

Leave of Absence

Tuesday, April 13, 1999

SENATE

Tuesday, April 13, 1999

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. Philip Marshall from April 13, 1999 and continuing.

SENATOR'S APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Arthur N.R. Robinson
President.

To: MRS. NIRUPA OUDIT

WHEREAS Senator Philip A.F. Marshall is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, NIRUPA OUDIT, to be temporarily a member of the Senate, with effect from 13th April, 1999 and continuing during the absence from Trinidad and Tobago of the said Senator Philip A. F. Marshall

Given under my Hand and the Seal of the President of
the Republic of Trinidad and Tobago at the Office
of the President, St. Ann's, this 1st day of April
1999."

Oath of Allegiance

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OATH OF ALLEGIANCE

Senator Nirupa Oudit took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Financial Statements of the Trinidad and Tobago Export Trading Company Limited for the year ended March 31, 1997. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]
2. The Eleventh Annual Report of the Integrity Commission of the Republic of Trinidad and Tobago for the year, 1998. [*Hon. W. Mark*]
3. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the San Fernando City Corporation for the year ended December 31, 1990. The Minister of Finance [*Sen. The Hon. Brian Kuei Tung*]
4. Report of the Auditor General of the Republic of Trinidad and Tobago on the accounts of the San Fernando City Corporation for the year ended December 31, 1991. [*Hon. B. Kuei Tung*]
5. 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, 1994. [*Hon. B. Kuei Tung*]

NATIONAL INSURANCE (AMDT.) BILL

Bill to amend the National Insurance Act, Chap. 32:01 [*The Minister of Finance*]; read the first time.

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

Question put and agreed to.

OLD AGE PENSION (AMDT.) BILL

Bill to amend the Old Age Pension Act, Chap. 32:02 [*The Minister of Social and Community Development and Minister of Sport and Youth Affairs*]; read the first time.

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

Question put and agreed to.

PUBLIC ASSISTANCE (AMDT.) BILL

Bill to amend the Public Assistance Act, Chap. 32:03 [*The Minister of Social and Community Development and Minister of Sport and Youth Affairs*]; read the first time.

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

Question put and agreed to.

LAND ACQUISITION

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy Dowlat): Mr. President, I beg to move the following Motion standing in the name of the Minister of Housing and Settlements:

Be it resolved that this House approve the decision of the President to acquire the land described in the Appendix for the public purpose specified.

Mr. President, this Senate is being asked to approve the decision of the President to acquire two parcels of land together comprising 150.1 square metres, more or less, situated on the southern side of the Eastern Main Road, Valencia, approximately 40 metres east of the 22 1/4 mile mark, in the ward of Manzanilla, county of St. Andrew and said to belong now or formerly to Mrs. Fay Kangalee.

Mr. President the subject acquisition is at the request of the Minister of Works and Transport and is required for a public purpose namely, the realignment of the Valencia River to alleviate flooding.

In response to a spate of complaints from residents in the Valencia area of severe flooding, the Ministry of Works and Transport undertook to realign the Valencia River, utilizing two parcels of land said to belong now or formerly to Mrs. Fay Kangalee.

In view of the urgent action which is necessary to carry out remedial works as well as the severity of the flooding, publication of sections 3 and 4 of Legal Notices as required in the Land Acquisition Act, No. 28 of 1994 to enter on lands subscribed was, in fact, overtaken by physical works which were initiated in 1990.

Mr. President, the project having been completed has, in fact, alleviated the flooding problem to the extent that the residents, including Mrs. Kangalee, has expressed their delight and satisfaction. More detailed information on the two parcels of land together comprising 150.1 square metres said to belong to Mrs. Fay

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Kangalee can be obtained on a survey plan filed in Book 1140 folio 192 in the vault of the Lands and Surveys Department, Red House, Port of Spain.

Mr. President the procedure for the acquisition of lands for public purposes is standard, and we have brought these arrangements before this honourable Senate from time to time. On this occasion we are indeed honoured to expedite the process and I beg to move.

Question proposed.

1.40 p.m.

Sen. Nafeesa Mohammed: Mr. President, from time to time we are asked in this Chamber to approve applications to acquire lands for various purposes and this afternoon the hon. Senator made mention of the fact that these two parcels of land are being acquired from Mrs. Kangalee.

