amended Bill constitutes 3 clauses and we have the circulated amendments before us by the hon. Minister of Health.

**Sen. Prof. Spence:** Mr. Chairman, do we also have before us the two amendments I had moved? I tabled them last week.

**Mr. Chairman:** Yes, we do have before us two amendments by Sen. Prof. Spence. If anybody requires additional copies, we have some. Sen. Prof. Spence's amendment "A" reads as follows:

- A. The Act is amended by inserting after 5A the following new section;

5B Section 5A shall cease to have effect five years after the coming into operation of the Dental Profession (Amendment) Act, 1999.

**Sen. Prof. Spence:** Mr. Chairman, I would like to ask the hon. Minister whether he had given consideration to "A" of my two amendments.

**Dr. The Hon. Rafeeq:** We did, and it was not accepted by the Cabinet.

**Sen. Prof. Spence:** Mr. Chairman, I would like to withdraw that amendment. I give notice that I intend to bring that as a Private Member's Bill subsequently, but I would like to withdraw it at this stage.

**Mr. Chairman:** Just so we follow what is going on: the amendments by Sen. Prof. Spence are two in number, both of them on one consolidated sheet numbered "A" and "B". He is withdrawing his suggested amendment "A". So the amendments we would be dealing with now are, in fact, the amendments as circulated by the hon. Minister and the one numbered "B" as circulated by Sen. Prof. Spence.

*Amendment "A" withdrawn.*

**Sen. Prof. Spence:** With respect to "B", I thank the hon. Minister for his acceptance of the general thesis behind the proposals and for the amendments which he has put. Just for the record, I would like to have "B" put. I would not call for a division, but just to put it on record. If we could just accept it as an amendment and then proceed with the Minister's amendment.

**Mr. Chairman:** Let me understand this: we are accepting it as a suggested amendment?

**Sen. Prof. Spence:** I do not mind if it is rejected, I just want it on the record.

**Mr. Chairman:** It is formally before us as a suggested amendment on the record. We have before us clearly, two sets of amendments: one by the hon. Minister and one by Sen. Prof. Spence. Both will be considered by the committee.

**Sen. Yuille-Williams:** Mr. Chairman, just for a bit of advice before you start. I do not know if it is possible according to the regulations to ask the hon. Minister for a little explanation—before we look at the amendment—on the statement he just made concerning the eligibility of those people for the election to the Dental Council. I was not quite clear when he spoke about the registration or the practice fee which was paid, because it was one of the things that we were looking at in the sum total of the whole issue. I would like him to clarify that so I could know who

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the people are that we are working with, whether it was those registered in 1998 or 1999, as the case may be.

**Dr. The Hon. H. Rafeeq:** I am not sure exactly what the question is.

**Sen. Yuille-Williams:** You said that people were not registered—  
[*Interruption*] They were registered but did not pay their practice fee. I am sorry, they paid their practice fee but did not get a certificate to display, and because of that they are not being considered as having registered for 1999. Is that what you said? I was not quite sure.

**Dr. The Hon. H. Rafeeq:** They are not licensed to practise at this time.

**Sen. Yuille-Williams:** So if any time we are dealing with a group of people who are licensed to practise, we would have gone back to those licensed to practise in 1998?

**Dr. The Hon. Rafeeq:** Dealing with it in what sense? The amendment that is before us speaks about dentists who will be on the interim council. The interim council will be given the power to register dentists for 1999, so when the interim council holds election later this year they would be dealing with dentists who are registered and licensed to practise for 1999.

**Mr. Chairman:** We will proceed with the three clauses of the Bill.

**Sen. Prof. Spence:** Mr. Chairman, Sen. Daly advises that the two amendments are so similar in many respects that it does not make sense to take both, so I withdraw my "B" amendment as well.

**Mr. Chairman:** That is appreciated. The "B" amendment circulated by Sen. Prof. Spence has also been withdrawn.

*Amendment "B" withdrawn*

Therefore, we are dealing with the Bill as drafted and the amendment circulated by the hon. Minister.

**10.30 a.m.**

*Clauses 1 and 2 ordered to stand part of the Bill.*

Clause 3.

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



**Dr. H. Rafeeq:** Mr. Chairman, I beg to move that clause 3 be amended as follows:

3. Delete the words after the words “following new sections:” to the end of that clause and substitute the following -
  - “ (5) Where a new Council is not elected in accordance with subsection (4) the Minister shall appoint for a period of six months a Second Interim Council consisting of -
    - (a) three dentists one of whom shall be the dentist holding the most senior dental post in the Ministry of Health;
    - (b) a lay person;
    - (c) a dentist who has at least five years standing as a practising dentist and who shall act as Chairman of the Second Interim Council.
  - (6) The quorum of the Second Interim Council shall be four members including the Chairman.
  - (7) Where a member of the Second Interim Council resigns the Minister may appoint another person as a member of the Second Interim Council.
  - (8) The Second Interim Council shall within its term of appointment convene a general meeting of the Board to elect a new Council under the Act.
  - (9) The president shall by Order appoint an independent fit and proper person to supervise the election to be held under subsection (8).
  - (10) The Second Interim Council shall have the power to make registration in accordance with the Act and such registration shall for the purposes be deemed to be done by the Council under the Act.
  - (11) Notwithstanding anything in subsection (5) the Second Interim Council shall cease to exist as soon as the Council is elected.”

**Mr. Chairman:** There are five pages of proposed amendments circulated to clause 3. Are there any questions or discussion?

**Sen. Daly:** I do have one residual problem and it lies this way: On page 2 of the Minister's amendments, subsection (10) says:

“The Second Interim Council shall have the power to make registration in accordance with the Act and such registration shall for all purposes be deemed to be done by the Council under the Act.”

On the next page it say:

“10B(1) Notwithstanding anything in the Act or Dental Regulations, from the commencement of the Dental Profession (Amendment) Act, 1999 the Second Interim Council shall register dentists as members of the Board.”

Now, my residual problem is this. First of all, it seems to be saying the same thing twice; and worse, it is saying it in different language. It is saying on the one hand “power to make registration”, and on the other hand it is saying “shall register dentists as members of the Board”. I do not understand why we need to have it repeated and why we are repeating it in different language, particularly as they have accepted, on page 4, in the terms in which I drafted it, a provision that transfers the registration functions of the Council to the Second Interim Council.

I would have thought that, by itself, that was enough; but I am not making any quarrel if they want to make it explicit that they are giving a power to register to the Second Interim Council. But we are ending up with the same provisions three times in different languages. I particularly have a problem with 10B(1).

**Dr. H. Rafeeq:** Mr. Chairman, I have been advised by our legal advisors that we can withdraw subsection (10) and leave the other two.

**Sen. Daly:** Much obliged. Thank you.

Can I then raise a small point on subsection (11)? I am not entirely happy with the expression “shall cease to exist”. I do not think it is a drafting expression. I would prefer “go out of office”—if there is no strong objection. I really do not like “liquidating”—or “demit office”, which is just as good.

**Dr. H. Rafeeq:** We will be guided by superior wisdom. The idea is that they will cease to exist.

**Sen. Daly:** What about “demit office”, as suggested by Sen. Teelucksingh?

**Dr. H. Rafeeq:** Demit office?

**Sen. Daly:** Demit office.

**Dr. H. Rafeeq:** Okay.

**Mr. Chairman:** We have a suggestion that in subsection (11), which would now in fact be renumbered 10, the words, "cease to exist" be replaced by the words "demit office".

Any other questions or comments?

**Sen. Daly:** Mr. Chairman, there are people in this Chamber who have demitted office but have not ceased to exist. [*Laughter*]

*Question put and agreed to.*

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

*New Clause 4.*

**Dr. H. Rafeeq:** Mr. Speaker, I beg to move that clause 4 be amended as follows:

4. The Act is amended by inserting the following new section:

<p>“Registration by Second Interim Council</p>	<p>10B (1) Notwithstanding anything in the Act or Dental Regulations, from the commencement of the Dental Profession (Amendment) Act, 1999 the Second Interim Council shall register dentist as members of the Board.</p>
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(2) A dentist may apply to the Second Interim Council for registration for membership of the Board in Form DR 1 set out in the Schedule to the Dental Regulations.

*New clause 5 read the first time.*

*Question proposed, That the new clause be read a second time.*

**Sen. Daly:** May I ask two questions, Mr. Chairman? I assume that the purpose of 10B(1) is to register dentists as members of the board, which is different from registering them as dentists; so I do not have a quarrel with 10B(1). Would there be any violent objection to saying “shall have the power to register dentists”, rather than “shall register”? Suppose someone is not appropriately qualified—just out of caution.

**Mr. Chairman:** The suggestion is that in the penultimate line of 10B(1), the words “have the power to” be inserted between the words “shall” and “register”.

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 4 added to 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.*

#### LEGAL AID AND ADVICE (AMDT.) BILL

[THIRD DAY]

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

That the Bill be now read a second time.

*Question again proposed.*

**Mr. Vice-President:** Members, the debate of the second reading of the following Bill which was in progress when the Senate adjourned on Tuesday, February 23, 1999 will be resumed: “An Act to amend the Legal Aid and Advice Act, Chap 7:07”.

You would recall that the following Senators had spoken on this Bill: Sen. Joan Yuille-Williams, Sen. Eastlyn Mc Kenzie, Sen. Martin Daly and Sen. Muhammad Shabazz.

**Sen. Danny Montano:** Mr. President, I intend to make a very brief contribution this morning on this matter.

Members would remember that when the hon. Minister was making her initial presentation sometime ago, before she took her seat, I asked a very simple question and that is: Whether she could advise this hon. Senate what the anticipated annual cost of the programme as envisaged under this new legislation

would be, and whether or not any budgetary provision had been made. The Minister's response was, essentially, that she did not know the answer to the two questions.

Following from that question, contributions have been made, effectively making the point that the legislation is somewhat of a farce without the financial wherewithal being provided to enable the legislation; and some excellent contributions have been made in that regard. I just wanted to draw the attention of Senators to something following from that point and it is this: clause 32(c)(b) of the Bill effectively amends the parent legislation which was passed in 1976, which made provision to pay lawyers who in fact would participate in this programme.

**10.40 a.m.**

Originally, the legislation allowed for the authority to pay the sum of \$750.00 to the attorney, and this amendment seeks to make the provision to pay to attorneys the sum of \$2,500.00.

Mr. Vice-President, my point is very simple, and it is this: we all understand the effects of inflation, but what I would like to advise honourable Members when they are considering their comments on this legislation is this: I have checked with the Central Statistical Office in terms of the inflation index between 1976 and January 1999, and \$750.00 in 1976.

I fully appreciate, Sir, that at this moment \$750.00 is still the standing fee. But notwithstanding that, we need to measure the intentions of the Government. In order to have the same purchasing power and with value to an attorney in 1999, the fee should be \$5,766.56. That is what it translates to. Or going the other way, Mr. Vice-President, \$2,500.00, expressed in terms of 1976 is \$325.15, as opposed to \$750.00. That is what it comes out to.

I think we need to measure what the Government is doing in very real terms. I would just like to leave that information for Members to digest, as to whether this is a political manifesto or a workable piece of legislation. Thank you very much.

**Sen. Nafeesa Mohammed:** It is indeed a pleasure for me to rise this morning to speak on this very significant piece of legislation, which seeks to amend the Legal Aid and Advice Act Chap. 7:07 of the laws of Trinidad and Tobago. Mr. Vice-President, I would like to commence my contribution by reading a very short poem that I had the privilege of listening to only this Sunday, at a function that

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was held in San Fernando to mark the opening of a shelter for women, a home known as “Medina House”, an effort organized within the Muslim community by a group of very dynamic persons.

This poem was composed by a Form 5 student of St. Joseph’s Convent in San Fernando, and is entitled “Before and After”. Sen. Nizam Baksh was there and I am sure he, too, would testify to the fact that it certainly stirred the entire gathering on Sunday:

“Before and After  
Before our marriage  
I asked for water, he gave me honey  
I asked for a dress, he gave me money  
I settled for a daisy, he gave me a rose,  
I said my smile was simple, he said just like a star, it glows.

At 18, it was love at first sight,  
My Prince Charming had finally come,  
Parents say, ‘that boy is trouble darling’.  
Hmm, they’re so old fashioned and dumb.

Five months after our marriage in the Warden’s office  
I asked him for some bread, he says, ‘yuh too greedy’  
I asked him again, he says, ‘you gettin’ fat already’  
I asked for a flower, he gives me a broom,  
And if a speck of dust remains, I’m doomed.

One year of marriage....I thought I had bracelets, not bruises,  
I thought I heard sharing, not shoving,  
He promised me laughter, not cries,  
Happiness not sighs.

How much more do I have to endure,  
As I lay there bleeding on the floor,  
Mom, Dad, you were right: I was a fool.  
How much more can I take?  
How do I make right, this big mistake.

As I lay there, battered, bruised, scratched and scorned,  
I thought, if I were to leave, where would I go,  
What would I do?  
And I shout at the top of my lungs,  
I shout a silent cry....  
Help me....please.”

Mr. Vice-President, I just thought it fit that I would open my contribution this morning with this composition by a very young student in our country. At that function when this poem was recited, the hon. Minister of Housing and Settlements, Mr. John Humphrey, commented. In his contribution he made reference to the Senators who are speaking on this issue of domestic violence. I certainly would like to add to the voices of the thousands of women, locally and internationally, who are vigorously seeking to grapple with this very serious social ill that involves domestic violence.

Certainly, Mr. Vice-President, this is the reason I deem it an honour to be able to participate in this debate that seeks to amend the Legal Aid Act, especially in relation to the provisions that are being introduced with respect to this problem of domestic violence.

I want to take this opportunity to commend the hon. Sen. Diana Mahabir-Wyatt, who has been one of the most involved persons in this country in all of the major discussions and activities that are taking place with respect to dealing with the issue of domestic violence. Her contributions are well-known to all in this country, and we must certainly commend her for the many years of hard work and service, especially in this field. [*Desk thumping*]

Mr. Vice-President, I would like to join the several Senators who have commended the hon. Minister of Legal Affairs, in terms of her presentation when she piloted this Bill a few weeks ago. It was certainly a very comprehensive and well thought out presentation. It was so easy, just looking at the *Hansard* report. She went into the origins of the Bill, looked at the development of the whole matter and went into the provisions, and I wish sincerely, to commend her on her very fine presentation. I can only hope that some of her colleagues in Cabinet would take note of how helpful it was to have such a thorough presentation in terms of the Bill with which we are dealing.

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Mr. Vice-President, when we look at the purpose of this Bill, we see that in the Explanatory Note to the Bill, it says that:

“The purpose of this Bill is to amend the Legal Aid and Advice Act, Chap. 7:07 (hereinafter referred to as “the Act”) to make Legal Aid more readily available and accessible to citizens of Trinidad and Tobago, to provide for a more efficient system of Legal Aid and to increase the kinds of matters for which aid may be granted.

The Bill, therefore, proposes to allow more persons to qualify for Legal Aid. For example, aid will be granted in respect of children charged with criminal offences, domestic violence applications, defence of appeals in the Court of Appeal, the grant of Probate and Letters of Administration where the value of an estate does not exceed a given amount.”

I remember the hon. Minister in her contribution, made reference to a symposium that had been held at the Hugh Wooding Law School some time in 1993, when that symposium was looking at the Legal Aid scheme and its operations in Trinidad and Tobago, and the way forward with respect to Legal Aid. The hon. Minister was, indeed, very kind in her contribution, if I may say so, in that she made specific reference to Dr. Linda Baboolal’s contribution in the budget debate on December 1, 1993, when, as the then Minister of Social Development, Dr. Baboolal had said that the Government was looking at extending the application of the Legal Aid Act to include proceedings under the Domestic Violence Act.

### **10.50 a.m**

Mr. Vice-President, I was very fortunate indeed to put my hand on a newspaper clipping which reported Dr. Baboolal’s comment at a function being held in Couva at a home for the aged. This newspaper clipping from which I am going to quote was published in the *Newsday* of June 27, 1994, on pages 1 and 2. Just for the record I would like to read what Dr. Baboolal said:

“Amendments to the Legal Aid and Advice Act are being drafted to provide for legal representation under the Domestic Violence Act.”

She said:

“...this was one of the ways in which Government was making a range of services accessible to families in need.



‘My Ministry is also examining the need to identify a cadre of counsellors as specified by the Domestic Violence Act’...”

It goes on:

“Under the financial assistance programme of the Social Welfare Division of the Ministry, grants are available for temporary accommodation needs of the victims of domestic violence as well as for the nutritional needs of teenaged mothers.

Other family support services include probation services to monitor and counsel juvenile delinquents or children at risk and their families.

Dr. Baboolal said Government was considering recommendations contained in a report recently submitted by the Cabinet-appointed Committee to Examine the Juvenile Delinquency and Youth Crime Situation in Trinidad and Tobago. She said the report contained ‘pertinent recommendations for the strengthening of the family system.’...

She said: ‘The breakdown in family life has contributed to the attendant social problems of domestic violence, substance abuse, homelessness, juvenile delinquency and crime, an alarming decline in moral and spiritual values and disrespect for authority.’”

At the end of her contribution she said, and I wish to repeat this by means of emphasis.

“It is only through cooperation between the state, community and the family that we can hope to find solutions to existing problems and prevent others from rearing their ugly head...”

Mr. Vice-President, if I am very generous and kind this morning to the hon. Minister of Legal Affairs, it is for this same reason. These are very important and serious matters with which we are dealing and we need all hands on deck in order to come to terms with some of these problems. We on this side have been doing, and we certainly would continue to do our fair bit in terms of dealing with some of these problems.

I commend the hon. Minister for following through with those initiatives that were in place at the time when her Government came into power in 1995. Particularly, I remembered when the Minister was making her presentation, she referred to clause 14 of this Bill which she said is the clause she is particularly proud of and she has every reason to be proud, being there at the time when this particular measure was, in fact, included in the Bill. That is the provision which

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introduces a new section 16A(1) into the Act, which provides according to this clause 14 the new section 16A(1) that in emergencies with regard to domestic violence cases, the Director of the Legal Aid Authority shall have power to issue an emergency certificate without reference to the court or authority. It says:

“Where a person desires legal aid as a matter of urgency in respect of proceedings for and in relation to an application made under the Domestic Violence Act, the Director shall have power without reference to the Court or the Authority to issue an Emergency Certificate.”

Mr. Vice-President, the hon. Minister had pointed out that clause 14 must be read in conjunction with clause 32 of the Bill. When one looks at clause 32, one sees that this clause seeks to amend the Schedule to the Act by expanding the range of matters, offences and proceedings under which, in this Bill, there would be provisions whereby legal aid can be accessed. There is now a situation where emergency certificates would enable battered spouses to get very quick access to legal aid instead of having to wait several weeks.

As we know, under the operation of the present system it takes a very long time before legal aid can be made available. In most cases when an application is made, it has to go through a process, I think the board of the Legal Aid Authority meets once a month and before approving aid for a payment there are certain processes which must be observed. In particular, very often a means test has to be done and this is where there are probation officers who look into these situations and provide a report which would assist the investigators in terms of determining whether an individual is entitled to aid or not. By having this new section in the Act certainly would assist persons who really need very urgent help and I say so in the context of battered spouses.

I think it must be noted that this provision certainly takes into account a recommendation which I have seen in a report which I am sure Sen. Mahabir-Wyatt would also deal with. There is a report by the *Ad Hoc* Committee for the Reform of the Domestic Violence Act, 1991 and Related Legislation which was recently submitted—I believe the present Minister of Legal Affairs would have been very instrumental in the appointment of this *ad hoc* committee. For the record, I think I should call out some of the members of this committee because they are people who have been involved for a number of years in this whole scenario.

They are: Mr. Donald Berment whom we have seen from time to time on television, very vocal as a man against violence against women; Mr. Dennis Bryan, a probation officer, Ministry of Social Development; Ms. Cleo Crawford, attorney-at-law; Ms. Stephanie Daly, attorney-at-law and President of the Law Association of Trinidad and Tobago and one who has done a tremendous amount of work in terms of the development of our family laws in Trinidad and Tobago; Miss Carla Herbert, a legal drafter; Ms. Judith Jones, whom I see sitting in the Chamber this morning, she is the Director and Chairman of the Legal Aid and Advisory Authority, a very prominent attorney who has been making a very significant contribution; we have Sen. Diana Mahabir-Wyatt, Mr. Jawara Mobota; Ms. Sadie Robarts; Ms. Lynn Roy; Miss Dana Seetahal, another vibrant attorney-at-law who has really been making significant contributions in our legal system; also, Mr. Hendrickson Seunath; Ms. Hermian Smart; Mr. Everald Snaggs.

As you would know, the police service is now playing a very active role in the matter of domestic violence, and with the introduction of community policing, they have really been making a significant contribution.

We have Mrs. Hazel Thompson-Ahye, an attorney-at-law who has been at the forefront whether it is with legal aid or domestic violence, and who I know would have been a tutor to the hon. Minister of Legal Affairs. I do not know if she was around at that time, but I certainly had the benefit of being tutored by Mrs. Ahye at the Hugh Wooding Law School and I must say, hats off to her for her contributions. We have Ms. Arlene Valere; Ms. Kathleen Weekes and Ms. Halcyon Yorke-Young.

Mr. Vice-President, on page 27 of this report there is in fact, a recommendation which says:

- “2. That the Legal Aid and Advice Act, Chap. 7:07 be amended to entertain applications from parties to domestic violence actions.”

So it is very significant indeed that this Bill is incorporating this recommendation. When I look at this report, I notice that in paragraph 3 of this document on page 27 says that the committee also recognizes:

- “3. The immediate establishment of a Family Court, in the initial stages in three areas, Port of Spain, San Fernando and Tobago, and thereafter in various magisterial districts as are justified, with attention given to the suitability of the judicial officers who are to preside in such courts.”

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I have referred to this issue of the Family Court because for sometime we have been hearing talk about the Family Court, and in doing some research on this matter, I came across some newspaper articles. Just for the record, I would refer to the *Sunday Express* of June 30, 1996 on page 3 where the headline is: "Special court for families" and this newspaper article is quoting the Minister of Legal Affairs who was speaking at a mediation graduation course at the Hugh Wooding Law School when it was said:

"...Persad-Bissessar expressed government's commitment to setting up such a court system.

Provision for such a court has been made in the 1995 Family Court Bill which is to be the subject of further consultation before being laid in Parliament.

The Family Court, for which Government has already set aside \$800,000, she explained, will be equivalent to the High Court and magistrates' court, but is expected to reduce delays and the inconvenience now experienced by families in the present system.

It will be set up in a building of its own."

She goes on:

"The purpose of the court would be to create a guardian whose duty it would be to represent children in any family proceedings, and to develop a specialist group of magistrates, judges, practitioners and social service providers to staff the court who would work from 'a common philosophy about the family'.

The court will also provide protection, assistance to families, care and education of the dependant, counselling, legal aid advice, probation, public assistance, health and social welfare services and foster care."

Mr. Vice-President, having read this extract from that newspaper article, I saw another article on page 3 of the *Trinidad Guardian* of April 14, 1997; the one from which I just quoted was June, 1996. We now go to April, 1997 which has the headline "Family Court within a year promises Maharaj". Francis Joseph is quoting the Attorney General, Ramesh Lawrence Maharaj. It says:

"Attorney General Ramesh Lawrence Maharaj admitted yesterday that he was in the process of reforming family law and when he has had a good look, the concept of a Family Court would become a reality."

The article goes on:

“Among those calling for such a court were former Anglican Bishop Clive Abdullah and attorney Hazel Thompson-Ahye, Director of the Legal Aid Clinic at the Hugh Wooding Law School.

The AG added: ‘Legislation is being looked at. We are committed to the principles, but we do not want to just set up courts without having the necessary infrastructure. The whole question of family law has to be reformed in order to make it non-adversarial’.

Maharaj continued: ‘The Family Court is not just a building, you could have a new building, but remain with the old law. You need to reform family law. I am in the process of reforming it and within the next year, there would be such a court’.

Thompson-Ahye, who has been campaigning for a Family Court for years asked, ‘as we move towards the 21st century shouldn’t we cease talking about the establishment of a Family Court and get on with the job?’”

### **11.05 a.m**

Let me just quote another clipping, dated June 13, 1998 and the headline here—from the *Guardian* where the hon. Minister of Legal Affairs Kamla Persad Bissessar said:

“The family court is coming. Reference was made to a Committee that Mrs Bissessar is chairing that involves the Minister of Social Development as well Mr. Manohar Ramsaran.

I have made mention of these newspapers clippings, for the simple reason that since this Government has come into power, we have been hearing promises of the Family Court, and we are wondering when is the Family Court really going to come. Is the hon. Attorney General the one who is spearheading it, or is it the Minister of Legal Affairs?

I think it is important for us to appreciate the importance of a Family Court, to have an idea of the concept of a Family Court. If we were to go back a bit we would see that the origin of the idea of a Family Court in Trinidad and Tobago really started as far back as 1979. I know it has been years since there has been talk about this Family Court, and just for the record, you know just to put things in chronological order I am going to refer to some dates and events:

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In 1979, the then Chairman of the Law Reform Commission, Dr. Edwin Watkins, promoted the idea of a Family Court for Trinidad and Tobago.

In 1982, you had the Law Commission drafting the first Family Court Bill.

In 1985, the former Attorney General, Mr Russell Martineau, publicly disclosed that he would be devoting time towards making progress, on the establishment of a Family Court, and, in fact, a Family Court Bill—I see the hon. Minister laughing about the references I am making, but it is important to look at the sequence of events.

In 1985, the then administration did in fact introduce a Bill in Parliament for the establishment of a Family Court. It just so happened as history would have it recorded, the Government changed in 1986, and a revised Bill was submitted to the then Attorney General, the late Mr. Selwyn Richardson, in 1989.

In 1995, another Bill was submitted to our colleague, the former Attorney General Mr. Keith Sobion and, of course, as history would have it recorded again, the Government changed in 1995.

So we have a situation now where the present administration has committed itself to the establishment of the Family Court.

My recollection of the matter is that the building right across the road, on Knox Street, next to the Ministry of National Security, was going to be remodelled in such a way to house the Family Court, as a kind of one stop shop, where in all matters pertaining to family life, you would be able to go to this particular court, and where a number of support services would be made available, counselling and so forth. I would just like for the hon. Minister of Legal Affairs to tell us something about the status of the establishment of this Family Court. It is a much needed court, and we certainly hope that before they demit office, this will become a reality. I see Mr. Kelvin Ramnath smiling.

You know, Mr. Vice-President, since the turn of the century in the United States of America, you have had a Family Court being established in America. Japan, since 1949 established a Family Court and Japan, perhaps, is the one country that has the broadest system involving a Family Court.

In Australia, in 1975, a Family Court was set up.

In Jamaica—right here in the Caribbean—in 1975, a Family Court was established; New Zealand in 1980; Belize in 1990; St. Vincent in 1992. And you know, I think it is important that we take note of the fact, that some of our own attorneys at law from Trinidad and Tobago have in fact been making a significant contribution in the Family Courts, in the other parts of the Caribbean.

I want to make special mention of a present magistrate, Miss Deborah Felix who has spent some time working in another jurisdiction assisting with their legal system and Family Courts there.

So that, Mr. Vice-President, the idea of a Family Court is that you will have emphasis being placed on the support services that are being needed: counselling, mediation, conciliation all these were important matters that have been raised in this debate that has been going on for the past couple of weeks.

I remember my colleague, Sen. Yuille Williams, spoke at length about the system of mediation and counselling, and the hon. Minister herself, in referring to clause 8, made reference to what is known throughout our country as the “panchayat” system, and I can tell you Mr. Vice-President, I came from a background where the “panchayat” system is very much alive, and it has in fact been working in terms of resolving a number of issues that could become contentious and really tackling the problems that may arise in a family or in a community from time to time. I know that the move in our legal system in recent times, has been to encourage such a system because it is part of the whole process of what today we hear talk about, alternative dispute resolution. It is a very economic way of dealing with disputes in our society, and I would hope that more and more people would continue with this “panchayat” system.

I can speak from personal experiences in my own practice. If a client comes to me and it is a family matter, I would exhaust all options first, before resorting to taking any legal action. Be it custody of children, or some maintenance matter or what have you. Very often the parties involved in such a dispute just need a little forum, they need an opportunity to ventilate some of their frustration, and in that way, when you hear the story on both sides, some kind of amicable resolution can be arrived at. I know that very many other practitioners do it.

We know, however, that in very extreme situations, especially when dealing with domestic violence matters, one of the things that is, in fact, needed, is counsellors to be able to assist in dealing with battered persons, issues involving battered spouses and so forth. It is such a delicate matter. When you are a victim

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of domestic violence, very often, you do not want your family life to break up; all you want is for the violence to stop, and very often the party who is inflicting the blows, is somebody who may need help. It could be man or woman, they need help. And this is why it is so important that you have trained people, who can in fact contribute and work as counsellors. But you know, in districts and villages and so forth, you could have “counsellors” and have “counsellors” because there are some people—I mean, if you are dealing with counselling services, certainly one would expect that there will be a measure of privacy and, you know, it would be a situation where you will have some little diplomacy in the way in which you deal with matters.

So I want to take this opportunity, Mr. Vice-President, to commend the number of NGOs, our churches, and the different groups, individuals and organizations all over this country that have in fact been offering some kind or social services along this line, in terms of counselling services and so forth. There are very many individuals and organizations who are engaged in this.

**11.15 a.m.**

Mr. Vice-President, when we look at some other aspects of the Bill, we know that the main purpose of this Bill today is to amend the Legal Aid Act, and the whole thrust is to make legal aid more readily accessible and available to those persons who are really in need of help, but I think it is important that we refer, as well, to the purpose of legal aid in the first place. The preamble of the 1976 Act states that the purpose of the Act is 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 and/or advice granted to persons to be defrayed wholly or partly out of moneys provided by Parliament.

We have heard a lot of talk about the economic aspects of these amendments, and I have to agree with Sen. Martin Daly who, on the last occasion, put the whole issue in context when he highlighted the fact that the bottom line has to do with money. My colleague, Sen. Montano, just spoke for a few minutes on this issue as well: the cost of implementing these provisions. Mr. Vice-President, the fact that we are here to deal with amendments to the Act is an indication that there have been problems associated over the years with the implementation of the 1976 Act, and I know there are many administrative problems.



I can speak with some authority when I refer to the fact that over the years, a number of lawyers have expressed very serious concerns about the system. The position is that for an efficient system of legal aid to operate, one needs the services of lawyers. There are many attorneys-at-law in this country who give of their time freely and have been providing legal aid unofficially—and, indeed, there are several others who do it officially through the legal aid system—and we must commend them for their efforts over the years. Just recently, I was in the Arima Magistrate's Court and a very senior practitioner in that court was telling me about the problems that occur, and no wonder we have this problem with the backlog of cases and cases having to be adjourned, because sometimes an attorney-at-law may be appointed to be an attorney in a particular matter, and if the attorney is based in Port of Spain, it may be difficult for him to get to the Arima court in time to deal with that particular matter, and the other attorneys would have to adjourn the matter. These are very real problems.

The bottom line, as I mentioned just now, has been in terms of the level of remuneration. The hon. Minister made mention of this. It is really outdated. Certainly, in criminal matters, in particular, the remuneration that is offered does not cater for several aspects that are involved in the successful completion of a criminal case. It does not cater for out-of-pocket expenses, like if one has to visit the scene of the crime or the prisons, or to locate and interview witnesses. These are very basic amenities.

Again, I was fortunate to come across a newspaper clipping in the *TnT Mirror* published on February 8, 1998 at page 5. It refers to a meeting that was held last year when a group of attorneys-at-law visited the Attorney General to discuss this whole situation or crisis that was existing at that time with respect to the legal aid services. Senators would remember that not too long ago, lawyers associated with legal aid were virtually on the verge of packing up and saying they were not going to render services anymore, because of the problems they had been having.

The attorneys met with the Attorney General and presented him with a letter laying out all the problems, and this article refers to the various problems that were highlighted. What was the response of the Attorney General? Instead of attempting to deal with the crisis, the Attorney General, in fact, threatened the group of lawyers from the Criminal Bar Association of Trinidad and Tobago. Present were the President of the Criminal Bar Association, Mr. Theodore Guerra, Mr. Subhas Panday, a former Member of Parliament with the United National

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Congress, and a panel of other attorneys who went to the Attorney General's office. Listen to what is reported in this article:

“Panday declared: ‘It seems to me, in these circumstances, that the AG is trying to make the issue of Legal Aid a political football...’

‘Ramesh must tell the country how he’s setting up the system to apply limited resources to competing forces.

I want him to tell the public how much he has paid a certain State prosecutor in legal matters so far.

And how much did he pay Queen's Counsel...”

in a particular case?

“‘What was so complex...case that a local senior counsel couldn’t do it?

It was a local senior counsel who did the preliminary inquiry in the magistrate’s court.

‘He doesn’t want to pay lawyers to defend people under the Legal Aid system, but it seems to me that certain people are getting paid very well.’

An irate Panday charged: “Ramesh is spending any amount on behalf of the prosecution and suffering and denying people the right to proper representation in their defence.

‘He wants to break people's necks and not give them adequate representation.’”

Mr. Vice-President, this is a very serious indictment on the way this whole situation involving legal aid in this country is being dealt with, because the attorneys have a genuine cause for complaint, and this is the kind of reaction they got from the Attorney General. It is for this reason that I am being so very kind to the Hon. Minister of Legal Affairs, because we must commend her for being able to bring this Bill to Parliament which, in fact, seeks to adjust the level of remuneration that would be offered to attorneys who have to be involved in the system.

The whole philosophy behind legal aid is to make it readily available to persons of small means, and this is why we need access to competent, good quality legal representation, because we know that in our criminal system there is a basic principle that underlies everything in the criminal justice system. A man charged

with a criminal offence has a right to be presumed innocent until proven guilty. That is a very fundamental principle. Sen. Daly is quite correct. We need to increase the incentives to attract quality representation to assist persons who are in need of representation.

I take this opportunity to commend the hard-working members, and indeed, the staff at the Legal Aid Authority and also, the Legal Aid Clinic. The Hon. Minister of Legal Affairs would remember that as a student at the Hugh Wooding Law School, one of the compulsory parts of the curriculum was to attend the Legal Aid Clinic at least once a week, and that has indeed been a very useful avenue whereby, as students about to enter the legal system, they are able to go into the clinic and render yeoman service to persons who are genuinely in need of legal assistance. In that way, they get experience, and at the same time, they are doing it under supervision, so it has been a sort of training ground while, at the same time, they are able to prepare briefs, do a lot of research work, prepare things like wills and do some preliminary work. It was a very useful experience.

What we find happening is that when an attorney-at-law is now admitted to practice, in the early stages of his career and in his practice, one would find that he would seek to get himself on the panel of attorneys with the Legal Aid Authority. But, after being in the profession for a year or two, and as his practice builds up, he would have less need for that, and less time to deal with matters, because he becomes so consumed in all the other matters. It would become difficult, and that is why if they offer the right incentives, they would be able to attract representation of a certain type and at a certain level whilst, at the same time, still have access, through the Legal Aid Clinic, to a sort of representation that would certainly redound to the benefit of citizens in this country who are really in need of help.

I am very pleased to note that in the Bill itself, we are seeing where provisions are made to extend those areas whereby legal aid will be made available, particularly in terms of estate matters, in obtaining grants of letters of administration and probate. It may affect the small practitioner, but nonetheless, it is very good and useful, because this is something that touches upon the day-to-day lives of so many people in our country.

Mr. Vice-President, in recent times, there has been a lot of discussion taking place, and to some extent, some contention, about the new rules of civil procedure and practice that are being laid in the Parliament. I know that over the last few months, many things have been happening, but I distinctly remember a few months ago, reading the comments of a very prominent and distinguished attorney-at-law

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who was remarking that in introducing new rules of civil procedure and practice—and especially, the basis of the rules that are being dealt with at present—it is premised on the operations of an efficient legal aid system.

**Mr. Vice-President:** The speaking time of the Hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. M. Jagmohan*]

*Question put and agreed to.*

**Sen. N. Mohammed:** Mr. President, I am about to end my contribution, but I just wanted to make mention of this fact, because it has been very topical in recent times. If they want to introduce these new rules which we know seems to be an importation lock, stock and barrel from other jurisdictions where their systems are certainly more developed and more advanced than ours, this is certainly a step in that direction in terms of improving the system of legal aid.

I say it is a step in that direction, because here it is in the legislation we are seeking to expand the system, improve it and deal with some of the deficiencies that have arisen over the years, but I simply want to reiterate the point that has been made on our side and, indeed, on the side of the Independent Benches, that for this to really work—and it is a point I have always made when dealing with these kinds of legislation—the crux of the matter depends on the implementation of it, and for this they need money.

I know the Hon. Minister of Legal Affairs would have a far better relationship with the Minister of Finance and would be able to use her influence on him to get him to ensure that in terms of the implementation of this piece of legislation, there will be sufficient resources that will be able to filter through the system and, in that way, make legal aid truly accessible and available to those persons who are really in need. We know that the poverty level in our country has been rising, and there are many people who are genuinely in need of help. To be successful, we want to see the allocation of resources. We want to see the establishment of the family court so that all of these support systems would come into place.