One of the immediate concerns which came to mind with this Motion is—the Senator had made mention of the happiness of the lady—whether this lady has, in fact, been compensated for this acquisition. As you know, from time to time, especially in relation to land acquisition matters, we are aware of the fact that this system tends to be a rather lengthy process and it is because of the problems being experienced over the years in terms of compensation for land acquisition that the former People's National Movement government initiated the passage of the Land Acquisition Act, which I think was supposed to have been implemented just as the UNC administration came into Government. We on this side are certainly concerned about whether people are receiving their compensation as required under the Act and whether, in fact, the system is being speeded up.

The hon. Senator talked about expediting the process. At the end of the day the people from whom lands are being acquired are the bottom line of the matter. They have no choice when the state wants to acquire property, there is no alternative once the procedures are followed through—whether it is to publish or what have you—but at the end of the day, it boils down to a question of compensation for these lands and we are very concerned about the matter and would like to know more about this aspect of it.

Mr. President, looking at the purpose for which the lands are being acquired, the Appendix to the Motion refers to the “Realignment of the Valencia River to alleviate Flooding” and immediately when I saw this it raised concerns for me. I know for a fact that not too long ago the same Ministry of Works and Transport,

which the hon. Senator pointed out had requested that these lands be acquired for realignment of the Valencia River, authorised some realignment of a particular river and it resulted in the worst flooding ever experienced in more than 30 years in a very large area of our country.

In terms of the nature of the work being carried out, I remember just about two weeks ago driving through this area. From time to time, I am sure many Senators have passed through this Valencia area and for the past two or three years some work has been going on. There is a particular bridge in that area just over that river and one of my colleagues I remember, more than two years ago, had highlighted the problem where there was a major accident at that bridge and another person had lost his life, and the fact of the matter is some work had taken place. I see a new piece of road is being built and I am concerned about the quality of the work that is being done, not just with respect to the road, but certainly with respect to the realignment of the river works, because we know what has been happening with the Solomon Hochoy Highway with the kind of work that is being done.

With respect to the Valencia River, there is another matter of concern which I need to raise in this particular area and it is a matter that I would urge my colleagues on the other side to please investigate. I understand in that area very near to the river, there is a sewer plant located somewhere in the vicinity of where this land acquisition is taking place and over the last few weeks, raw sewage has in fact been filtering into that river. This is a matter of great concern because there are people living in the area. It can in fact be a health hazard and I would certainly ask the Government to please investigate this matter and see if it is in fact so, and what steps can be taken to alleviate this particular problem. It is a matter which needs to be investigated.

Mr. President, in terms of the acquisition of these lands in order to realign the Valencia River, we on this side certainly have no problems in supporting the Motion, but we are hopeful, or at least we would have liked to have heard when the hon. Senator was presenting the Motion, that the lady had, in fact, been compensated because this is the machinery which we left. The general procedures had been established. It is a question of implementation and we would like to know what the Government is doing in terms of this issue of compensation of persons with respect to land acquisition matters.

Thank you.

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, I have one or two questions for the hon. Senator. She knows my pet questions about lands in Tobago and how many more persons have been paid. I have been promised a reply so I am not going to hit that very much. What I want to find out about this particular acquisition is if the land has been valued; what is the cost of it, and whether Mrs. Kangalee has been paid. If she has not been paid, how soon can she expect payment?

That is all I have to ask. Thank you.

Sen. Mahadeo Jagmohan: Mr. President, thank you for the opportunity for a brief intervention in the Motion before the Senate. It is not unusual for motions of this nature to come to this Senate for approval. This actual acquisition has already taken place, I presume, but what we are required to do here is to ratify the acquisition at this level.

Mr. President, we have heard from the leader of this section of the Senate that we do not seem to have any great difficulty in terms of the policy to support this Motion, but it seems to me on the basis of what is said on this Appendix, that another document which should have come with this is not there. The plan which should have been appended to this Order Paper and this description of land is not here. This is my understanding. Except I am told otherwise, it appears that this acquisition is going to be within the new piece of law that was passed recently in the Senate.