**11.30 a.m.**

When we see the squandamania taking place in other respects, all we are asking is that you take back some money, maybe from the airport or elsewhere and try and direct it towards this legal aid system. A lot of money is going to be pumped into Chaguaramas soon, but let us get our priorities right. It is all well and

good to talk about equality and justice, but if you are truly committed to social justice—I am sure the hon. Minister has a social conscious in terms of her private practice. I know that coming from Siparia, would be very familiar with the problems that are involved in the system.

I omitted to mention the provision in this Bill that sought to broaden the base of representation. I think it is clause 4 or 5 of the Bill that seeks to have representation on the basis of location. It is a very commendable move and we certainly would like to urge the hon. Minister to do whatever she can within her powers, to influence her colleagues to please direct some of the resources which are becoming more and more scarce, as we see the downturn that is taking place in our economy—to try to get some of these resources and really direct it to the Legal Aid Scheme which we have in our country. I thank you for this opportunity to speak on this Bill.

**Sen. Diana Mahabir-Wyatt:** Mr. Vice-President, I know that all matters that come before this hon. House are deemed to be important, but as George Orwell said in his *Animal Farm*—it was the head of the barn-yard that said;

“All animals are created equal but some animals are created more equal than others.”

I happen to think that this particular issue before us today is more equal than others and is more important than many other issues that come before us. Really, I think because it affects the lives of so many people in the country, and so many people who otherwise would have no help and no hope of ever seeing justice—

I remember once, many years ago, someone who was very cynical said to me—when I got very angry about the injustice in a particular case which involved murder—it was a death penalty case: I am not going into the details. I do not have as much time as I would like to have today; but I remember him saying to me; “What you have to remember is that justice is like the Hilton Hotel: anybody who can afford it can get it.” It was a very cynical comment, but in a way it was very true, because unless we have a system which provides legal aid for those who cannot afford the Hilton Hotel, they are not going to get that quality of help. or justice.

Mr. Vice-President, I must say that I am very proud to live in a country where, over the years, efforts have been made, seriously, to provide legal aid to those who cannot afford it and to make sure that this assistance is available on a systematized basis.

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I think that this is not the first time we have had attempts to change the Legal Aid Act. References have been made to this by Sen. Mohammed and by the hon. Minister. I am not going to go back through them. I just want to say how very glad I am that this has come before us again today. I commend the Minister with all the force I have, for bringing the Bill before us today and in the form in which it has been brought.

The deficiencies in the previous Act have been well-recorded in the Minister's brilliant address. I would not even try to go back over that, because I do not think that there is anybody who can match that particular address with which she introduced this Bill. I think it is one of the best addresses that I have ever heard in this House. I congratulate, not only the Minister, but Miss Robarts and the other people in her Ministry who worked on this address, for their research. I think also for the genuine concern and the welfare of those of us—it could be any of us any day who may need to use the services of the Legal Aid Authority. The fortune takes us up and takes us down. For those who have a bit of authority and influence at any one time to think about the welfare of those who do not, is a kind of important justice, because any of us could be at the other end at any time. I commend the Minister.

There are 10 specific comments that I wish to make on the address made by the Minister. I will try to do it as succinctly as I can so as not to extend the time before lunch when people are suffering through debates. The first one has to do with the comment which she made about the extension of the Legal Aid Act to domestic violence. She said that she hoped it would lead to a reduction in the number of pointless murders and battering of innocent women and children. Someone commented in the course of the debate, I forgot who, that they did not understand how this could be done, but they wished her good luck.

I am not going to make a long discourse about the addition of domestic violence to the Act. I think that the point has been well-covered and there is no point in me repeating over and over again the stance that I have repeated over 20-odd years in relation to domestic violence. I want to say that when we get to the Domestic Violence Act and the amendments, which I certainly hope will be before us within this legislative term, that I am overjoyed that we have added domestic violence coverage to this Act. For those who have doubts that this is going to help reduce the number of pointless murders and battering of innocent women and children—can I just point out that most cases of battering and domestic violence never reach the courts. They do not reach the courts because the Protection Order

alone is not enough. Very often the matters have to go to court and because women who are battered tend to be poorly off and have to support their children and themselves just to survive—they do not have the money to pay lawyers—these crimes go unpunished. Mr. Vice-President, they are crimes. The fact that they will now be prosecuted, I think, will make a big difference. I commend the work that has been done over the years in the area of domestic violence, generally, outside of the official legal aid system. I know that the name “Mrs. Hazel Thompson-Ahye” has been called several times in this debate, and I commend her for the years of service that she has given to helping women in situations like this.

I am grateful for those of you who have commended me for my involvement in domestic violence. I would like rather, to commend those who have been working in recent years to expand this. When I first started, I think it was Radica Saith and I who started the Half-way House in South, and now we have five homes for battered women and children. We have 23 homes, I believe, for children who have been abandoned or abused, and five where battered women can go. I am so happy to see the Medina House which was started up over the weekend. I note, just as I got into Parliament today, that I got an invitation to Brighton, to the opening of another one—the Hope Shelter for Battered Women and Children, which would be opened—at least turning of the sod—by Mrs. Panday on Monday, March 08, 1999. The fact that we will now have seven homes for battered women is just an indication of how desperately these are needed, and how many years we have gone without and how many people have suffered as a result of having nowhere to go. I was very touched by Sen. Mohammed’s poem.

The second point which I wish to make has to do with a comment made by the hon. Minister, talking about increasing of the levels of fees paid to attorneys to ensure that more and better lawyers would be available to all.

I want to spend just a few minutes on the point of the quality of representation which we have had in the past. Someone on the first day of the debate commented on—I think it was Sen. Mc Kenzie—a student just out of university, or still in university, probably just out, representing someone in court. It was not Sen. Mc Kenzie, I beg your pardon—Sen. Williams.

**11.40 a.m.**

The point is that for far too long the representation of the quality of lawyers who practised through Legal Aid has been very uneven. I have spoken before in this Senate of the case of a woman called Indravani Pamela Ramjattan who was

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convicted of murder following eight years of vicious domestic abuse and battering. The murder was, in fact, committed by two other people, but she was convicted of murder as an accomplice to the murder. This case has been reported all over the world.

I have reports from the *Los Angeles Times* and from the *New York Times*. I have one in front of me from the *Los Angeles Times* of Wednesday, January 27, 1999. The reason it was reported was because this case, eventually, has reached the Privy Council and the world press and the entire world is now aware of the fact that the quality of representation which people like Indravani Ramjattan have had in the past from Legal Aid in Trinidad and Tobago has been rather poor. I quote from this particular article which said:

“In fact, Ramjattan’s lawyers...”

who were Legal Aid lawyers—

“chose not to present evidence of her years of abuse at her 1995 trial. Rather, it was the prosecution that used the abuse to reinforce the argument that Ramjattan had a strong motive to murder her husband.

Her lawyers also chose not to focus on the abuse in her first appeal to the Privy Council, which declined to hear the case two years ago despite acknowledging that she had suffered years of abuse that the panel called ‘a reign of the terror’.”

The reason it has come up, of course, is because the Privy Council, in a history-making judgment last month returned this case to the courts of Trinidad and Tobago and told them to look at it again, taking into account the issue of domestic violence.

The advocates against domestic violence and for the protection of women against domestic violence in Trinidad and Tobago have been fighting for this to happen for months and months. The fact that it has happened means that women all over the Commonwealth who have been victims of domestic violence and got themselves into similar situations, will now have domestic violence taken into account. That this has come as a result of a case in Trinidad and Tobago makes me very proud.

I am sure, in the future, because domestic violence cases have been added to the list of those that are passable for legal aid, that we will not have this kind of thing taking place.



What I am really concerned about is the quality of representation that we have had in the past and, with the greatest of respect, to the quality of representation which is often available, generally, in cases where poor people are involved, especially poor women, but not just poor women. I remember a quotation from Voltaire who said, "I was bankrupted twice; once when I lost a lawsuit and once when I won one", and I have a feeling that sometimes in Trinidad and Tobago, one gets the feeling that the judicial system does not operate to serve the people who need to use it, but the practitioners.

Mr. Vice-President, sometimes when I speak in the Senate, I am afraid. It is not that I am afraid of what I am about to say and the criticism I will get for saying what I am about to say, because by now, if I had not become accustomed to that, I should not be here. But I am afraid that I am just not eloquent enough; I do not have the ability to persuade enough, or to argue enough, to make a difference in something that is so important, that is as important as the quality of legal representation that people get in this country.

I just quoted an instance of a case that went but did not get the help it should have got insofar as legal aid is concerned. I have got piles of cases here that people refer to me all the time, from poor people, poor women, elderly people, poor men, too. As I said, it could be any of us. These are cases where—and I will not call names because I do not want to abuse parliamentary privilege—poor people have paid attorneys large sums to appear in court to defend or to handle a case for them. The money has been given.

In this case, the lawyer appeared, accepted the sum of \$7,000 to appear in a custody matter and when the person is a poor women dealing with a custody matter which has to do with her children, this is life and death, perhaps more than life and death for a women. The gentlemen concerned made a guest appearance once for 15 minutes and never appeared again in court, although the case was called over and over again. So the woman involved had to get another advocate. The first one was from San Fernando; the second one was from Port of Spain and because she is very poor, she referred the matter to the Legal Association, Disciplinary Committee. Is that the correct name?

**Sen. Daly:** Law Association.

**Sen. D. Mahabir-Wyatt:** Law Association, Disciplinary Committee, but the Disciplinary Committee dismissed the complaint without comment.

Another instance, again of a single parent, a woman with a young daughter. In this case, she says that she is now paying her fourth attorney, having been swindled by the first one, whose name I will not mention, of Harris Promenade, San Fernando; the second one, a different name of Harris Promenade, San Fernando; the third one from Port of Spain; she went through the fourth lawyer and ended up representing herself, after having paid money to each of them. She represented herself and now has a judgment in her favour. But she also reported her case to the Disciplinary Committee and it was dismissed.

I have others, Mr. Vice-President, but I do not want to go through these one after the other. I just wonder what has happened to the professional standards of a profession which should be an honourable and admired one. I am not saying that members of the legal profession are not honourable people. There are a number of them here in this Senate today and we all know that the majority of people who are in that profession are honourable people, but I wonder if the Minister can comment about whether there is any relationship between the Legal Aid Authority and the Disciplinary Committee of the Law Association. Is there any way in which the Minister of Legal Affairs can lend any authority to having people in the profession do something to those of their own profession who betray the trust of the public, who take their pittance and not even give them a room at the Hilton Hotel, do not even give them a meal at a guest house?

It seems to me that the quality of representation which people get in this country is something which needs to be looked at very seriously and I do not know how to put this into words that will make enough of a difference for anyone to do something about it. If they were doctors, they would be brought before the Medical Board; they would be disciplined. I do not know if anybody has ever been debarred on fraud, whatever it is the Law Association does, when people cheat their clients and just move away; but there is case after case.

I beg the hon. Minister, because she is a member of the honourable profession, to use her good office as an influence to do something, because it is in the same spirit with which she brought this Bill before the Senate today.

The third point I mention has to do with the whole issue of alternative dispute resolutions. I have problems with this. I agree with Sen. Mohammed and with the hon. Minister that mediation in domestic violence cases can be very effective, and I agree entirely that in most cases, victims of domestic violence do not want to break up the household. All they want to do is stop the domestic violence from happening and if mediation can help this, then I am all for it.

But, in domestic violence cases, where there is one person who is very much stronger than another and there is another person who has been battered, bruised and abused, sometimes for years, to the point where that person gets into a kind of psychological paralysis where that person is so frightened of the abuser that the person does not know how to counter the abuser, the person cannot psychologically counter the abuser.

When they are put in a mediation situation where it is proposed that the people come to an agreement, the one who has been abused can be so traumatized just by the sight of the other person, and while the mediator is not there to make a decision or push them in either direction, the traumatized person can very easily, simply because of psychological paralysis, the concept of learned helplessness, will lead that person, perhaps, to go back into the situation the person does not want to go back into.

There is a *de facto* inequality before the law when it comes to domestic violence cases and mediation and when there is one person who is more powerful physically, economically, politically and socially than the other, the question of mediation has to be looked at very, very carefully. If one can afford a Martin Daly to represent him at the mediation procedures and the other can only get someone from the Legal Aid Authority who has been out of school for a year, an inexperienced “newby”, if you would like, one has to be extremely careful about the application of mediation in domestic violence cases.

This brings me to my fourth point which has to do with one to which the Minister also referred. I was very pleased that she did refer to it. That has to do with programmes which she proposes under this Bill. One of those programmes which she proposes is that legal officers should be employed by authorities in Magistrates’ Courts and they will be there to give advice to people who do not know what to say when they have to come for consent orders.

I make a special plea for a system of training for everybody who is involved in legal aid in the Magistrates’ Courts and the Judiciary, generally, to deal with matters of domestic violence. We have seen over and over again that the Judiciary in this country and in other countries have no concept of the domestic violence syndrome.

**11.55 a.m.**

Even the people who have to deal with it like doctors and very often lawyers do not understand that there is a cycle, a domestic violence cycle, which goes from

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a battering situation to what is called the manipulative situation which is characterised by "I am so sorry. I do not know why I did it. I love you. I will never do it again. I must have been drunk. Forgive me. You know I love you," and then goes on to the third stage which is the tension building stage which moves on again to another incidence of violence, and the cycle goes on and on and on.

And very often magistrates get fed up because somebody reports the domestic violence incident, it goes to court and then the woman withdraws the case and they do not understand that they withdraw it because they are in the middle of that manipulative phase where they want to believe it will never happen again but, you know, after 15 times of being told, "I promise I will never do it again. I am sorry. I do not know what got into me. Something just comes over me. Forgive me," magistrates just get fed up because women keep forgiving and going back. But this is part of the cycle and it has to be understood because on the sixteenth and seventeenth time she could be killed and very often is.

The other thing which people need training in is how to identify and understand domestic violence trauma syndrome. We had an enormous amount of difficulty, even just getting the international forensic expert, who is perhaps the world's expert on domestic violence trauma syndrome, to be able to talk to Pamela Ramjattan and in fact in the end he had to interview her through an intermediary because the ability for him to come into the country, because they said he would be practising medicine which he was not, it was just a diagnosis. Everything was made so difficult for him, but it was on his evidence that the Privy Council accepted that she had been subject to domestic violence trauma syndrome.

It is a scientific opinion and there are pages and pages of evidence as to what you see in this, but in our courts people do not know about that. But what I am making a special plea for is that we get professional training for people who are involved in the mediation, the alternative dispute resolution system, in the legal aid, in the magistracy, in the judiciary generally on how to deal with these situations so we are not going to be in future embarrassed before the whole world by not understanding a basic thing about domestic violence so that murder cases go wrong. And I beg the Minister of Legal Affairs to add this into her programmes of public education.

I specifically again want to commend her for bringing up the point about public education. She mentioned the fact that most people in this country do not know what their legal rights are, and this is a fact. And I would beg her in her programme, not just going around the country to talk to groups, but also to

consider a radio call-in programme. What we have discovered is that in remote areas of Trinidad and Tobago where people often run into legal problems, and I am not talking just domestic violence now, I am also talking about dealing with the elderly and wills and legacies and motor accidents, where people have no idea what their rights are. They do not have, very often, access to newspapers, they may not have access to even TV, but radio programmes, call-in programmes, are some of the most popular activities that people throughout Trinidad and Tobago have discovered. They will listen to them long into the night and you can reach people that way. People in the most remote districts have got a radio or someone who listens to it and talks to them about it and if that could be one of the things that could be considered I think it would be a great advantage.

The other one has to do with the recent move by this Government to put computers in community centres all over the country. If we can get a programme via E-mail, sort of distance learning, but it is E-mail really but on a continuous basis, in the community centres, a question and answer programme about legal rights and just wired into Legal Aid where someone in Legal Aid who can answer, I mean asynchronously, I do not mean as soon as they ask it, but E-mail the question and then they can get an answer the next day, this again would help and it would expand the knowledge of what human rights are in this country.

The other suggestion I have, has to do with legal hot lines and advice, at least that the legal aid organizations can man to give people advice as to where to go and what to do and where to look for help. The programme to put the legal officers in the magistrates' courts and in the high courts could be one of the answers for many people who need that kind of help. This is something I think that we have to try to understand, the frustrations of being, as she said, out in the countryside, of being poor and uneducated in the law. It puts an unbelievable strain on people who want to be able to defend themselves and their families but do not know how to do it. It is that kind of frustration and strain that can come out in unhealthy ways within the family and within the community and domestic violence of course is one of these, with drugs and crime and others. I think that when this training is taking place if we can educate people not just into the direct causes of crime but the social and environmental causes that underlie it, perhaps it will make the mediation more effective, it may make our whole approach more effective.

Just one brief point; the Minister commented on the need for a probation officer's report to be obtained on liens. I am so glad that has been removed because, amongst other things, the probation officers are under so much strain.

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They do a marvellous job in this country and it is unheralded and unthanked but they have far too much to do and it is unfair to put that extra strain on them and I am glad to see that that has been removed.

The other point which she made about being able to—they were clogging up the list because of the means test, having to go back and forth in the court of summary jurisdiction, *et cetera*. The amendment she said would introduce into the magistrate's court a system similar to what happens in the Assizes whereby reporting on liens is only required if the magistrates order it. That, I think, is a definite advantage and a step forward in the right direction.

I appeal again, if I can, for an annual refresher. I think it should be annual refresher courses for magistrates in dealing with these kinds of cases because I think that without annual refreshers—in some countries do you not have to get an annual refresher to keep your licence, like dentists? You do not have to get an annual refresher, you just have to reapply. But I know in many countries just to keep a licence, for example, as a social worker or a psychiatric practitioner you have to upgrade at least once a year. I suppose that would be terribly unpopular to suggest that it has anything to do with the legal system of Trinidad so I will skip that one. [*Interruption*] Yes, yes, we have to be careful about the service commissions so I will come to that at another time.

Mr. Vice-President, just a few more points that I wish to make and one has to do with including for the first time matters dealing with children and minors in the legal aid system and here again I pause because I am almost without words.

One of the appeals which I wish to make to the Ministry of Legal Affairs and to the Government as a whole is to do something about the Children Act. The Children Act which we have in Trinidad and Tobago was originally passed in 1922. It has been revised since. It was revised, I think, in 1976. But three times since then it has come up or twice it has come up to the Senate, since I have been in the Senate anyway, for amendment and every time it gets referred to a joint select committee and somewhere it gets lost. At the moment we need amendments to the Children Act. We desperately need amendments to the Children Act.

There is no provision in the Act at the moment where children who are perceived to be at risk can be taken to a place of safety and, Mr. Vice-President, there are so many cases of children who are at risk. I get calls virtually every week from people who are begging that the Coalition Against Domestic Violence help them to find some way to help children. One case came in last week of an eight-

year-old child who was adopted by a couple in—well it does not matter where—a particular area in Trinidad. The eight-year-old child was being abused by the adopted parents. When the neighbours called the Adoption Board it simply said, “Well the child is already adopted. It is out of our jurisdiction. We cannot do anything about it.”

The neighbours have tried calling everybody they know but there is no authority under the Children Act or anyone to take this child to a place of safety. They hear the child screaming night after night after night as it is being beaten. They could hear the sound of the blows from next door. They see the child locked in the house for 12, 14, 18 hours at a time, banging its head against the door and against the window and there is no way to get to that child legally to help it. We need amendments to the Children Act.

Mr. Vice-President, I have a letter here from the women's prison, Golden Grove Road, Arouca from a woman who said that she had a very hard childhood because both of her parents were drug addicts and are still drug addicts so she was left with all the responsibility of the household at the age of 12, and around that age a gentleman, a young man, came by and offered to help her, got her pregnant but did provide some food and enough money to help her finish school.

Now this child, who was 12 years old at the time, there is no provision in the Children Act for anybody to help this child through what must have been a terrible childhood. At the age of 17, having gone from one boyfriend to another, she ended up in a situation which has been very well publicized in all the papers. Her name is Natasha DeLeon. She is on death row for murder, for a particularly brutal murder, which was committed. But Mr. Vice-President, it never should have got to that. Had we had legislation and enforcement of the Children Act, that child would have been picked up at the age of 12 and taken to a place of safety where she would have learned values, she would have learned that there were people who cared. But when you grow up in a totally brutalized situation you become brutalized yourself and until we have—well, we now do have provision under legal aid for cases involving children to get that legal aid. I think it is even more important that we extend the coverage for protection through the Children Act.

One last point or one last point before the last point, and that has to do with the Minister's commendation of lawyers who have not worked for phenomenal fees over the years under the legal aid scheme. I would like to add my commendation to those people. I would also like to mention, Mr. Vice-President, that there are many lawyers in this country—and I am sure Sen. Daly is one of them, as I am

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sure that Sen. Mohammed is one of them—who, outside the legal aid scheme, for years have been giving free help to people in cases where they feel strongly that this is needed; People like Christopher Hamel-Smith, Reggie Hammer, Betty Mendes and Roberta Flak who put hours and hours of work in because they believe in a particular cause. Whether you agree with them or not is beside the point.

The thing is that there are many lawyers in this country or many fraternities who give free time and even pay some of the legal costs for their clients because they believe in the system, as there are in other professions: doctors, dentists and so on, and it is all so wonderful.

**12.10 p.m.**

I would like to add my endorsement—for what it is worth—to the Minister asking that other lawyers who do not do this kind of *pro bono* work at the moment, to become part of the system to help those who are less fortunate than they are. I think that we should, in fact, recognize this by some sort of system of national honours for those prominent attorneys and lawyers who have given of their time, energy and their firm's resources to helping those who are without help and cannot afford the provisions, even sometimes of the legal aid.

Mr. Vice-President, even if a person does receive an income of \$900, after tax, per month or less, and is now within the legal aid limits, after the eligible deductions—if you are a woman with five children to bring up and your income is \$900 a month, you have got to send children to school, buy school uniforms, books, food and pay transport to get them to and from school—you are not going to have \$900 a month left. Even the additional qualifications, which I am very glad to know are there, are still going to leave some people outside the pail. I am hoping that we could persuade some more of our brothers and sisters in law to give their assistance for free in cases which do not fall under the legal aid qualifications.

The last point I would bring up has to do with old age pensioners. The abuses of old age pensioners particularly when it comes to letters of administration and grants of probate, have been legendary in this country for many years. I once again commend the Minister of Legal Affairs and the Government generally, for making this provision, to look after the elderly, because up until now the anguish they go through—and they, apart from children, I think are the most helpless and voiceless in the society—is unspeakable. Now that there can be assistance via legal aid is something great.



In closing, I would first comment on one issue and that has to do with the point about money. Of course, I agree you need to have money in order to run a system like this, but in a way it is like saying you should not get married unless you have got the money—I hear that a lot too—that you must have enough money to get married. It is not the intention that matters, you must have enough money to make sure you can buy a stove, fridge or whatever.

We may not have the money to run this whole legal system the way we would like to, but the intention is an honourable one, just like the intention to marry. I think once you have got the intention and the spirit, the money and consideration would come. [*Interruption*] Now that we have the Minister of Finance with us, perhaps seeing that marriage is about to take place the Minister would be so kind as to look into his heart and budget to find a little to help the marriage go along and last, because we really do want to see it become fruitful.

I end by going back to where I started. This particular piece of legislation is going to provide rights for all of us. It is not just for those who are poor and disadvantaged, or children, old age pensioners and those who do not have the money to afford legal representation, because we cannot put people in separate categories. It could be you, me or anybody next month that needs the assistance which should be granted to all human beings as a right. As I said in the beginning, I am very grateful that I belong to a country which cares enough about the rights of human beings to provide this kind of legislation.

Thank you, Mr. Vice-President.

**Mr. President:** Hon. Senators, I propose taking the lunch break at this point, I think it is appropriate. It is 12.15 p.m., so we can suspend now and resume at 1.30 p.m.

**12.15 p.m.:** *Sitting suspended.*

**1.30 p.m.:** *Sitting resumed.*

**Mr. Vice-President:** Hon. Senators, we will continue the debate on the Legal Aid and Advice (Amdt.) Bill.

**Sen. Mahadeo Jagmohan:** Mr. Vice-President, I am indeed happy to join other Senators of this honourable Senate to make a brief contribution on the debate before this honourable Senate.

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Firstly, it has been stated by other members of the People's National Movement who spoke before me that we support the Bill; we support the intent of the Bill, but we have some concerns which we thought and still think that we should address so that the hon. Minister or other learned persons may be able to elucidate further and help this Senate.

On February 9, when this hon. Minister presented this Bill, she quoted from a previous *Hansard*, and I seek your permission to quote what she quoted. She quoted the Attorney General who piloted the Bill which is now Act No. 25 of 1976. I should like to take this opportunity to remind Senators that this Act was amended as No. 15 of 1975 and No. 46 of 1979. I quote the hon. Mr. Basil Pitt the Attorney General then, of revered memory.

“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 to 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 provided to them by the inflexible observance of the rule of law and the impartial administration of justice. The Legal Aid and Advisory Scheme will, I trust, ensure that justice will not be the privilege of the affluent but the right of all.”

What I have to indicate is how very long ago the People's National Movement Government thought very greatly about the poor, the oppressed and the people without means, hence, the original Bill was brought in 1976 and also amended twice in 1979. By saying this, I wish to impress upon the Senate that the People's National Movement always stood for the poor and oppressed classes of the country; people who were without means were given support through legislation of this kind.

I wish to state that we also commend the hon. Minister and her advisors for including domestic violence in the Bill. What we see immediately is that this will make the office of the Legal Aid Authority a beehive of activity. Why do I say this? I say this because of the extent of domestic violence taking place in the country.

We all know—because it has been alluded to by so many who spoke before me—that the implementation of these amendments will be astronomical in the

sense that fees for legal aid counsel would now be increased, to my mind, very substantially. There is a clause to which I will come later that gives a judge the right to recommend increased fees for legal aid matters that take unusually long or are difficult to handle. As the Minister has now entered the Chamber, as the other before me, I compliment her for having the thought and seeking Cabinet's approval to come with these amendments.

I wish to state that when the Minister was presenting the Bill, the speed with which she read, or quoted or presented it, was somewhat difficult for the few people like myself to follow. But this charming Minister has her own particular style. The lady is indeed very charming. I knew her before anybody else in this Chamber—when she was a tot and when she was a teenager, always charming and beautiful. I wish to state that I have total independence in certain regards; I am not inhibited by any rule or policy. [*Laughter*]

**Sen. Kuei Tung:** Does that mean that the next time we see you, you will be on this side? [*Laughter*]

**Sen. M. Jagmohan:** Absolutely not at all! [*Desk thumping*] I have loyalty to the political Leader of the People's National Movement and the party, *per se*.

In getting along with the Bill before the Senate—I have read the Bill and have formed the impression—my good Friend Sen. Dr. Eastlyn Mc Kenzie had a very serious concern about travelling costs in Tobago for litigants or persons who have applied for legal aid as well as attorneys dealing with matters out of town. In a number of clauses we see that the Director of Legal Aid is empowered, unfettered powers given to him or her to approve cost for certain expenses; and I believe travelling costs could be reasonably met by the Legal Aid Authority.

#### **1.40 p.m.**

Mr. Vice-President, this Bill before the House seems to be in six parts. I wish to point out that paragraph 7, in the Explanatory Note on page 2, reads thus:

“Clause 6 proposes to introduce a new section, ‘section 3A’, whereby the Authority would be empowered to appoint a suitably qualified person to be its secretary.”

From this stage onwards we have a concern, will this secretary be a lay person, a career civil servant, or an attorney-at-law? It seems to me it is desirable to have an attorney-at-law serve as secretary to the Authority. It seems so, but when the Bill does not clarify certain things, we have the right to enquire as to what they mean.

Page 4, the fourth paragraph, which reads thus:

“Clause 25 proposes at section 29 to, *inter alia*, leave the assignment of attorney to the discretion of the Director who may take into account the wishes of the applicant.”

Suppose we have a bad boy applicant; he does not like this one, the other, and he does not like the next. We might go through a whole process of elimination, and for a very serious matter like this, I have a concern. I wonder what the Minister would say in her winding-up and her reply.

On page 6 of the Bill, clause 3, it reads thus:

“3. The Act is amended by deleting the words ‘child,’ ‘infant’, an infant’ and ‘young person’ wherever they occur and substituting the word ‘minor’ or a ‘minor’ as the case may be.”

What is going through my mind, a baby will be a minor, a tot will be a minor, a teenager will be a minor: everybody will be a minor. This seems to be a flaw in the Bill, and if the Bill is flawed by one clause, we could have difficulty down the road. This has to be examined further.

It is so clear-cut that the hon. Minister of Legal Affairs has presented this matter before us. Clause 4 (c) of the Bill States:

‘Minister’ means the Minister to whom responsibility for the Legal Aid and Advisory Authority is assigned.”

We are wondering whether this was not a matter for the Minister in charge of Social Services, or whatever. This has to be explained. Although it is reasonable to assume that the Minister of Legal Affairs is in charge of the Legal Aid Authority, there is something that tells us, perhaps, another Minister could be in charge.

Also on page 7 clause 5 states:

“(2A) In nominating persons for appointments to the Board due regard shall be given to regional representation.”

This, again, in whatever terminology we regard it, is plain and straightforward. The country is made up of the entire society for the effective management of the country; for the effective existence of Trinidad and Tobago. Why did it not occur to somebody—the Minister, the Cabinet, the Advisors, or the drafts people—to have the church people drafted into this Legal Aid Authority? What about the business community, without whom we could hardly make much progress? What

about community leaders? And very, very importantly, the labour movement, that National Trade Union Centre? Should they not be included in this Legal Aid Authority? We ask the Minister to kindly look at it once more.

Page 8 of the Bill, clause 6, dealing with a new section 3A states:

“3A The Authority shall appoint a suitably qualified person to be its Secretary.”

It is in the Explanatory Note. It is in here and I do have a concern. We wish to have this matter reviewed a second time.

Clause 8 on page 8, as well, which is actually the last paragraph. The last two lines read:

“4A. The Director shall establish and maintain a panel of skilled mediators.”

Mr. Vice-President, who will these skilled mediators be? Will there be any pointer, any indication here, as to who these skilled mediators would be? I am wondering whether “skilled mediators” would mean people from different segments of the society, or it would merely mean attorneys-at-law? This has to be examined.

On Page 9, clause 9, subsection 5A 2 (a). I will read a little part because we are all familiar with this whole matter.

“(a) goods are imported by the Authority for and on behalf of the Authority”, or

“(b) the commercial sale of goods or services to the Authority is in the opinion of the Board of Inland Revenue, required for the purposes of the Authority,”

What the earlier part said was: they would be exempt from taxes, duties, fees, charges, assessments. I am looking at this from the point of view that there should be some central authority, like the Central Tenders Board, or somebody handling this question of purchases for the Legal Aid Authority. Will this not be compromising the Legal Aid Authority into commercial transactions as well, when there will be highly qualified and skilled Legal Aid personnel? This is a matter that is of concern.

On page 10, Sir, 15A, under clause 11. It reads thus:

“15A. (1) The Authority may develop and operate programmes for the purpose of improving its efficiency”.

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I heard an earlier speaker allude to training programmes, or educational meetings for the public at large, but this does not say so. One could easily go with the impression that the programmes to be developed by the Legal Aid Authority, could mean in-house training for personnel of the Legal Aid Authority.

Perhaps the public at large should be given exposure to what the Legal Aid Authority has to do, how it would do it, and who would benefit. I urge the Minister to look at this and give us some kind of explanation.

**1.50 p.m.**

Then on page 18, I have a small problem though it may appear insignificant, but I draw the Minister's attention to this long paragraph (1A) the last four lines which say:

“...as the case may be, but may, instead, give notice of the assignment or new assignment by letter to the proper officer of the Court in which proceedings are pending.”

In no legislation or law have I heard the word “proper” used to describe legal personnel. Perhaps there are other words like appropriate, relevant, competent, suitable, anything but “proper” officer. I have a problem with that word. Can some consideration be given to changing that word? On the same page clause 25(c), adding a new subsection (5) to section 29:

“Any person who contravenes the provisions of subsection (4) shall be liable, in the case of an attorney-at-law to have his name removed from the panel by the Authority, and in the case of an employee shall be subject to such disciplinary action as the Authority deems fit.”

This again is clear and straightforward, but would any attorney who contravenes some kind of legislation or law just be removed from the list of the Legal Aid Authority, or will he or she be subject to some kind of examination by the body that governs the operation of attorneys? This is a question that has come up and will come up and we need to look at this further.

On page 19, clause 27(b) which is adding a new subsection 2 to section 32:

“Where an aided person discharges the attorney-at-law assigned to act for him the Director may in his discretion revoke the legal aid certificate granted pursuant to section 23.”

How will they do this? Some explanation is necessary. Just tell another person in authority you no longer want that attorney? Like the saying, "I don't like that lawyer, I want him changed?" People do this and I am saying after some difficulty and this machinery is put in place an aided person should not have it so easy without proper explanation or good reason to ask that an attorney be changed. Therefore, what are we saying? I am saying Mr. Vice-President, that this needs to be looked at.

Part III, subparagraph (b) which speaks about the power and authority of the judge to recommend increased fees for an attorney who handles a matter for an aged person that is unusually long and difficult. Would there be some kind of regulation how this would be? Or would it be at the total discretion of the presiding judge? This is a matter of concern. Perhaps one way or the other, there could be some difficulty in this regard.

I have looked at a few small points which are of concern to me and us, and it is our hope that the Minister would take into account my observations. I wish to state that there are many attorneys-at-law in Trinidad and Tobago who would wish to assist persons in difficulties with some kind of free service with respect to legal aid, but because of the profession and the importance of the profession, some of these attorneys are inaccessible to the man-in-the-street, not deliberately, or otherwise, but because of the importance of the profession.

I am urging that machinery be put in place by the bodies that control or seek the interest of attorneys, who would want to settle matters out of court. I wish to state that many presiding magistrates and judges in Trinidad and Tobago would be very happy to settle matters out of court.

Mr. Vice-President, a few months ago there was a matter in the High Court in San Fernando. I would not name the judge or the individuals, but I found myself in a position to negotiate a settlement out of court which was negotiated and the attorneys wrote the agreement on the spot and the judge was amazed how such a thorny matter, which could have had such serious financial implications, was settled "just like that" and the judge enquired which attorney did the settlement.

I am saying that an out-of-court settlement would redound to the benefit of the entire country. So it is our hope that after the proclamation of the Bill, notwithstanding the astronomical cost, that the hon. Minister in charge of the Legal Aid Authority would put machinery in place so that implementation would not be difficult, and persons who wish to source benefits from the Legal Aid Authority would do so.

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There are certain kinds of machinery in the country that fall under the aegis of the Inter-Religious Organization and also other bodies that I do not wish to identify at this time, who would be willing to assist the Minister in getting people who would understand the implications of the Legal Aid and Advice Bill.

Thank you, very much.

**Sen. Agnes Williams:** Mr. Vice-President, I am indeed very thankful for the opportunity to make a very short contribution to the Legal Aid and Advice (Amdt.) Bill. Much has been said by my colleagues from both sides of the Senate and it is very heartening and disappointing that they have raised the issues which I wanted to raise.

I commend the hon. Minister of Legal Affairs for assisting our Government in making good its promise, since the 1998 budget, to address issues that relate to people who are more disadvantaged in the society and more vulnerable. This is another very important social legislation that is telling our nation that the Government is serious about trying to right some of the injustices and inequities in our society.

I know that some issues have been brought to the forefront since the original Bill was enacted and other governments had contributed to it also. I must commend all those in the Legal Aid Division and all the lawyers who have given so much of their time and service for so little over the years. I know when this Bill is passed and assented to, there are many members in the society who would sleep much easier or rest better.

One of the most important aspects of this Bill is the issue of opening the umbrella for domestic violence cases to qualify for legal aid. On behalf of the women of our nation—we on this side, and I must say that Sen. Mahabir-Wyatt who has always been a vociferous proponent on women's rights and trying to address some of the issues on incest—and to a lesser extent men, would be pleased because domestic violence affects women, men, and children.

Mr. Vice-President, if efforts had been made in the past to include people who had been subjected to domestic violence for legal aid, maybe there would not have been so many murders and emotional hurts in our society—but it is better late than never. I was looking at today's *Express* and I saw a heading that children also complain about domestic violence and abuse. So our children would benefit in having access to legal aid.



At first, when the Bill was introduced I did not understand all its implications, but I must praise our Minister for the way she introduced the Bill and how she took her time and explained the history of the Bill and addressed all the various issues which made me understand the magnitude of the work which has been done, and what our Government is trying to achieve with this piece of legislation.