My colleague already alluded to a very dangerous situation which we have been advised exists around that area of the Valencia River in that location. An appeal was made for an investigation and some corrective measures, if and when necessary. It is hoped that this idea would be given priority over other considerations in that project, because information reaching us is that people bathe in that area of the river almost on a daily basis and they are actually seen to be enthusiastically frolicking in the waters which we are told are loaded with bacteria which is dangerous to human life. Like I said before, this is the report we have from our usually reliable sources, but the Government ought to investigate this matter and make a public statement on it. The people do not know what they are doing and immediately some kind of notice or precautionary measure should be established so that people may stay away from that area.

A term is used here, Mr. President—the realignment of the river—we would like to know whether this realignment referred to is going to change the course of

the river or is it going to be realigned in a straight line from point to point. We do not know and the reason for asking whether it would be realigned on a straight path from point to point is to find out to what extent people would be affected. When I say people, I mean people whose homes are in the way, people whose gardens and farms fall in the way. This has to be explained to us some time before the Motion is finally approved.

Going a little further, perhaps we could serve notice or remind the Government that reference was made to a very important project. The name was not mentioned, but I am in a position to say that first-hand information was available when the Piparo River was being handled by a contractor on behalf of the Ministry of Works and Transport and the contractor at that time handled the job in a most unprofessional manner with very poor project management which resulted in severe flooding which devastated a great area of Central Trinidad. The losses that were experienced by those people can in no way make up for it in any short-term period and it seems as though no compensation is coming to those people up to this time. It is important in any such project whether a study is done and what exists upstream and downstream in that area where the river is to be realigned. That is extremely important so we can focus on what hardships may come if severe flooding takes place.

We know very clearly and only those who are hurting right now know how it feels. That is the reason for my taking this stance in alerting the Government, particularly the Minister of Works and Transport, to pay attention to this.

1.55 p.m

Very sadly the terrible flooding that took place in Central Trinidad—many of us do not know and will never know the extent of the losses experienced by persons. Their losses amounted to millions of dollars being lost in agricultural produce, livestock, household equipment, furniture and carpets. A great deal was damaged and destroyed.

We know that the question of compensation was attempted, but it has been frozen. Compensation is not being paid, and no serious consideration is being given. We ask again, about the realignment of that river. Is it being handled in the way some of us are aware of how such projects are handled?

We have no doubt that the Government will consider it a legal obligation to compensate the owners of the land using the term “formerly, now or lately”. We

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are suggesting that from this point onwards, all steps be taken to compensate expeditiously. I am told by our friends that there is a terrible situation existing in Tobago with respect to the compensation for land. The Ministry, and the Minister, through the Parliamentary Secretary, supplied a list to us with respect to those persons who were compensated. But we understand that there is a larger number of people in Tobago who have not yet been compensated. We ask that attention be given to this matter.

Mr. President, this is a matter which takes a long time. Perhaps, we need not lay the blame right now, but we request that those persons whose gardens would be destroyed when the tractors and other equipment begin to work, and those persons whose houses would be removed, that they be compensated expeditiously; especially those people who depend on their farms and gardens for their existence. We ask that this matter be handled in a different manner, not the manner in which acquisitions and realignment of rivers were done in other areas.

There is a part in this Motion that states that it is to alleviate flooding. Flooding takes place in many parts of Trinidad. The Minister of Works and Transport is not in the Chamber at this time. I suppose we would be told that it is an act of the Supreme Being when it rains heavily and places get flooded and so forth. We are told this time after time.

That very important southern link road—the Mosquito Creek, I do not know if it has another name—we see that some work was done there over the last two years, but the flooding continues to the extent that many of us who depend on travelling on that road must divert through La Fortune and Woodland or Debé and Penal through San Francique in order to get to Fyzabad. With regard to that aspect of flooding, we are urging the Minister of Works and Transport to speed up the process.

Mr. President, having said these few words, we are hoping that some of the warnings that we have sounded, and some of the advice that we have given would be heeded. I thank you very much, Mr. President.

Sen. Joan Yuille-Williams: Mr. President, before the hon. Senator replies, I have noticed, since I have been a Member of this Parliament, that each time a land acquisition Motion comes before us, it is just for one parcel of land, one area. I am a bit concerned about this. I remember, as a Member of a previous administration, whenever we had land acquisition a number of pieces came before us. In this case we have already used the parcel of land and we are now asking that the parcel be acquired. But, there are several other pieces out there which we have used and

which have not come before the Parliament. I would like to know what are the criteria for this. Why is it that only one piece comes at a time?