**2.05 p.m.**

There is one small point, Mr. Vice-President, I observed in many cases, the movement of public servants from the public service is very restricted, because sometimes their services and pension rights have not been transferred. I observe now in this Bill that we have allowed provision for the transfer and secondment of public officers with the authority to move freely within the bodies. Their pension rights and superannuation would be preserved, wherever they are transferred or seconded, so that their security of tenure would be achieved and maintained.

Mr. Vice-President, I had a friend some years ago, she was a separated mother of two, and she had been subject to domestic violence abuse, and opted to leave the marital home. After about nine years, she wanted to be divorced. She had no income and I advised her to go to Legal Aid and she came back to me in distress and said: "They are a waste of time. I have to fill out so many papers and they ask you so many questions and I do not know how long it will take."

We, her friends got some funds together and assisted her and showed her ways and means to help herself and she got the divorce. That was one instance where the umbrella was too small and because the proposal in this amendment would widen the umbrella, many people could have access to legal aid, and can have their rights preserved and they would not be treated less than human beings in our society. So without saying much more, Mr. Vice-President, I must say that my Government and the Honourable Minister of Legal Affairs and her team have really done a great job in making efforts to get this Bill passed in our Parliament and bringing these proposals here today.

The umbrella has been widened so that many people who are dispossessed or poor, or of lesser means, can have access to justice. I am pleased also that even areas where there were items that hinder people that made their income seem so much higher than it was to make them qualify. I would not say much more, but I must say that I support this piece of legislation and the fulfilment of the promise of the Government to address social imbalances and to help the more vulnerable persons in our society. Thank you, Mr. Vice-President. [*Desk thumping*].

**Sen. Dave Cowie:** Mr. Vice President, hon. colleagues, it is my deepest privilege to rise in support of the Minister's most admirable presentation and her even more exemplary initiative in tabling this amendment Bill. Certainly, her inspiration if I may, is to ensure that this is no mere statutory artefact or dead letter insofar as no such creature could give life to the fundamental guarantee of the right of fair hearing and one of the founding principles, in fact, of the rule of law.

Mr. Vice-President, no mere formula of words would effectuate recourse to the benefit of access to legal due process. It would certainly require the most serious act of political will, to translate the Bill on its face, into what it is intended to be and certainly insofar as it seeks to redress the imbalance of disadvantaged circumstances.

It is clear and, in fact, it is inevitable that it will supplement the lowest common multiples of all those deficiencies that have traditionally afflicted access and recourse to legal aid, in terms of limited range of facilities, and eligibility, the limited range of recompense and ultimately of responses to the exigencies of the needs of hardship and dire pecuniary circumstances.

The Bill, in fact, Mr. Vice-President, looks to the highest common factor of democratizing the availability of the recourse to legal aid and advisory services to effectuate the founding principle to which I have adverted. A worthy aspiration, but this is only the beginning.

The ambitions that underlie this Bill are most commendable and in fact, underlie the thinking on this side that quality is more than merely a worthwhile aspiration. The underlying policy considerations that have generally been common to successive dispensations in Government, have unfortunately agonized for a tremendously long time before delivery of the Bill to this august chamber. In fact, it is a heavy indictment of guilt, that would have had to be discharged if the Bill did not see its parturition in this Chamber. [*Desk thumping*] Its birth, Mr. Vice-President, cannot now be suppressed, and if it is that the benevolence of its underlying social conscience has to be underpinned by prudent, financial considerations, then so be it. A debt, as has been said by the Hon. Prime Minister in another place and at another time, is a debt that must be paid. This Bill is intended, in fact, to retrieve and to redress the arrears of conscience that in fact are now being honoured as a debt to this society.

The substance of the Bill, in fact, vindicates its economic cost of implementation, and that is why my colleagues on the Front Bench opposite find themselves now being their own prisoners of conscience. [*Desk thumping*].

In respect of the substance of the Bill, it admirably seeks to extend the catchment area for conciliatory resolution and inducement of sorts away from the lists of adversarial conflict.

**2.15 p.m.**

This Bill seeks, so to speak, to defuze the incendiaries and detonators that prompt this type of adversarial conflict. We on this side are grounded in reality, and we understand fully well that the protagonists of perversity will have their cynical say outside of these precincts and otherwise. We have become, in our very recent dispensation, quite well-seasoned to these attitudes. The brave intervention that the Bill seeks to, in fact, initiate into the realm of non-contentious probate is, itself, commendable.

**Sen. Shabazz:** Mr. Vice-President, I missed the last point the hon. Senator made, and I would just like him to go over it again, please.

**Hon. Senator:** Protagonists of perversity! [*Laughter*]

**Sen. D. Cowie:** The intention, as I was attempting to say, was to introduce, via the Bill, a greater measure of light than heat. Once the parameters of conflict resolution are institutionalized, they invariably tend to insulate themselves against abuse and aberration. This principle, in my respectful view, applies both to the discipline of the law and to discipline within the law.

Mr. Vice-President, we anticipate, no doubt, that the mediator's influence will hopefully send the right signal in pursuance of squelching acrimony and, in conclusion, I say that it is my privilege to commend the hon. Minister on her efforts. I thank you. [*Desk thumping*]

**Sen. Nirupa Oudit:** Mr. Vice-President, I begin, like everyone else, by congratulating the Minister on a very thorough and well-researched presentation. I did not have the opportunity to be in the Senate to hear it, but I was able to get—through the kind support of Hansard—a copy of the preparation. Thank you very much, Madam Minister.

Although I am not seeing her here, I also commend my colleague, Sen. Diana Mahabir-Wyatt, for the depth and breadth of analysis of her presentation. I

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remember her saying that she felt less than eloquent when she stood to speak in the Senate, but it is my opinion that experience and empathy in a particular area gives one far more credibility than just words or the ability with language. I also think that we certainly had the experience of someone who has lived the problems associated around this Bill in the contribution of Sen. Diana Mahabir-Wyatt, and that made it very eloquent and very credible.

I am not a lawyer, Mr. Vice-President. I have not been so privileged as to have been exposed to that school of training, and whenever I come to the Senate, I am not so much involved in the way that a Bill is structured, as I am interested in the principle of a Bill. What is it trying to say? What is the spirit of the legislation? What value is it going to add to us as a country? What benefit would it bring to Trinidad and Tobago? Is it only to give the Government Printery additional work? Is it only to expand the 24 or 28 volumes of the laws of Trinidad and Tobago to be there to say that as a civilized society, we have an extensive collection of laws? Is that what it means to be civilized?

As someone who is trained in sciences and who works with brevity—scientists like to keep things simple, as Prof. Kenny would agree—I would much prefer that we had 10 law books, but within that framework of 10 law books, 95 per cent of the legislation in there being effective, really working for the country. I think the principle of Parliament and the principle of law—if I may be so bold as to comment on that, not being trained in the law—is about having rules and guidelines for a society which govern the operation of a society and speak to the benefit of the majority of that society.

When I look at this Bill, I ask myself: What is different about this Bill so that it would speak to the question of being more effective? It is very clear from the way that the amendments are drafted that the Minister and the Ministry recognize the need to have efficiency, because I think clause 15(a) has actually an amendment which says:

“The Authority may develop and operate programmes for the purpose of improving its efficiency.”

So, the spirit of having an efficient Legal Aid Authority is stated in this Bill.

What is different about this Bill that is going to make it work? Many speakers raised the issue of the effectiveness of the current legislation in place, and the contribution from Sen. Mohammed—the contributions from all sides of the

House—spoke about the frustration in operating this Bill. Maybe we should ask ourselves: Are we going to have a better functioning Bill by having many more details extended in the present legislation? Please remember, I am not a lawyer, so maybe I am not understanding the full power of what is in these amendments, but to a large extent, what I am seeing here is a lot more detail fleshing out the original legislation in Chap. 7:07 of the laws of Trinidad and Tobago.

I would like to see something in this legislation which structurally addresses this amendment Bill having more than a 50 per cent chance of success, because it is not a money bill—I have had the opportunity to be present in this Senate for many money bills; it is not a bill about shifting people from place to place, or giving salary rises; it is not that kind of Bill. It is a life and death bill that we may not think affects us, but it does, in that the quality of the society directly impacts on the life that we lead.

I think parliamentarians have a very unique privilege in being able to make decisions by having effective legislation on the quality of life that the society leads. What I am suggesting, Mr. Vice-President, is that there is possibly a structural change that could be made in the Bill that would give the Bill more of a chance of success than it seems to have right now. I looked at the constitution of the Authority, and I am reading from the legislation. Part II, section 3(2) at Chap. 7:07 of the Legal Aid and Advice Act states:

“The Authority shall consist of eight members appointed by the President as follows:”

I think in all there are five lawyers, and the amendment seeks to change the terminology, which is changing “barrister” and “solicitor” to “attorney”. That is fine.

I understood from the Minister's presentation that the reason we have five lawyers is because we have a regional representation of lawyers. I guess San Fernando, Tobago, and so forth. There are five lawyers in this Bill, the chief probation officer, someone from the National Insurance Board and a member, being a public officer, attached to the Ministry. So, it is all a little family of public servants, but this is a Bill that impacts on the wider community. Where is the voice of the non-public service part of the country? Where is that voice on the Legal Aid and Advice Authority, which, in effect, is the management committee or Board of Directors for this Bill?

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Even the previous Bill which we started this afternoon's proceedings with, the Dental Profession (Amdt.) Bill, spoke about the recognized need to have what is called a “lay person”, and I would suggest—again not being a lawyer and not being too *au courant* with the terminology, but I hope to convey the spirit—that we need to have on the Legal Aid and Advisory Authority someone, a body or bodies, from outside the public service to represent the other interest groups on which this Bill would impact.

The NGOs do much of this kind of work. While I am not suggesting to the Minister that she would extend it to 10 or 12 people, I think the spirit of having someone with competencies outside the public service needs to be addressed, and if the terminology is to have a lay person with some definition of what that lay person could be, maybe that is what she should consider.

There are so many skills and if a Bill like this is to be successful, we need them at the highest management authority—which is the Legal Aid and Advisory Authority—and we also need them within the operation of the framework. We need it at the management and operational levels; someone who is trained in the skills at the management level, someone who is very good in money management, because we could have the scenario of too little money being voted and too much to do within a piece of legislation like this.

To just have five lawyers, the Chief Probation Officer, someone from National Insurance and another public servant does not seem to encompass those additional needs. I think at the end of the day, to make a real change, we need to start from the top—which is that body—and we need competent, qualified people with vision. I would suggest just one person, coming from outside the public service.

The other area I would mention very briefly before demitting my presentation would be section 13A(1) at clause 10. Again, it speaks to the same kind of concept. It says:

“An officer in the Public Service or in the Authority may, with the approval of the appropriate Service Commission and the Authority, consent to be appointed on transfer...”

I have seen this in many bits of legislation before this honourable Senate. We are always talking about transferring people within the public service from one ministry to the next. That is very good. It is cross-fertilization of ideas across ministries, but again, it is kept within the public service, and I would like to put a question to the Minister: How can we attract talented, creative and competent

people who are not public servants, to spend some time working with the Legal Aid Authority, either at the management level, or at the level of officers—the operational level? Is there something one needs to do with the pension funds, and that kind of detail, so that we could expand that?

We have a very small country with talented people, and they are not all resident in the public service. We need to make our legislation tight enough, but also expansive enough, so that we get the best people to do the job at all times. I am quite sure that there are people outside of the public service who may be working in this field or associated fields like management, communications, and so forth, who would add great value—either at the management level of the Legal Aid Authority or at the operational level. So, perhaps the Minister would address that in her winding up.

In concluding, Mr. Vice-President, I would like to reinstate the point that this legislation is too important to just be one more law on the books. We have a responsibility to ensure that not only the correct legislation is put in place, but that the implementation has more than a 50 per cent success rate. My vision for what a very good working Legal Aid Authority should be is that I would see a number of offices throughout the country; not only at Port of Spain, San Fernando and Chaguanas, but some small offices. They do not have to be expensive and staffed by many people, but fit for their purpose in locations where the people who need the service can get it easily. That is what we need really.

### **2.30 p.m.**

I think the right manager would probably be able to run 10—12 small offices like this at the same cost of running three expensive offices in Port of Spain, San Fernando and Chaguanas, but it is more effective; it is reaching the right people. So you need more offices. More people need to know about it. It needs to be communicated. At the end of the day, of course, staffed by courteous, bright, young lawyers, I think Sen. Mahabir-Wyatt made that point. At the end of the day what is the result of putting all this focus on making sure that this Bill works? The result is that we have less people killed in the country, and less people in jail who should not be in jail. So, with those my few comments, Mr. Vice-President, I thank you.

**Sen. Cynthia Alfred:** Mr. Vice-President, I would just like to add my congratulations to the Minister for this Bill, especially the part with respect to domestic violence. I think it is good that that part in particular was included. I

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would like to make a very brief point and I would like to turn your attention to clause 32 Part III (b) and clause 7(e). Clause 32 Part III (b) says:

“by deleting the second paragraph and substituting as follows —

‘The Authority shall pay to an attorney a fee of two thousand five hundred dollars ...’

I take it that this fee is payable to the attorney who takes the case to its logical conclusion. Am I correct hon. Minister? Good. Clause 7(e) dealing with section 4(5) says:

“Subject to this Act, the Director shall pay to an attorney-at-law, investigating and reporting...”

The part I noticed here says:

“or acting for a person receiving legal aid or giving legal advice under this Act...”

I interpret this to mean the same as taking the particular case to its logical conclusion. If the two mean the same thing; in other words I have no difficulty with investigating, reporting, giving an opinion and so forth. But if the person is to act for a person receiving legal aid and the Director, in his discretion, may pay him for that—

Clause 32 Part III says—in other words, acting for somebody, taking the case to its logical conclusion, the Authority shall pay the mandatory fee of \$2,500.00. So, in my opinion—I am not a legal person—I believe those two clauses may be saying the same thing, but if we have different ways of dealing with them, we might very well have somebody look at the Act and say, “I am acting for this person, so I have to receive a fee according to the discretion of the Director, and at the same time I have to be paid my \$2,500.00 according to the terms of that particular section.” That is the point that I would like to make, Mr. Vice-President. I thank you very much, and as I say, we support this Bill. [*Desk thumping*]

**The Minister of Culture and Gender Affairs (Sen. Dr. The Hon. Daphne Phillips):** Mr. Vice-President, of course, I rise to support the Bill and to commend the Minister for her eloquent presentation of the Bill. We noted, in so many of the comments and submissions by Senators that concerns about domestic violence issues were raised, and the general agreement that, inclusion of those issues is very well-received and very important. While we welcome the inclusion for the victims



of domestic violence to be assisted under this Legal Aid Act, I just want to draw to the Senators' and your attention some of the other things that we are doing; the holistic approach we are giving to this issue of domestic violence; the interconnections with this particular Bill, and the importance, therefore, of this Bill to the whole management of this situation of domestic violence.

The Gender Affairs—what was Women's Affairs—Division of the Ministry of Community Development, Culture and Women's Affairs at that time, did receive some money for strengthening since 1993—1994 under the previous administration, and it is out of that initiative that we have been able to put a number of things in place, particularly hardware, computers systems and management systems. We have been able to carry out our outreach programmes and so forth, which I will outline. But I want us to note that this process started in 1994.

We have a national domestic violence hotline, as you know, with consultation services, which is fully funded by Government. We recently published a report of the data of that hotline, and I am sure it connects with what we are trying to do here in this piece of legislation. For example, we found that, out of that data 86 per cent of calls were made by females and 16 per cent by males. I note that in one of the daily newspapers during this week, it was reported that 400 men are beaten by women. That is not quite so, 400 men called the line and we thought that was a very good sign, but 70 per cent of them complained of emotional abuse—women nagging them and harassing them verbally, not physically. Men also called for assistance to prevent them from engaging in violence. We thought that was useful as well, and these are also customers of the legislation we are trying to put in place—those who want assistance, I think, Mr. Vice-President.

What we also found was that 1 per cent of the calls was received from children under 10, some of them complaining of abuse taking place with their parents—their mothers. Some of them also stated that they were themselves victims of abuse—1 per cent of those calls. But, 9 per cent were received from children and young people between the ages of 10—18, therefore, for children under 18 years old, 10 per cent of the calls were received.

#### **2.40 p.m.**

It tells us that we have a problem with abuse of children and children are using the services and the avenues, however limited they are, to get help. I am suggesting, Mr. Vice-President, that this particular provision in the legislation

should be applied and would be applied to children in domestic violence situations. Ten per cent of almost 3,000 people who called the hotline were children. That is in one year for first calls.

We also found that the highest rate of use of the line was during festive periods—Carnival, Christmas; particularly Christmas and other festive periods. We found that those months had the highest rates of calls; also, of course, those were related to our publication advertising of the line. So, we are saying that activities and preventive activities to deal with the festive periods must be put in place and, perhaps, in the legal fraternity, we need more services in place during these periods.

We found, also, that abuse is highest. In fact, it starts to be significant in the 19—25 age group which reports 17 per cent of abuse, but it peaks in the 25—36 age group which is 36 per cent of abuse. It is also high in the 36—45 age group at 22 per cent, and it declines in the 46—54 age group to 6 per cent; over 55, it is 3 per cent. What we are seeing is that the abuse is really taking place throughout all the age groups; it peaks in the reproductive age period from 26—35, but that teenagers and young people are also affected. For the age group 19—25, the figures are fairly high. It only declines after age 45 and into 55, which is in the menopausal period. So, we need concentrated efforts on persons whom I think are in the most vulnerable age groups where they are in the reproductive and child-caring periods.

We also found that urban people have greater access to the services and resources than rural, and people called the hotline more so from urban areas, although we noted that in county St. Patrick, more men called than women. We still need to know why. That was the only county in which we had more men than women calling.

That also connects with our need to have community services available to people, especially in the rural areas but also in the urban areas where the extent of calls are so severe that the listeners on the hotline referred them to centres, to NGOs and various facilities in the urban areas.

So that, following on Sen. Oudit's point about having centres throughout the country, we feel that having services throughout the country where people can access is, indeed, very useful. Indeed, one of the services we provide at the Ministry which was started as a pilot project, is a drop-in centre facility which is located in community centres where there are university trained counsellors

available. This is paid for by the Ministry. They deal with issues of domestic violence, incest, abuse, child behaviour, difficult behaviour, *et cetera*, all family community-based matters and, perhaps, in this, there can be collaboration between the legal officer and the counsellor in the community-based drop-in centres.

We have also, as you know, Mr. Vice-President, put great emphasis on the training of community police and their inclusion in the whole programme of attempting to address domestic violence. In the Ministry, we have been carrying out, with the assistance of the United Nations Development Programme and in collaboration with the Canadian Fund for Gender Equity, as well as UNIFEM which is a United Nations agency, training for community police, shelter workers, hotline workers, rape crisis centre workers and so forth, all to facilitate the better preparation of these people who handle these very difficult and complex matters in which they engage almost every day.

Of course, the Government is also working with the NGOs that administer shelters for battered women and children and Government works with them, through financing from social development, particularly, as well as in assisting in training which we do in the Gender Affairs (Division), in these issues. Part of that training will now have to involve using and accessing these provisions in this Bill for assisting in the communities.

We are also working on the matter of prevention, because we think that if we work only on what we call “victims”, that is not the way to eradicate or reduce this problem. Part of our work is in prevention which, perhaps, does not get very much airing and publicity. We have done several gender sensitization exercises with the police service, some members of the Judiciary, Permanent Secretaries, the business community through the Chamber of Commerce and we even had one session with members of the Cabinet.

The division also produces training materials. We have produced four videos which are used for outreach in schools and communities and we have now a training manual. What I am saying is we can now assist in training in various areas.

We have also conducted several outreach training sessions for members of the inter-ministerial committee on domestic violence and gender issues and the National Council for Women, which is itself a community-based body of women who work with us in our Ministry on this whole matter of outreach, forming groups in the community, the focus of which is to help prevent domestic violence, to look after and watch out for your neighbour and try to prevent, and call the hotline if there are difficulties.

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We also have a male programme because we thought this was, indeed, necessary to have specific emphasis on the needs of men and the way in which we can assist in preventing violence through addressing male issues. We had, from 1996, a Male Awareness Week which we started, dealing with this whole matter of the male and issues of domestic violence. These were largely gender sensitization issues.

We have been contributing to male training in the Civilian Conservation Corps which is now merged with the Youth Training Employment and Partnership Programme; we have training for the new recruits in the Coast Guard and we have had several requests for training from various organizations around and including the protective services.

We have also included a gender sensitive module in cultural programmes in schools which we started last year as a pilot project. We note that gender violence occurs in schools. We see the beginning of it in the school system so we want to sensitize the young people and the children of appropriate ways of behaving and thinking in terms of the opposite sex. We have collaborated in various projects such as “Fathers Who Care”, “Man Talk” and some other similar projects.

The data that we have compiled and the experiences we have developed show us that working on this problem in a holistic way is extremely important. We have to address legal issues, as well as caring and counselling issues, as well as male programmes, training and sensitization and preventive programmes, as well as research. Our research, and what we have done from the hotline, show us the great need for legislation like this but, also, it directs us to focus on groups which need attention—children, young people, men and women; the vast majority of women being both victims of physical and emotional abuse.

While there is much more we need to do, we think this legislation would enhance our ability to serve our community and our country in the way we want to. Of course, we need more funding and more programmes, but the coming on stream of this legislation will give our people and various focus groups some of the services needed to lead a better life.

Thank you, Mr. Vice-President.

**Sen. Prof. Kenneth Ramchand:** Mr. Vice-President, it is a good thing that everybody should have the means to fair trial and to legal representation and, therefore, I congratulate the Minister and the Government for seeking, through this amendment, to try to help to ensure that.

I go further. I assume that legal aid is intended to benefit the less well-off members of our society and these disadvantaged and underprivileged members of our society, I think, should be specially thankful to the Government for thinking of them.

Further, Mr. Vice-President, I am very pleased that the Minister is attempting to bring domestic violence matters under the Legal Aid Scheme. I think this is a wonderful proposal and it speaks to a great need in the society, as other speakers before me have indicated.

**2.55 p.m.**

I do not think there is anyone who would be reluctant to applaud the intention of the amendment. So, Mr. Vice-President, I do support it. But there are a number of questions I would like to raise concerning implementation and funding, and although some of these questions may have been raised before, I think that it needs to be said and can bear being said a few times.

Looking at fees to be paid to participating attorneys, I wonder, Mr. Vice-President, if the fees stipulated are going to attract attorneys who are in great demand. And if those fees are not going to attract such attorneys, how useful would it be to have impoverished litigants or victims being defended by people who seem to have less of a reputation, and what kind of confidence would the victim have in the aid that is being offered to him? Would it in fact embitter him to say, "Look who they give me?" You know? It really is a serious problem whether the fees that are being paid would attract the attorneys who are in demand.

I do not know if the answer, Mr. Vice-President, is to raise the fees and I am silly enough to put forward a suggestion that would be laughed at, of course, but I will still put it forward, I wonder if it would be possible to ask all attorneys to volunteer on a quota basis, to say, "Well, I guarantee to work on three cases a year under legal aid" [*Interruption*] even one. "And I will accept the fee in the schedule," as a patriotic gesture.

**Sen. Kuei Tung:** *Pro bono.*

**Sen. Prof. K. Ramchand:** I wonder, Mr. Vice-President, if we can look at the Hugh Wooding Law School and the law degree awarding institutions in the region and develop some kind of apprenticeship scheme whereby these people who are about to become attorneys would work along with attorneys who would not have to bear the full brunt of the work and therefore this might encourage the attorneys

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to take part in the scheme. So there is a very real problem about attracting attorneys who are in demand to take part in the scheme and these are two suggestions I am making about possible implementation.

Still on the question of money, Mr. Vice-President, the amendment is very vague. Perhaps it is totally silent on how much this scheme is going to cost, how many million dollars a year are we going to spend on providing legal aid. And are we going to budget that sum annually and say, "Well, we are budgeting so much?" Now I am not at the moment saying that we should do so, that it should be budgeted, because when I see the size of the estimated cost of offering legal aid, I might want to wonder whether the money spent on expanding or extending legal aid might better be used in doing things to prevent the need for legal aid.

Could the money be spent on education? Could this money be spent on other kinds of welfare? Where and how should we invest the money? So I cannot really give an answer to the question myself until I can see how much we estimate the legal aid scheme is going to cost. I have in my mind a kind of ceiling that if it is going beyond such and such a figure perhaps it might be worth spending that money in other ways and so cut off the need for legal aid before it arises by dealing with the things that cause the need for legal aid.

Of course, I have a bias or prejudice which I think is a justified one so I do not think that one would call it a prejudice, that moneys spent on children in our schools and moneys spent on making the school a place that produces balanced and happy citizens, that that kind of money is always very well spent. In the debate on Sen. St. Cyr's motion I will try to prove that economic policy should recognize the financial gains that would come from spending money on education, and what a great contribution to the economy investment in education can be.

But I am just raising the question now as to whether the amount of money we think we are going to spend on legal aid can be justified when there are other areas where it might be spent with more profit in the long run. Because there is a bit of—I do not know if it is a parliamentary word—bitchiness in me that says, why should we spend money defending the rights of people who have violated other people's rights? But I am not letting that be the main plank in my argument. My main plank is, should we spend the money on legal aid? Should we not spend it on other areas that might reduce the need for legal aid?

The second question I have, Mr. Vice-President, has to do really with my not having legal expertise and not being clear about certain things. I cannot work out

from the Bill who is going to decide that legal aid should be granted. At different points it seems to me that the Director can do it. At another point the Court of Summary Jurisdiction can do it. At another point the Court of Appeal can do it. At another point a judge of the High Court can do it. So if we are establishing a Legal Aid and Advisory Authority and giving it all these tax exempt facilities, should we not put in the hands of the Legal Aid and Advisory Authority office, the decision, the adjudication as to who should get legal aid?

I am not at all happy about the various people who can grant legal aid. I know that in case of an emergency you would want to say there is someone other than the Legal Aid Authority. In the granting of emergency certificates I can see the usefulness of the exception but I would feel that the norm should be that the Legal Aid and Advisory Authority should be responsible for making the judgment about who gets legal aid.

The third question that I have, Mr. Vice-President, may lead me into some contentiousness. The Bill proposes to make legal aid more readily available and accessible but it does not say anything about making legal aid speedier. Now, we already have backlog in our courts. If you lift the ceiling so that more people can get legal aid and if you extend the fields in which legal aid can be granted, it follows logically and mathematically that you are increasing the number of matters that are coming to the courts.

And when we try to calculate the cost of the legal aid, we would have to ask how many more new judges and courthouses, *et cetera* would we have to put up? How much more backlog are we creating? And I do not see very much in the Bill that addresses this question. So yes, we want to make legal aid more available and accessible, but we have to consider making it speedier. It is a defect of the existing system and it is a defect that we should try not to increase.

Mr. Vice-President, if you give people money to go to court they will go to court. There are many times when people trouble me and I want to go to court and I say, "Well I cannot afford to go to court." So you are going to increase the amount of a kind of litigation that I call harassment litigation and that is something that we would have to take into account too. So we have to be sure that we do not slow down the delivery of justice. That is why, Mr. Vice-President, I welcome clause 8 which enables the Director to appoint a panel of mediators and the new section 23 (1A) which gives power to the director, in cases where legal aid is being granted, to impose as a condition of the grant that the people submit to mediation.

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I would go further. If the distinction that the hon. Minister is making between mediation and arbitration is to be upheld, if we are holding on to that distinction, then I would feel that every time the director says you must accept mediation, he should also say, "And if you want binding arbitration we will go for that too," because the mediation exercise may turn out to be a waste of time. You mediate and you mediate and then somebody say, "Well I do not like that. We have tried mediation and it has not worked."

If there is a breakdown in mediation—you have ordered them to go for mediation, if there is a breakdown in mediation, time would have been spent, money would have been spent and nothing would have been achieved. But if you can get people to say, "All right, you have to go for mediation in the first instance but if you want to enter into an agreement for binding arbitration, let us go that road." In fact, I would prefer binding arbitration to be an option that the Director can impose too.

He can either say, "There is mediation and there is binding arbitration and I strongly recommend binding arbitration but if you want mediation we go for that too." But somehow I feel that it should be a system that permits the matter to be settled then and there and we know beforehand it is going to be settled because the parties have accepted binding arbitration. I do not know if that can be arranged, if human nature would permit that, but if you are going to impose mediation at least the option of binding arbitration should be presented.

I have a little difficulty with the clause 8, the phrase, "skilled mediator". Now, I am a very skilled mediator but I do not think they are going to call me because I am not a lawyer and there are many things that may arise where my mediation may not work. So does "skilled mediator" mean skilled in the law or skilled in mediation or skilled in both? I do not know if the Minister would consider that an ambiguity that needs to be cleared up.

Mr. Vice-President, I used to look at a TV programme, I still look at it, that I thought was just "kicksy," with Judge Judy "boofing" up people and giving them all kinds of sour and tart and witty replies and treating them like children and so on, and I have found out that Judge Judy is really a kind of court. It is a court, a real court. But I thought it was fiction. The way this lady plays the role of being the judge, I thought it was a nice script that is very good; boy you get some nice cases and those fellows who come up with complaints and defences, they have to be crazy, but they are acting well. I cannot believe that some of the cases that come there are real cases.



**3.10 p.m.**

Mr. Vice-President, I wonder whether the money we are proposing on legal aid might not be directed towards the establishment of community courts? You have a building, a panel of judges going down there and you deal with many cases within the community in the manner of Judge Judy, and that is the kind of legal aid you would offer to communities and to poor people in the communities. It is like mediation or arbitration, but I feel that it would allow justice to be swifter and more friendly, and it may deal with justice rather than the law. Now, that is a problem that I have with so much of our legal practice, so I will just make the proposal and then go on to that.

I am just restating that the proposal for mediation seems to point in a very useful direction, that we should offer both mediation and arbitration, and we should consider setting up community courts operating in the manner of small claims courts or courts as run by Judge Judy. Those are very positive possibilities that may be even more useful and effective than granting people money to carry on litigation.

I come now to what may be a slightly contentious point. Let me digress. There is something I forgot to say on the question of mediation and to prove the value of mediation. Recently, I suffered—I would not say I have endured, because I am still suffering—from the loss of US \$1,100 that had been sent to me by one of my graduate students in Guyana to pay her registration fees. It was obviously an inside job. I called in the police and they charged one of the insiders, one of the workers in my house. I know they are going to charge and convict him, but I am not getting back my US \$1,100. There is no way I am getting it back.

The parent of the perpetrator came to me and said, "I do not want my son to go to jail, he is innocent, but I am willing to give you back the money." I said, "I am an Independent Senator, I am not the President of the United States, I cannot pervert the course of justice. If you say the boy is innocent, I cannot take a bribe to go to the police and say do not charge him. If you are willing to confess that he did steal the money, you are sorry, and he wants to pay it back, I am willing to go." I do not know if that is a legal thing, or if the police would be vex with me. If the parent says, "My son is guilty and I am paying you back the money," I wish there was some place I could go and explain that this is what is happening. That would save many problems.

**Mrs. Persad-Bissessar:** Thank you for giving way. It is very interesting that you are raising that real life situation. One of the Bills coming to this Chamber has to do with plea discussions and agreements. The very kind of situation you are speaking of is not plea bargaining but plea discussion and agreement. People can go in, plead, come to an agreement and the sentences can be effected accordingly. I am sure you would be giving your fullest support to the Bill. [*Laughter*]

**Sen. Prof. K. Ramchand:** I tell you, as soon as the present Prime Minister retires, I think we have someone who is contending for the post, not in word but in action; certainly winning friends and influencing people. Yes, indeed, I will support it. I hope that does not lead to the Minister's throat being cut. [*Laughter*]

I now come to a matter that concerns me: recently, we had the spectacle, we were voyeurs on the spectacle of a whole nation—we have television—witnessing the perversion of justice when somebody who had the money could buy enough talent to get off a charge of murder. That was a blatant perversion of justice and the logical climax to a litigating society, where attorneys that their responsibility is to their client and not to justice, sometimes not even to law. Their responsibility is to their client and to get their client off, to save their client. I am very keen to have the kind of court that would deal in justice, rather than the kind of court that is perverted by the defence attorney's goal of getting the person off, saving the person, being responsible to their client.

Although it seems to be legal and accepted within the profession, it seems to be a slide away from justice and fair play that certain people can buy freedom and escape conviction, not because they have been proven innocent, but because they have found obstacles to put up and they challenge the other guy, "prove I am guilty". I cannot prove beyond the shadow of a doubt that you are guilty, therefore, I have to let you off. I am not too sure—in your heart of hearts you know the man is guilty, you know the man did it, but yet somehow I am wondering whether this is a debating point within the profession. Should we have some kind of national debate or some debate within the profession about what attorneys are supposed to do.

I feel that if I were an attorney, my obligation would be to serve justice, and not so much to get my client off or save him, but to make sure he gets a fair trial.

**Hon. Member:** You would be very poor.

**Sen. Prof. K. Ramchand:** But I would sleep well. I would not be an attorney, that is for sure.

The relevance of this moral question is that by granting legal aid which would increase the number of cases coming before the court in this manner, we may well not be serving the interests of justice but helping people to get off from things that they did. I have a feeling that if I were given a choice, if I were the law maker, I would say that if people have examined the matter and you are charged then the onus's upon you and your advocate to prove your innocence. I am not saying you are guilty until proven innocent, but you are coming to the court to prove that you are innocent. You are the defendant, you show that you are innocent. The principle that you are innocent until proven guilty does not seem to be working all the time. Madness, but I want peace.

To summarize: I applaud the Bill. I am especially pleased by its provision, that matters under the Domestic Violence Act would come under legal aid. I have some worries about the cost and I really would like to know the cost before I can decide whether it is worth spending all that money on legal aid rather than on something else. I have some uncertainty as to who is going to decide that legal aid should be granted, and I would like the legislation to clean itself up and say, "the decision as to who is getting legal aid, is to be made by the Legal Aid and Advice Authority. [*Interruption*].

A little linguistic quibble: maybe the Minister will explain why it is called the "Legal Aid and Advisory Authority" rather than "Legal Aid and Advice Authority". I hope there is a good reason for that, because logically it should be "Legal Aid and Advice Authority". What is it advisory about?

On the question of speed, I applaud "available" and "accessible", but I am wondering about speed, and whether as it stands, the Bill would not increase the amount of litigation and contribute further to the backlog; whether sufficient thought has been given and, whether there was a willingness to spend enough money on alternative methods, as suggested by the mediation procedure. I would like arbitration to be an option and for us to consider the establishment of other kinds of courts and arrangements to save the matter from going to court and coming to a conclusion. I have a misgiving about the quality of justice being dispensed nowadays, not only in this country but in others as well.

I would close with some specific queries about parts of the Bill that I do not quite understand. I hope the Minister will help. I really do not understand why the definition of "guardian" was changed. In the Legal Aid and Advice Act it states:

"'guardian' in relation to an infant, includes without prejudice to the generality of the expression, such person as the Director considers might properly be appointed to be the next friend or guardian *ad litem* of the infant;"

The new definition of "guardian" states:

"'guardian' in relation to a minor..."

It deletes "include without prejudice to the generality of the expression"

"includes any person who, in the opinion of the Court, having cognisance of any case in relation to the minor or in which the minor is concerned, has for the time being the charge or control over the minor;"

I do not find that is a very satisfactory definition of guardian at all. I would like to know that a guardian has responsibility for the care of the minor as well as charge or control over the minor. The deletion from the original takes away the notion of care and responsibility, and only speaks about "charge or control over the minor". I think that is so special a definition of guardian for this law, that its effect may well be to spill over into other areas where guardianship means what it properly means. I wonder if we can have some clarification as to why it was felt necessary to make that change from the original to the present.

There is one minor quibble I have with 5(d),(2A) which deals with nominating persons for appointments to the board. We have been talking about an "authority" all along but now we see a reference to the "board". So I do not know where that board comes from. Is that a sort of slip in the typing or is "board" intended there rather than "authority".

Clause 7(e) dealing with section 4(5) states:

"Subject to this Act, the Director shall pay to an attorney-at-law, investigating and reporting or giving an opinion...for the grant of legal aid or acting for a person receiving legal aid or giving legal advice under this Act, such fees..."

Mr. Vice-President, I feel that subsection (5) is really two matters: one is attorneys-at-law "investigating and reporting or giving an opinion upon application for the grant of legal aid"; The other thing is "acting for a person receiving legal aid".

I feel that they should not be lumped together. They should be separated; that the business of “investigating and reporting or giving an opinion upon application for the grant of legal aid” does not seem to me to be as arduous, extensive and taxing a arduous business as the other one of representing the person. I really would like to understand why they are brought together.

**3.25 p.m.**

Well I have to pass over without much more comment than this. I really do not understand the speed with which governments like to grant people exemption from revenue—why Governments like to surrender revenue so easily, so I am not really happy with clause 9. I do not understand the English of something on page 9 of the Bill; the new Section 5A (2) (b):

“(b) the commercial sale of goods or services to the Authority is in the opinion of the Board of Inland Revenue, required for the purposes of the Authority,”

I do not know if that is clumsy. I cannot follow it very well. But, as I said, I am leaving clause 9 alone.