I remember some time ago the last one we dealt with was the Home Construction area—a selected piece. Today, with due respect to Ms. Kangalee, only this particular one is coming. I wish you could tell me what are the criteria, why is it that we do not get 10 or 15 as the case may be? Is it because when this comes, we are looking forward for payment on this and therefore we are not anxious to bring the rest? I think in fairness to all of them, the Government should go back and see all that it has already used and bring a motion to the Parliament in all honesty, and ask the Parliament to approve the acquisition of those lands and move forward with the payment.

I remember, when we were dealing with the Investment Bill, we spoke about speedy payment for the foreigners whose lands we have acquired. I am hoping that this will also be done in the case of these. But, I am really concerned. I would hate to see again, that someone comes with a selected piece, because it would make us think, why this particular person? These are the things which cause people to ask questions—transparency and a number of other questions when, probably, they should not be asked. But, you would be forced to ask those questions if there are 40 or 50 persons whose lands have been used and this matter is not in Parliament, then suddenly out of the blue one piece crops up—I would really like to know what are the criteria? Why must this happen? This is the second time that I am seeing this happen here. I am not accustomed to it and I would really like the hon. Senator to tell us what are the criteria, and when is the Government prepared, in all honesty, to bring to this Parliament, a list of all the lands that it has used and has already acquired, which need the formal sanction of the Parliament. Thank you very much, Mr. President.

The Parliamentary Secretary in the Ministry of Housing and Settlements (Sen. Carol Cuffy Dowlat): Mr. President, I want to thank my hon. colleagues and Senators for the contributions which they have made on today's Motion.

I want to begin by assuring Senators Dr. Mc Kenzie, Jagmohan and Joan Yuille-Williams that we are addressing the issue of compensation for lands and payments that have been outstanding since the 1950s and 1960s. This is not novel. We have in fact provided, under the 1999 budget, approximately \$15 million for payment to persons whose lands have been used and, to date, have not been paid. This is a 1997 acquisition and we are dealing with it in 1999 so that we are, in fact, expediting payments.

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I want to assure Senator Yuille-Williams, that we would be doing the work that was not previously done. The reason we are bringing these matters which she has raised is that on many occasions titles have not been cleared, valuations have not been completed, or the matter is in the hands of the Director of Surveys. Only when those issues have been addressed can we, in fact, come before this House to ask for acquisition.

This also brings me to the point of the question of payments. Dr. Mc Kenzie raised the issue with respect to the cost of valuation and payment. The estimated cost of acquisition is \$5,280 which is broken down as follows: land \$4,800; contingencies \$480; total estimated cost \$5,280. We regret to say that Mrs. Kangalee has, in fact, since passed away, but her estate is the receiver of any compensation that would be paid.

2.05 p.m.

Sen. Mohammed raised the question of the road as the Sangre Grande road. I want to assure Sen. Mohammed that I am not in a position actually to question the technical competence of the engineers of the Ministry of Works, being merely an attorney, but I will have faith in their competence until I have reason to believe otherwise. Also, we do know of the accident on that bridge and we expressed deep sorrow and regret that a Member on her side, Mr. Boynes, lost his sister in that accident. We also know that Mr. Boynes had been crying out for that matter to be addressed and it was, in fact, not addressed when his administration was in office. So I think we must congratulate the Minister of Works and that Ministry for heeding the cries, not only of Mr. Boynes, but of all users of that road and that bridge.

Sen. Jagmohan raised the question of where one can find the survey plan. If you look at the Appendix to the Order Paper, you would see:

“The parcels are more particularly shown coloured raw sienna on a Survey Plan filed in Book 1140 Folio 192, in the vault of the Lands and Surveys Department, Red House, Port of Spain.”

So it is not usual to have the survey plan attached here, but it is available. You can check in the vault of the Red House to locate it. On the issue of pollution of the Valencia River, I can assure you that the matter would be investigated and an appropriate statement made once that investigation has been completed.

Once again, on the realignment of the Caparo River, we must have some confidence in our technical people and I am certain that they would have considered all the issues raised, so that when the alignment of the Caparo River is, in fact, completed, all the questions which Senators are raising would have been addressed.