Mr. Vice-President, I would like to find out more about what is intended in clause 11.

“11. The Act is amended by inserting immediately after section 15, the following new section:

15A. (1) The Authority may develop and operate programmes for the purpose of improving its efficiency.”

Are these literacy programmes? Are these law programmes? Are these managerial programmes? What kinds of programmes? What kinds of costs to the taxpayer? What is meant by this whole business of programmes? So in clause 11, I do hope the Minister can clarify just for my information, so that I can understand better what is meant by “programmes” in this case.

Finally, Mr. Vice-President, clause 32(b) (ii) and (iii), I wonder if there is a misprint.- I am sure that is a misprint or a typo of some sort; so I wonder if that could be clarified. [*Interruption*]. Is that in the amendment?

Mr. Vice-President, that is the limit of the comments I have on the specific clauses, and I thank you very much.

**Sen. Rev. Daniel Teelucksingh:** Mr. Vice-President, I have two brief comments. First of all, I congratulate the Minister and the Government for the very excellent provisions made to extend justice to the lower strata in society. We are very pleased—as from the various contributions today—very pleased indeed that the focus is on the under-privileged and the poor; that provisions are made for justice: justice for the ghetto people, the voices of those from the ghetto who need defence and protection in our courts. The Government is to be commended for providing the funding and giving the assurance that it will continue to search for the personnel for legal assistance to the poor.

Nevertheless, I have this concern that I would like to share with you, Mr. Vice-President and this honourable Senate, that there is still the perception out there—it is more than a perception—that there is a dichotomy existing as far as the dispensation of justice is concerned; that there seem to be two levels of legal expertise available in this society: the better one of more qualified and experienced personnel. They are employed by the privileged and the wealthy. That justice in this society, ever so often, is up for sale to the highest bidder—and this has nothing to do with the concerns of a particular Bill that is being debated about some commission being a sacred cow.

There are many people in this society who know for sure that justice can be bought and hired, and the best legal experts to represent certain people are there. We need to say with this Bill—as someone said a long time ago—that in this society and in every society, justice must roll down like waters and righteousness like a mighty stream; the river must come down to all peoples not only to the wealthy and to the privileged. [*Desk thumping*]

**Sen. Daly:** Ahyayie! You think Benny Hinn good? [*Laughter*]

**Sen. Rev. D. Teelucksingh:** Mr. Vice-President, do you remember the case of the mother who appealed for assistance because of a missing child in December, 1998? I still remember the story of the police getting a hundred vehicles and so forth, and the police nearby told that poor woman that no vehicles were available in a time of grave desperation, and the business community came out and offered the police two vehicles. I wondered what happened to the Cherokee jeeps for that particular area.

But again, you see, for the wealthy and the privileged in this community they have private security; they can afford private security. Maybe they have their own private ambulances. But a few weeks ago, this poor woman was appealing for help

and the nearby police station said, “We have no vehicles”. You see, what is happening in this society, you have VIPs (very important prisoners). For them, they can buy—or somebody is always there to provide for the very important prisoners, the VIPs—the best legal expertise to defend them.

Mr. Vice-President, you do not know that the poor people in this country, the people of the ghetto are looking on. They see certain cases being tried so quickly, while their loved ones are perishing in the prisons and their cases have been postponed for years and years. Somebody is privileged. We are very concerned about that, because the poor are not important prisoners. Who cares about them? Well, we have to speak out of the Bill and within the Bill.

We still have to recognize—I know others have said it, I should like to do this again—and thank the small group of dedicated attorneys who give so much of their time, free of cost. I am very happy that the hon. Minister of Legal Affairs made reference to the members of the American Bar Association, who donate a percentage of their time giving of their professional services free. I know that Government has been trying to source that kind of assistance for the underprivileged. But we have to do something about this dichotomy, the two levels as far as legal service and assistance is concerned in our society. Within that system there is no real justice as far as the voices from the ghetto are concerned.

My second concern urges me to really want to come out batting for children. I am very happy about clause 3 which focuses on children who are charged with criminal offences. Here it is that the Bill is recognizing a very common phenomenon in our society—children charged with criminal offences. So when Gypsy sang about “Somebody tiefing the soul of the nation”, and every day you see the growing number of children—to use the concern of the Bill—charged with criminal offences, and Sen. Prof. Ramchand is quite correct, what are we doing as a nation to stem this tide? What are we doing as a nation to look at the children? I really believe—and I hope that the hon. Minister of Legal Affairs will look very seriously at amending the Children’s Act, Chap. 46:01—that we need to spend some time looking at that, because children have been exploited; somebody is responsible for young people who are living a life of crime.

### **3.35 p.m.**

I have been looking at that section in our laws, dated 1979. That is a long, long, time ago and I hope the Ministry of Legal Affairs will look at that. The section that deals with “Prevention of Cruelty to Children and Young Persons”,

1979, revised bits and pieces over the years. I just want to read this to you. Some of us may not have heard it for possibly many years. In section 3 of that old Act:

“3. (1) If any person over the age of 16 years, who has the custody, charge, or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes the child or young person, or causes or procures the child or young person to be assaulted, ill-treated, neglected, abandoned or, exposed....”

Mr. Vice-President, nobody is looking at this, but it is happening. Those who have been assaulted, ill-treated, neglected, abandoned, exposed

“in a manner likely to cause the child or young person unnecessary suffering or injury to his health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement...”

This is pathetic. It is an Act like this that needs looking at again.

Recently a young girl disappeared, along with other children, in the course of months, possibly years. You read the story about some bones being discovered in Guayaguayare and the pathologist summed up that they were the bones of some young person; a child maybe. All those stories are about incest, violence against children, neglect of children.

Do you remember that story, Mr. Vice-President, of a Trinidadian national who had a collection of pornographic films featuring children? And the lower courts that I dare not speak about—untouchable: those who belong to that profession—this national had a collection of pornographic films featuring children, and under the guise of freedom and rights, our lower courts gave the man back the films for his enjoyment, because it is his property. We need to talk about this. Did somebody look at those films to see whether they resemble Trinidadian girls and boys? Something is wrong with justice in this country!

When Delamo sang that very beautiful calypso: “Mammy don’t come”—the young boy from the prison, maybe he is on death row—“Mammy don’t bother to come and see me, what you could do for me, you have done already and you couldn’t help me”. It is most interesting that, that woman had to get all the pressure. He could not say: “Pappy or Daddy do not come”, because possibly he never knew him, anyhow. We need legislation to make fathers more responsible for educational and financial upkeep of their children. We must do it. Out in death row he said: “Mammy don’t worry to come.” She is the only person he knew; she



had all the responsibility, and all the burden. We need to look at parenting again, the home and family, and possibly the re-examination and revisiting of Chap. 46:01 the Children Act is something that we need to look at. Find some time in the Ministry of Legal Affairs.

I support the Minister and the Government on this Bill, but I am very, very concerned about what is happening to the children, the young people, the minors of this nation and I am frightened.

I understand that the President of TTUTA was asking, in the case of children who have been charged—I am talking about school children who have been charged—to hasten the cases, close them up as quickly as possible. And we need to do this, but I am worried and we need to be bothered as a nation. We need to stop this conspiracy, because somebody is really “tiefin” the soul of the nation, beginning with the children; and the soul of the family, and family love; somebody is stealing that. That might be one of the most precious treasures we have as a nation. It is possibly more important than what is happening at Pt. Lisas. The economic problems at Pt. Lisas might be less important than the spiritual and moral loss. Somebody is stealing the very heart and soul of the nation that resides in, possibly, the most important social institution, the home and family.

Government, I congratulate you and compliment you and hope and pray that we will find some time to look at the Children Act; to look, again, at all those little ones who have been assaulted, ill-treated, neglected, abandoned, exposed; those who have been suffering injury to health, or sight, or hearing, or limb, or organ of the body; those who have been denied parental and home love and are almost being lost to us as a nation. Thank you very much, Mr. Vice-President.

**The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar):** Mr. Vice-President, in replying, there are several concerns that have been raised on the other side. I would first like to record my gratitude to all hon. Members of the Senate, for the suggestions they have made and the contributions they have made with respect to the amendment Bill that is before the Senate.

I believe I should spend some more time in the Senate; it is very good for me to hear all the praise that I have received this afternoon. And I thank you for that, Members here who contributed. I would like to say that for this Legal Aid and Advice (Amendment) Bill, I think our gratitude goes to Ms. Judy Jones, who is the Director of Legal Aid. She has worked tremendously in bringing this Bill before this House. I say thanks to Judith, Ms. Camps from the CPC Department,

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and all those who laboured very long and very hard to place this Bill before this hon. Chamber.

Mr. Vice-President, several concerns have been raised, and the main one, it seems to me, had to do with the issue of funding. There was a concern that we had brought no costing, and I think on the very first day, the hon. Sen. Montano raised the question about funding: where would we get the moneys for implementing? And that call was picked up and echoed throughout the Chamber by almost every Member who spoke.

It is cause for concern, because we know that, without money, none of it would happen. It worries me too, in terms of finding the finance. But we do have the hon. Minister of Finance, who has been in this Chamber, and has heard the contributions that have been made, and who understands the importance of this piece of legislation.

We have been looking at costing and we estimate it should be around \$9 million, in order to implement this legislation. Now, it seems to me that may appear to be a lot of money, but we have spent in this country, more than \$9, on very simple matters, and if it takes \$9 million, I can give this House the undertaking that I will do all that I can to persuade—I cannot make the releases myself—my colleagues on the Government Benches for us to find a way to find that \$9 million. So, I say to you I am determined—[*Interruptions*].

**3.45 p.m.**

**Mr. Vice-President:** May we have one contribution at a time please.

**Hon. K. Persad-Bissessar:** Thank you, Mr. Vice-President. I am saying that I share your concern with respect to the finance, the funding for implementation of this legislation and would do all that we can because we recognize the importance of it.

I do not like to say things to Sen. Mohammed because today she was so full of praises and I want to keep the *Hansard* because that has made history to have Sen. Mohammed praising someone on the Government Bench. I thank her for that.

The point has to be made that while this legislation has been long in the making, in her contribution she took time to quote from Dr. Baboolal, and in my contribution I had referred to that. It is very important to note, and I said it on the last occasion, that we must bite the bullet. We cannot just talk and keep talking

about it. I want to make it very clear that this is not a manifesto in the sense that it is a political campaign, because that point was made that this Bill is so wonderful, it is like a manifesto, full of promises, but given the implication that it would not be carried out. If it is a manifesto, I want to say very clearly that the manifesto of this Government, and of myself being in Government, is clearly to improve the quality of life of the people of this country. That is my manifesto. If it is a manifesto, it is one that is committed to uplifting those in need and placing them in such a position that they can benefit from institutions of the state and this is what this Bill is about. It is not a political campaign.

So for those who seem to imply that it was merely something on a piece of paper, that would remain on a piece of paper, that would add to the laws on the statute books and make the books bigger, it is not that at all. This Bill is, as most of you have said, of crucial importance in Trinidad and Tobago at this time, and I cannot see my colleagues refusing to find ways to implement it. Again, I give you that assurance in terms of the funding.

In addition to the concern which was raised by Sen. Joan Yuille-Williams about applications under the Cohabital Relationships Act. Insofar as the applications in the High Court would already be covered by this Bill. However, for applications in the Magistrates' Court we would need a further amendment and I thank her for her concern with respect to that. We have, in fact, drafted an amendment which has been circulated to include applications in the Magistrates' Court under the Cohabital Relationships Act.

On the issue of mediation, concerns were raised by several Senators that if people are to be referred to mediators under the legal aid scheme, we must have more trained mediators available under the Community Mediation Act. Centres were supposed to be set up and the concern is, what has happened to these centres? And here we are coming to speak about mediation again.

I am very happy to tell Sen. Williams that we have already identified at least 12 mediators who are professionally trained in alternative dispute resolution. They were trained at their own cost and they are prepared to serve on the authority's panel of mediators to whom reference was made.

Someone asked the question when we say "skilled mediators" what do we mean. With the greatest respect, we are saying skilled mediators would be skilled in mediation. That is in answer to what was raised. The kind of mediation that is envisaged under this amendment to the Act, is of course wider in range than what is to be covered under the Community Mediation Act which was passed in 1998.

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The 1998 Act applies only to first time offenders on minor charges under 21 years of age. Further, the defendants in those cases or the complainants are the only persons who have the right to apply for mediation as a resolution to a criminal charge.

Finally, the range of remedies under that Act is limited and confined to such things as compensation, community service, or working for the complainant. What is clearly envisaged in this piece of legislation is that the amendments would involve civil, as well as criminal matters. So the Community Mediation Act was for much more restricted situation unlike what is envisaged under the Legal Aid Act.

Another Senator in her contribution spoke about legal aid investigators who were investigating applications with respect to divorce, but what is really needed is counselling and advice. I agree with her that in many cases such could assist. That is why the introduction of mediation as an alternative to go directly into the courthouse on adversarial proceedings is such a good idea, in my respectful view, because the mediators can step in and defuze certain situations. Then they can point the parties in the direction of other agencies even if the mediators themselves cannot act as counsellors. So they would be there and would be able to guide the parties to other services which are offered for counselling within the Family Services Division of the Ministry of Social Development, and in other areas.

The issue was raised about the kind of support system to be put in place for this increase in legally aided applicants. The comment was made that there was only one legal officer in place at this time and that there is provision for five. There are four investigators, but if the demand is increased threefold, obviously we would need more. That concern was raised. The Legal Aid and Advisory Authority would be very happy to welcome extra staff. There is certainly a need for extra staff and if these amendments go through then even a greater number would be needed. I would like to point out that there are in fact, three legal officers, not one, so it was not correct to say that there is only one legal officer at this point in time. There are three legal officers since the secretary to the authority and the director are qualified, experienced, and practising lawyers and they are also available to give advice and assistance to applicants. In our projected cost, which I mentioned, approximately \$9 million, we have allowed for extra lawyers, better pay for the lawyers and additional administrative staff.

Sen. Shabazz raised the issue about persons who are outside the income levels as set within this Bill. Within the Bill we are saying that we have raised the ceilings to allow more persons to become eligible for legal aid, and he has asked what

about those who fall just outside the ceiling; that the ceiling is still quite small. I would like to point out that for persons outside the income limits, legal advice is provided at present at the cost of \$1.00, because in addition to representation, the authority provides advice at the cost of \$1.00 and if we accept these amendments that would be increased to \$10.00. So persons outside the ambit of the income levels would still be able to seek advice from the authority.

There was concern with respect to the delay in granting legal aid certificates through the usual process of application to the investigator, then on examination by a probation officer, and when the adjourned date is reached, the applicant still does not have the legal aid certificate; magistrates should grant a longer adjournment and so forth, and the situation of the use of the probation officer lengthens the process. This was a valid criticism but that was the situation on the existing Act. I am very happy to say now that clause 13(b) of this Bill, as I pointed out last week, substitutes a new section 16(5) which provides as follows:

“Where a Court of Summary Jurisdiction is of the opinion, on the facts brought before it...”

that the applicant is entitled to legal aid then the court itself may grant it. This gets rid of the necessity for the magistrate to refer the matter first to a probation officer for report, followed by a further referral to the Director Of Legal Aid for an opinion on eligibility. This whole process took, as was quite rightly said, much time and there is great delay in the resolution of a case and, of course, it took up tremendous productive time of the probation officers. It is clear now that if this Bill goes through, as it appears that it will, and it is passed by this honourable Senate and it goes into effect, that duty of the probation officer would be taken away and, therefore, that whole process of time would be shortened. That is for criminal matters in the magistrates' jurisdiction that the judge can grant the legal aid certificate where necessary. I would like to point out that in the civil area, the Act provides for the issue of an emergency leave certificate by the director. So again, there would be cases where that long time lag in waiting for it would be cut down.

There was an issue raised about the transferred staff between public service and Legal Aid and it was pointed out that the Legal Aid staff has no benefits in their service; there needs to be an amendment to get benefits like the right to apply for a car loan or repairs for those officers who travel. First of all, let me make it very clear, and this would also pick up the point made by Sen. Oudit. The staff of

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the authority are employed by the authority; they are not public servants and, therefore, her comment would not apply with respect to having only public servants involved in the authority. The staff are not public servants. However, we would like to give them certain fringe benefits and have recently negotiated a pension scheme which is retroactive to 1992. We are concerned as well for those workers not within the service and, therefore, not having certain types of benefits. On the question of giving them car loans, those are administrative matters and certainly not matters of policy to be included in legislation.

An issue was raised with respect to increase in fees to lawyers. There is a perception that with a legal aid lawyer a person is bound to lose a case; higher fees may mean better lawyers who are prepared to do legal aid work and so forth. We must remember that the comment “higher fees may mean more competent lawyers would be willing to serve on the authority’s panel”, is a valid comment and that is precisely why we have increased the level of the fees. Legal aid to the poor for the enforcement and establishment of their rights is not supposed to mean poor quality legal representation.

If we pay more reasonable fees, then lawyers would be better able to pay their own travelling expenses, was a comment made by Sen. Dr. Mc Kenzie with respect to attorneys having to journey from Charlotteville to offices in Scarborough. The reality is that whatever fees are paid by the authority could not or would not compare to fees that are paid in private practice. The Government cannot, at this time, pay comparable fees to what obtains in private practice.

The question about quality of representation which was raised. It is our fervent hope that there would be better quality attorneys becoming involved, but again we just cannot pay the kind of fees that are paid out for private practice.

As I am on that point, I made the comment in my introduction of the Bill with respect to having lawyers from the Law Association and in the country as a whole providing service *pro bono* for the Legal Aid Authority work in that sense I also talked about what happens in the United States of America where the members of the American Bar Association freely give of their time and where, even in the large firms, they would release their younger lawyers to go out and do *pro bono* work.

I totally agree with Sen. Prof. Ramchand that it would be an ideal situation if we can ask lawyers in the country to do one to three cases per year *pro bono*. I think it would be a tremendous thing if that could happen. But again, we all have our property rights and we would need a very special majority of the Parliament if

we were to legislate to make it mandatory for lawyers to do *pro bono* work. What I will do however, is write to the Law Association and let them know the views which were expressed here with respect to that and ask them if they would be willing to assist in that manner.

**Sen. Prof. Ramchand:** I know the Minister would know how to apply for that, but I did say that maybe to get them to agree to take the scheduled way. It need not be absolutely free.

**Hon. K. Persad-Bissessar:** Yes. Certainly they would be paid under the schedule. I take your suggestion and this is something of which I had been thinking and I mentioned it in my opening comments on the Bill when I introduced it and I described the situation in the United States of America. It is certainly something that is worthy of following up.

Let me say, however, there are many lawyers in this country who come forward and do *pro bono* work and they must be commended. [*Desk thumping*] In my constituency, for example we had done free legal and medical clinics.

#### 4.00 p.m.

On March 14 we will be engaging free medical clinics again and both the doctors and lawyers, when we did the legal clinic, came forward not only from my area: they came from outside. It was a wonderful thing. They came and sat for the whole day and it is something that I have been doing in the constituency and I intend to continue doing, to provide that kind of service. There is reluctance by some to do the *pro bono* work, but let us not be deceived, because the fact is, as I say, there are many who do *pro bono* work and I can say that, in my own constituency office—I mentioned that as well—99 per cent of the persons who come to me, come for legal advice, and I am sure that Sen. Nafessa. Mohammed experiences the same kind of situation.

**Sen. Mohammed:** We want to put it on record that there are several other areas in the country, where many of us are indeed engaged in that kind of work. Just for the record.

**Hon. K. Persad Bissessar:** Wonderful. Wonderful. [*Desk thumping*] So that the call is made really by all of us, for others to come forward to assist in that manner, and we would be very happy for those of you who do have friends, colleagues and relatives who are lawyers, if you can persuade them with your

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arguments as well, and let us take that call outside of this Chamber as well and pursue it to get assistance for those who are in need.

Several other issues were raised today, and on the last occasion. There was an issue raised by Sen. Martin Daly with respect to what the Government should do, which is to prioritize implementation. He felt that it would be too costly to implement and, therefore, we should break the Act up into pieces, bring some in today, some next week and then again at some other time according to how the funds would go. I want to say that I totally disagree that we should separate any of the matters that are contained in this Bill and do them one year at a time.

The reason I say that, is because this Bill has been so long in the making. The matters that are now contained in it are, in fact, priority matters. That is why they are in the Bill in the first place. I have given you an indication as to what the kind of cost would be—approximately \$9 million—so that I do not agree that we should stagger it in that sense. I think other Senators also raised that point about staggering it.

There was a point made that seemed to imply mischief on the part of the Government when it was said that the Bill does not have a date from when it is to come into force. But it is totally normal that an Act would come into force on a date to be proclaimed. I do not see what is so devious, because there was an implication that we were being devious—that we did not really mean to implement this legislation, because it did not give a date for implementation. But the majority of legislation that comes into the Parliament has that wording, so there is nothing unusual or devious in the way that it is put there to be proclaimed on a particular date. So that if it is then, that we are to have this measure passed, it is my respectful view it should go into full force—not in stages and not in pieces at all. It should not be staggered.

You know I was a little surprised, that after all the comments that were made by the hon. Senator, when he said that we should stagger it—or prioritize it. In the very next breath, he said you know what you must do? Capital cases are different; you must raise the fees for them to £1,000—I do not understand it. I am sorry that he is not here. On the one hand, he is telling me do only domestic violence, prioritize that, and do that alone, and do not do the others because we may not have the money, and on the other hand, he says, but you know what to do: raise the fees for criminals on capital offences. So I am saying, I do not agree with that approach. I believe that we should put all of it into place at one time. Further, I would like to say, that given his concern with respect to capital offences, we have



further amended the legislation, as circulated to you, to allow for a maximum of \$10,000 in cases where capital offences are concerned, so we have taken that point on board.

Sen. Shabazz had spoken about the fact that “Your Government said if you do the crime you will do the time.” Now you are saying you are very concerned about the criminals’ rights. Senator Shabazz raised that point saying, we are here saying we want to grant legal aid to criminals. I made the point and I think it was made by others and is well-known that you are not a criminal and you are innocent until you are proven guilty. That is how I see the justice system operating. That is how I feel it should operate. There may be problems here, as there are elsewhere. We must always work on the premise that a person is innocent until proven guilty, because if we fail to do that then we will be hanging people, locking up people, without establishing that they are, in fact, guilty of a crime. We have seen many cases where persons were arrested, charged, and tried and did, in fact, turn out to be totally innocent of any of the charges.

I want to say very clearly that I believe, and this Government believes in the inalienable human rights of every one of our citizens. Every single person—whatever crime he or she is accused of—has the right, in our system and in our belief, to a fair trial and to legal representation, so that justice may not only be done but justice would also be seen to be done. We do believe it; it is not that we do not believe that if you do the crime you have to do the time. We still believe that and I will always believe that and I will be committed, as I say, to that fight against crime. We are committed, to it and, therefore, I think it is very wrong to take this Legal Aid and Advice Bill and try to make it appear that it is to help criminals. With the greatest of respect to the Senator, that is totally not the case.

If therefore, after you have had your right to a fair trial, you are found by the jury to have taken a life, then it is very clear, we agree, that you must do the time and pay the price—whatever it is the judicial process has taken you to. But that must only happen after you have gone through the judicial process fully and fairly—only then. So in response to the hon. Senator, I say that the Government is definitely in favour of all the rights of all its citizens, including alleged criminals and, therefore, they are entitled to legal representation just as anyone else.

“You have passed many laws”, Senator Shabazz tells me. “You talked about public education but you are not doing it. It is just a public relations exercise”, as other Senators have suggested. So that we are accused of passing laws as a public relations exercise, but I hope that the hon. Senator would see that we have taken

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the time to quantify the costs as requested. We have brought these today, and I hope, that is a demonstration of our commitment to act in good faith, with respect to this Bill. There were many other points that were raised.

Sen. Alfred raised the point that two clauses seemed to be in conflict, with respect to the payment of fees. One clause in the Bill is talking about being paid \$2,500—\$7,000 and in another clause we are saying the Director will pay fees. If the hon. Senator would want to look at the Parent Act, which this Bill amends, the hon. Senator would note that the first clause deals with fees to be paid for work done in the civil jurisdiction and these fees are in the discretion of the Director. All those that come in the first clause which state “Where the Director has the discretion” are matters in the civil jurisdiction, but the further one on page 22—that is with the range of \$2500 and so on—deals with fees for matters in the criminal jurisdiction, and these are subject to the range that is specified and those fees are in the discretion of the Judge. So it is two separate sections, completely, that we have sought to amend and to place the payment. In the case of criminal matters, the Authority pays fees as the Judge certifies. So that is the difference in the two. I hope that clarifies the Senator’s concern with respect to that.

#### **4.10 p.m.**

There was concern raised about the use of the word “programmes”. On the last occasion, I mentioned there is a proposal. We may not be able to do that certainly within this year, but there is a proposal with respect to having duty officers placed at the courts so that a lawyer would be available to provide legal advice on the spot in the court. That is an example of the kind of programme.

I think, Sen. Jagmohan raised the point that when he read “programmes” there again, he did not understand perfectly, but if we look at what it was for, it was for increasing the efficiency of the Legal Aid Authority. What is it that the Legal Aid Authority does? If we are to increase their efficiency, he was saying he was not sure if it was only for internal programmes or for external programmes. It is for both internal and external to increase the efficiency of the functioning of the Authority. The duty officer scheme is one such example of a programme, but what that provision will do, if it is included in the Bill and, therefore, later on in the Act, is to allow us, the Authority, from time to time, to come up with other ways in which we can deal with this business of providing legal aid and advice to the system of Trinidad and Tobago.

Another programme I have in mind, which we have been discussing, is one I mentioned again the last time we sat, has to do with the whole business of public education with respect to legal matters—giving public education programmes. I thank the hon. Senator who talked about radio programmes for people in the country who do not read as much or do not have access to the newspapers as much as others. It is a good idea. This is certainly something we can explore in that field of public legal education.

There was concern about the use of “proper officer” in one of the sections. I think Sen. Jagmohan raised it where we were saying that they would give notice to the proper officer. This officer may change from time to time, so instead of having to come each time to change the designation, if the officer for receiving that document is changed in the particular court, this is to avoid that happening and allow us to direct it to the proper officer. So, whoever is designated the officer in that court for the receipt of such documents would be the proper officer.

He also raised the point about not knowing where the Legal Aid Authority was. I recall in my contribution in introducing the Bill that the Legal Aid Authority was placed under the portfolio of the Ministry of Legal Affairs in May of last year. So it now functions within the Ministry of Legal Affairs. Mr. Vice-President, again, I am saying there were so many other points raised. I hope I have covered most of them. There were one or two matters relating to words used in the Bill, and in the committee stage we will pick up some of those errors with respect to words the hon. Senator pointed out. Someone talked about a board being mentioned. That is an error. It should be “authority”. We will pick up those typographical matters in committee stage.

One other matter is with respect to the definition of the word “minor”. That is an important point.

“The Act is amended by deleting words ‘child’, ‘an infant’ and ‘young person’ wherever they occur and substituting the words ‘minor’ or ‘a minor’, as the case may be.”

This Bill says:

“‘minor’ means a person who is under the age of eighteen years;”  
and the question was asked: “Why put it as minor only?” This is really very easy to explain. Legally, an infant is below a certain age; a young person is a different age, and child is also of a different age. What we have done is just have that sort of uniform, so minor means anybody below the age of 18 years.

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It is a practical kind of amendment to have done away with all these various definitions of young people and placed them all as minors. In fact, that is the trend which is happening in other pieces of legislation, because over the years, what has happened is that different pieces of legislation—I know that Sen. Prof. Julian Kenny is concerned about that—talked about the same thing in different terms. This is a good example of that. Over the years, with legislation coming in about young people, children and infants, the legislation created different definitions for basically the same people. We have eradicated that kind of problem by using the one word “minor” to encompass all those persons under the age of 18 years.

With respect to the definition of “guardian”, in the parent Act, which we are attempting to amend, the definition of “guardian” was wider than the one we are now proposing. I am advised by the Director of the Legal Aid and the CPC person that this definition is wider than what was originally there. This definition of “guardian” is solely for the purposes of the person making an application to the Legal Aid Authority, and once the person, for the time being, has the charge or control over the minor, it would allow that person to apply to the Legal Aid Authority on behalf of that person. I think that the Senator’s fear that it may have cut out some persons is not justified in light of the advice I have had.

Mr. Vice-President, let me once again thank all Senators for their very involved debate on this Bill. I was very surprised on a Bill that everybody appeared to be supporting that there were so many contributions. I welcome those and thank you for them. I ask them to let us work together to see if we can convince some lawyers out there to do some more *pro bono* work and, perhaps, work for the scheduled fees on a more consistent basis.

Let me just repeat that the purpose of this Bill is to increase the range of matters for which legal aid can be obtained. We have spent a lot of time talking about the increase with respect to domestic violence matters, but let us not forget it is not only domestic violence matters, but it now includes claims in the Petty Civil Court; appeals where the applicant seeks to defend an appeal; it now includes grants of probate and letters of administration where the estate does not exceed \$100,000; it now includes applications under the Family Law (Guardianship of Minors, Domicile and Maintenance) Act; and it now includes applications under the Status of Children Act, and by the time we have finished today, it would also include applications under the Cohabitation Relationships Act.

Further, the Bill has sought to allow more of our citizens to become eligible for legal aid by increasing the income limits and liberalizing deductions in

computing disposable income. The criteria used is basically the sound board for granting legal aid. As we said before, disabled persons on grants, pensions, and so forth, would be able to access legal aid. In addition to increasing this range of matters for which people can now apply, even more important is that, as we have said, the amendments seek to make it procedurally easier to obtain a legal aid certificate. The question raised about whether this would increase the delay and backlogs, I do not think that is the intention at all, because we have tried to put procedural measures in there to make it easier for persons to obtain their legal aid certificates. Finally, the bottom line is always money. This Bill does make provision for increasing the fees that we would pay to lawyers.

Mr. Vice-President, I thank you very much again, and I beg to move.

*Question put and agreed to.*

*Bill accordingly read a second time.*

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

*Senate in committee.*

**Mr. Chairman:** We have in front of us, the Bill with 34 clauses. There are proposed amendments to seven of them. What I propose to do is deal with the clauses in groups, save and except those that have amendments, which will be dealt with individually.

*Clauses 1 to 3 ordered to stand part of the Bill.*

*Clause 4.*

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

**Mrs. Persad-Bissessar:** Mr. Chairman, I beg to move an amendment to clause 4 as follows:

In paragraph (b) delete the word "Court" and substitute the word "Director".

*Question put and agreed to.*

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

*Clause 5.*

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

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**Mrs. Persad-Bissessar:** Mr. Chairman, I propose an amendment to clause 5 as follows:

In paragraph (d), delete the word “Board” and substitute the word ““Authority””.

*Question put and agreed to.*

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

*Clauses 6 to 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed, That clause 13 stand part of the Bill.*

**Mrs. Persad-Bissessar:** Mr. Chairman, I propose an amendment to clause 13 as follows:

In paragraph (b), in subsection (5), delete the word “including” and substitute the words “which may include”.

*Question put and agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

*Clauses 14 to 16 ordered to stand part of the Bill.*

*Clause 17.*

*Question proposed, That clause 17 stand part of the Bill.*

**Mrs. Persad-Bissessar:** Mr. Chairman, I propose that clause 17 be amended as follows:

Delete the words “Section 19 of the Act is amended by deleting subsection (4) and substituting as follows:” and substitute with the following:

Section 19 of the Act is amended—

(a) in subsection (2) by deleting the words “including any” and substitute with the words “which may include a”; and

(b) by deleting subsection (4) and substituting as follows:

*Question put and agreed to.*

*Clause 17, as amended, ordered to stand part of the Bill.*

*Clauses 18 to 20 ordered to stand part of the Bill.*

*Clause 21.*

*Question proposed,* That clause 21 stand part of the Bill.

**Mrs. Persad-Bissessar** Mr. Chairman, I beg to move that clause 21 be amended as follows:

- A. In paragraph (a) delete the words “ “or a disabled person” and substitute the words “or a person under disability”;
- B. In paragraph (c)—
  - I. In subsection (5) delete the words “disabled person” wherever occurring and substitute with the words “person under disability” and
  - II. Delete subsection (6) and substitute as follows:
    - “(6) In this section ‘person under disability’ means a person not being an infant who is a person under disability pursuant to Order 77 of the Supreme Court of Judicature Rules”.

**Sen. Dr. Mc Kenzie:** Mr. Chairman, in the amendment we are coming up again with the term infant. I thought that there was the feeling that we use the word “minor” as all inclusive. I was wondering whether I was wrong assuming that we should be consistent and go with minor all the way.

**Mrs. Persad-Bissessar:** I think that I can explain that in this section—you are correct, but I am just checking to ensure, thank you. Can we move on and come back to this clause.

**Mr. Chairman:** We will defer consideration of this clause, and come back to it.

*Clause 21 deferred.*

*Clauses 22 to 28 ordered to stand part of the Bill.*

*Clause 29.*

*Question proposed,* That clause 29 stand part of the Bill.

**Mrs. Persad-Bissessar:** Mr. Chairman, I beg to move that clause 29 be amended as follows:

Delete paragraph (a) and substitute as follows:

- “(a) by deleting the word ‘shall’ where it occurs the second time and substitute the word “may”.

*Question put and agreed to.*

*Clause 29, as amended, ordered to stand part of the Bill.*

*Clauses 30 to 31 ordered to stand part of the Bill*

*Clause 32.*

*Question proposed, That clause 32 stand part of the Bill.*

**Mrs. Persad-Bissessar:** Mr. Chairman, I beg to move that clause 32 be amended as follows:

- A. In subparagraph (a) (iii) insert after “(the Attachment of Earnings) (Maintenance) Act, 1998 the words “the Cohabitational Relationships Act, 1998”.
- B. In paragraph (c)—
  - (i) delete the words “(a)” and “(b)” and substitute the words “(i)” and “(ii)” respectively;
  - (ii) delete the words “(i)” and “(ii)” and substitute the words “(A)” and “(B)” respectively; and
  - (iii) delete subparagraph (ii) as renumbered and substitute as follows:
    - “(ii) by deleting the second paragraph and substituting as follows:

“The Authority shall pay to an attorney in respect of non-capital offences a fee of two thousand five hundred dollars; but the presiding Judge after the conclusion of the trial, may, if he thinks fit, certify that the case was of unusual length or difficulty and increase the fee of the attorney to a sum not exceeding five thousand dollars.

In respect of capital offences the Authority shall pay a fee of seven thousand five hundred dollars, but the presiding Judge after the conclusion of the trial, may, if he thinks fit, certify that the case was of unusual length or difficulty and increase the fee of the attorney to a sum not exceeding ten thousand dollars.

These sums become due and payable by the Director on the written authority of the presiding Judge.”



**Mr. Chairman:** Hon. Senators today you would have received a further list of amendments circulated by the hon. Minister which includes the amendments to clause 32.

*Question put and agreed to.*

*Clause 32, as amended, ordered to stand part of the Bill.*

*Clause 33.*

*Question proposed, That clause 33 stand part of the Bill.*

**Mrs. Persad-Bissessar:** Mr. Chairman, I beg to move that clause 33 be amended as follows:

In paragraph (a), subparagraph (i) delete the word “Supreme” and substitute the words “Supreme Court”.

*Question put and agreed.*

*Clause 33, as amended, ordered to stand part of the Bill.*

*Clause 34 ordered to stand part of the Bill*

*Clause 21 recommitted.*

**Mrs. Persad-Bissessar:** Mr. Chairman, we are of mixed views here. There are some of us, amongst my advisors, who think that it should remain as infant. I am inclined to also believe that it should remain as infant because we are amending a Parent Act. But I would like—if you would allow, to leave it as it is and if we have to make that change, we will bring it back to you to make that change. It will be the only word that will hold us up today. I am inclined to believe we should keep it. One of my advisors is saying it should go and another is saying, keep it.

**Mr. Chairman:** What I can draw to your attention hon. Minister is that if you look in subsection (a) of section 21, in the Parent Act you will see the reference here. You will see “infant” being retained wherever it occurs with the word “disabled person”. So that, in fact, the amendment to subsection (6) of section 21—

**Mrs. Persad-Bissessar:** You would need to keep it there. I am also of that view, but I am just saying that in the event that is not so we will bring it. I am of

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that view and I thank you. You have collaborated with me on that point; corroborated my view on it.

*Question put and agreed to.*

*Clause 21, 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 amendment; read the third time and passed.*

#### ADJOURNMENT

**The Minister of Finance (Sen The Hon. Brian Kuei Tung):** Mr. Vice-President, before moving the adjournment, I would like to indicate that, by agreement, we have agreed to have Private Members' Day at the next sitting. In the event that there is anything urgent, I undertake that we will notify the other side by Thursday, March 04, 1998.

I beg to move that this House do now adjourn to Tuesday, March 09, 1999 at 1.30 p.m.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 4.35 p.m.*