Dr. Mc Kenzie had indicated to me earlier that when our last acquisition was brought here the question of compensation for some Tobago persons had been raised and we have provided a list of 15 pieces of land which were acquired in Tobago but which were not paid for.

On the 20th of the first month of 1999 at least one additional person had, in fact, been paid, Mrs. Sybil Pitt. She was paid \$10,885.20 for the compensation of her lands. You see, we can only pay when we have been assured by the Director of Surveys that title has been cleared and the Valuation Department has given us a cost. So that these matters are all being addressed and the moment we are convinced that all the groundwork has been done we would bring matters of compensation before this honourable Senate.

Mr. President, in these circumstances, I beg to move.

Question put and agreed to.

Resolved:

That this House approve the decision of the President to acquire the land described in the Appendix for the purpose specified.

APPENDIX

DESCRIPTION	PUBLIC PURPOSES FOR WHICH TO BE ACQUIRED
The parcels of land comprising together 150. 1. square metres more or less, situate on the southern side of the Eastern Main Road, Valencia, approximately 40 metres east of the of the 22¼ mile mark, in the ward of Manzanilla in the county of St. Andrew and described in the schedule and coloured raw sienna on a plan of survey signed by the Director of Surveys and dated July 31st, 1996 and filed in his office are required for a public purpose: Realignment of the Valencia River to alleviate flooding.	Realignment of the Valencia river to alleviate flooding

DESCRIPTION	PUBLIC PURPOSES FOR WHICH TO BE ACQUIRED
<p style="text-align: center;"><u>SCHEDULE</u></p> <p>Two parcels of land containing together 150.1 square metres more or less, situated on the southern side of the Eastern Main road, Valencia, approximately 40 metres east of the 22¼ mile mark, in the ward of Manzanilla, in the county of St. Andrew and said to belong now or formerly to Mrs. Fay Kangalee.</p> <p>The parcels are more particularly shown coloured raw sienna on a Survey Plan filed in Book 1140 Folio 192 in the Vault of the Lands and Surveys Department, Red House, Port of Spain.</p>	

VENTURE CAPITAL (AMDT.) BILL

Order for second reading read.

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

That a Bill to amend the Venture Capital Act, 1994, be read a second time.

Mr. President, I hate to sound repetitive but this matter can be considered to be relatively simple. I am sure this honourable Senate will recall that in 1994 a Venture Capital Act was enacted to provide for, among other things, the establishment, regulation and administration of a venture capital industry in Trinidad and Tobago. It was meant to create such an industry and it provided, among other things, for the appointment by the President of an administrator of venture capital companies. One of the duties, Mr. President, of this venture capital administrator included, among other things, the issuing of a tax credit certificate to persons who have purchased shares issued under section 29, that is under subsections (1) and (2) of the Act.

Mr. President, section 29(4) of the Venture Capital Act requires that the above mentioned tax credit certificate be issued by the administrator of the Venture Capital Incentive Programme within 45 days of the date of the receipt of the

application. It was an onus that was placed upon the administrator to ensure that tax incentives which had been provided were given forthwith and forthright to ensure that there was no undue delay. It therefore put the onus on the administrator to ensure that this tax certificate was issued within 45 days.

Mr. President, Parliament has asked to know that the previous administrator was appointed administrator of venture capital companies in 1996, about mid-year I think, and served in that capacity during the period July 12, 1996 until July 12, 1998, at which time his term of engagement expired. An advertisement for the position of Administrator, Venture Capital Incentive Programme was placed in two of the daily newspapers in May of 1998 in anticipation of the expiry of his term of office and it attracted applications from seven persons. Regrettably, Mr. President, none of the persons was found suitable and, therefore, the appointment of an administrator had to be further delayed.

The appointment of an administrator is to be made shortly. What we propose to do is to appoint the Compliance and Financial Officer of the Venture Capital Incentive Programme to the post of Administrator. This, Mr. President, is because the person, a female, stacked up quite well against the seven applications we received in response to the advertisement. As a matter of fact, she has been acting in the position and has acted quite well since then, and that is how the decision has been made to have her appointed Administrator.

It is, therefore, not possible, given these circumstances, for the provisions of section 29(4) of the Act, which requires a tax credit certificate be issued within 45 days upon receipt of application, to be met. As such, Mr. President, the Venture Capital Incentive Programme has not issued any tax credit certificates since July 12, 1998. To correct this I am proposing an amendment to section 29 of the Venture Capital Act, 1994 which shall be inserted after subsection (4) and will read as follows:

“(5) Notwithstanding subsection (4), where on account of a vacancy in the office of Administrator, a tax credit certificate is not issued to a shareholder within the period stated in that subsection, the certificate shall be issued by the new Administrator within twenty-one days of his appointment.”

This amendment would enable administrators, when appointed, to issue tax credit certificates for applications which have been with the Venture Capital Incentive Programme in excess of 45 days.

Mr. President, the Venture Capital Incentive Programme, as you know, seeks to promote the creation and development of small and medium-sized businesses throughout the nation by the provision of what is described as venture or equity capital to these businesses for the long term. This Government recognizes that the development of the small and medium sized business sector must form a crucial part in any plan to modernize or diversify our local economy. The Venture Capital Incentive Programme will play an increasingly important role in this regard. As such, it is essential that Parliament enact the above amendment without delay, as not to do so could jeopardize the growing investor interest and confidence in the venture capital industry.

Furthermore, Mr. President, Government is mindful of the fact that we are approaching April 30, 1999 and this is the stipulated due date for the filing of individual income tax returns. Individuals who have purchased shares issued within the requirements of section 29 subsections (1) and (2) of the Act must be allowed the right to claim the respective tax credit on their 1998 income tax return. Accordingly, I wish to recommend to this honourable Senate that they support this amendment to section 29 of the Venture Capital Act.

I may add, Mr. President, that by the end of 1998, by way of information, the total capital raised by the two venture capital companies registered in 1998 increased by TT \$1.1 million or 53 per cent to \$3.1 million. So the equity capital raised for 1998 by these two companies, one Prudent Venture Capital Company, \$211,750.00 and Adventure Capital Company, was \$866,442.00 bringing the total of the amount raised by all venture capital companies to \$3.11 million. With these very few words, Mr. President, I beg to move.

Question proposed.

Sen. Danny Montano: Mr. President, we on this side have no particular difficulty with this piece of legislation. It is quite simple. It is a procedural matter, as the Minister has adequately explained. However, surrounding the issue there are one or two matters I would like to ask the Minister about, and that is, as he very well pointed out, the deadline date for finalizing these certificates so that taxpayers can have the benefit of them is April 30. So I understand that.

However, I do understand what happens with the Inland Revenue Department. That is to say, I do not quite know what the certificate looks like, but if it bears the date 1999 it is going to create some confusion in the minds of the Inland Revenue employees unless somewhere on the certificate it says that it relates to the

investment that took place in 1998. So that could very well create all kinds of snafus for taxpayers. I would ask the Minister to clarify that issue so that there are no problems.

The only other thing I would like to ask the Minister is this. As I recall, in his budget contribution he indicated that the venture capital of a company was likely to come under the administration of the Small Business Development Company. As regards that, I think some clarification of what has taken place would be very useful for us in the business sector. As I recall also, the original legislation had limits on the amount of equity or venture capital a company could buy into or borrow, as it were, to a maximum of 49 per cent of the equity. There was also a maximum limit on the extent of the investment of \$3 million. I think that the company had to be limited in size to 75 employees.

I would ask the Minister, considering the limited success of the venture capital project, whether those limits are, in fact, being reconsidered in view of the fact that you intend to move it under the Small Business Development Company.

The Minister of Finance (Sen. The Hon. Brian Kuei Tung): I must thank the hon. Senator for his support of this amendment and for his understanding of what has happened here. I think the difficulty really is that we have not been able, without this legislation and the amendment—because even if we did appoint, which is what I had attempted to do—I attempted to appoint the new administrator, as I said, Ms. Judith Mark, I think that is her name, in compliance as financial officer. She should have been there since the inception, I think.

She really has worked quite exceptionally and, as a matter of fact, she has literally held the reins since the departure of the previous administrator and has really gone about trying to do the best there. And I say that particularly because I feel personally she has been tested. First, I announced in the budget, as you rightly said, that it is being transferred to the Small Business Development Company, so there was some loss of interest, if you want to call it that, because it was in-between.

2.20 p.m.

Mr. President, just to answer Sen. Montano's question, Cabinet has already made the decision in a separate note, to transfer it. I thought that I had read something about it earlier on, that it had already been transferred, but I know that the Ministry of Trade and the Small Business Development Company have not really assumed the responsibility in a full way. In the meantime, Miss Mark kept

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the ball rolling, as it were, and even with the loss of the administrator she continued to keep plugging away at it. So it was unfortunate that we could not have gotten her appointed, but even if we did, she could only have done those that will come within 45 days of her tenure. This is to make sure that all those applications that came in since July 12 that were sitting on her desk, she thought that even acting as administrator she could have done them. Apparently she could not, and the only person under the law who can actually issue these tax certificates is the administrator, not an acting administrator.

I have to get this piece of amendment in, in time for those other people. I can give the assurance that I have been told by the Board of Inland Revenue there would be no difficulty in recognizing the certificate in 1998, even though it might be dated 1999. Again, I give the assurance that there is no snafu, as the Senator said, or any foul up, because we would not want it to lose any further momentum.

Basically we are trying to find a way to harmonize the Venture Capital Incentive Programme with the Small Business Development Company. It was in the Ministry of Finance, but it really did not have a proper fit, and that is why in the budget I said that maybe the better fit would have been for it to be somewhere around the Small Business Development Company. In any case, Mr. President, you will remember that in the budget I announced that we would put a team together, because of our development of what is called small or rather micro enterprises and small business. Some people get confused, they think that small business is small, whereas under normal international measures, small business is fairly big. When we think about big business we speak about Shell and Exxon, so you can imagine that small business cannot get anywhere near these, and small business in the international sphere is somewhere near US \$250,000. Now, we do not have those kinds of small businesses, instead we go toward the expression "micro enterprise" which is pretty close to the definition of the honourable Senator.

I am hoping that this team headed by Mr. Neil Rolingson, the Chief Executive Officer of PLIPDECO—and I think his report is about due in—would look at all these things and see how they can rationalize them. So they look at the Venture Capital, and what the Small Business Development Company has been doing. In one case the Small Business Development Company has a new leasing company, and in another case they give guarantees to the banks. I am not too sure whether we are satisfied that those guarantees given by the Small Business Development Company, which is an arm of Government and which can be considered as a government guarantee, have really benefited applicants for loans, because we hear

that the guarantee is only seen as collateral, but there is no benefit to the applicant in terms of a reduced interest rate.

I cannot think of a better gilt edge investment for a bank than to get a guarantee from an arm of Government. Even though it is not a direct guarantee, they are guaranteed that their money would not be lost under normal circumstances. Yet these applicants are not benefiting from a lower rate of interest, which is what we would expect. More than that, there are other organizations like FundAid which also do small business lending, and we ourselves have also been considering—I did announce in the budget too—that there would be some direct lending being done by the Small Business Development Company, but it had to be done in a rationalized environment. That is why I am anxiously waiting for the report that comes in on the Small Business Development Company so that we do not seem as though we are running off in several directions at the same time: one, we end up confusing people who want to go into small business, they are not too sure where to turn; two, there are several avenues.

I remember Sen. Prof. Spence asked me whether the Agriculture Development Bank was part of it too, because it also lends money for what might be regarded as small or micro enterprises. So there is some rationalization that is quite critical and necessary. I merely mentioned all that to show that the Venture Capital Incentive Programme is another feature of that whole landscape.

I thank you for your support. Mr. President, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

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

Senate resumed.

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

**REGISTRATION OF CHARGES
(MOTOR VEHICLES) BILL**

Order for second reading read.

The Minister of Works and Transport (Sen. The Hon. Sadiq Baksh): Mr. President, I beg to move,

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That a Bill to provide for the registration of charges on motor vehicles and for matters incidental thereto be read a second time.

Mr. President, the primary purpose of this Bill is to protect the prospective motor vehicle purchaser from monetary loss and undue hardship when undertaking transactions. The problem stems from the process of registration of motor vehicles insofar as it relates to the question of encumbrances on motor vehicles.

At present, the system of motor vehicle registration affords information with regard to the date of registration of the vehicle; the name of the registered owner; and particulars of the change of ownership in the form of a certificate card copy of ownership. The process, however, does not afford the means by which it would be possible at any given time to ascertain as to whether encumbrances remain on a motor vehicle being the subject of a purchase.

Currently, bills of sale on motor vehicles are registered at the Registrar General's Office as per the provision of the Bill of Sale Act, Chap. 82:32. However, there are other methods by which motor vehicle purchases are made, resulting in a variety of instruments that create charges on motor vehicles that are not under the Act. Mr. President, I am sure that you and other Members of this honourable Senate can appreciate the risks these registrable charges bring to bear on the purchaser of a vehicle. There have been cases which have wound up in the courts where vehicles have been purchased by innocent persons allegedly free from encumbrances when, in fact, the said vehicles were subject to mortgage bills of sale, higher purchase agreements or other forms of unregistrable charges.

While a vendor in such a case shall be liable in a civil action and conceivably criminally liable to the purchaser in such instances, in cases where the vehicle in question has been subject to a chain of such transactions, it becomes extremely difficult to establish the proper party or parties in legal proceedings. It is, therefore, most important that a system be established in order that a prospective buyer be made aware of any liabilities or charges he may incur or be liable to when he seeks to purchase a motor vehicle. Such a purchaser should be placed in no less favourable a position as regards the title of the vendor than a purchaser of land enjoys at present.

This Bill seeks to establish a centralized system for the registration of all charges on motor vehicles, with the Licensing Authority, and where the vehicle is not in the possession of the holder of said charge, places the onus upon him to

register that charge. The registration of charges, Mr. President, is most important for the following reasons:

- (a) That as against the interest of a subsequent third party who registers his interest, an unregistered charge is deemed by this Bill to be unenforceable in a court of law; and
- (b) priority of charges is determined by the date of registration of the charges.

With an establishment of the proposed centralized system, it is intended that all instruments creating a charge on a motor vehicle shall be registered in one registry. This will eliminate as best as possible all hardships caused when motor vehicles are sold and are subsequently found to be the subject of undisclosed charges.

It is envisioned that prospective buyers shall have instant access to all pertinent information with regard to the motor vehicle's history and attendant charges affecting it. Purchasers shall, therefore, be placed on notice before parting with their hard-earned money and exposing themselves to legal hardships.

With the proliferation of the used-car market in Trinidad and Tobago, it should be quite clear to you and Members of this honourable Senate here today, that more than ever before, improved means of protecting the purchaser is needed. The establishment of the proposed registry seeks to aid, assist and protect such customers and consumers.

Mr. President, during the initial debate of this Bill in 1997, queries were raised on individual provisions of this Bill in its initial form, as well as to the system of registration generally. My colleague, the hon. Attorney General and Leader of Government Business in the House of Representatives, gave an undertaking to the Members of the House that their concerns would be addressed and their proposed amendments determined. However, the policy behind the Bill predates the present administration by over a decade. With that in mind, the Government took the opportunity to revisit the original policy and update it accordingly. The Bill before this Senate today is the result of the updating of the policy and the redrafting of the Bill; the joint effort of the Attorney General's Office, the Ministry of Works and Transport, the Law Commission and the advice of the Registrar General's Department.

2.35 p.m.

I would now like, Mr. President, to go into the clauses of the Bill, highlighting the important provisions and indicating their purpose.

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Clause 2 serves to define the important terms used in the Bill. The most important definition is of the term “charge”. This dictates what form of transaction forming a security interest is covered for the purposes of this Bill.

A charge is, therefore, defined as: “any security interest evidenced in writing and created by any consensual transaction”—that is, a transaction where all parties have agreed—“whereby a motor vehicle is used as collateral...” This shall serve to cover such transactions as the credit sale agreement, hire-purchase agreement, mortgages, bill of sale, a lease, a contract of sale and a transfer. However, it excludes transactions under the Pawnbrokers Act, where the vehicle would become the actual possession of the pawn holder. Other than this, all consensual transactions of the type listed above, shall be registrable charges under this Bill.

The other important definitions included in clause 2, shall be dealt with in details in the appropriate provisions of this Bill.

Mr. President, clause 3 outlines the scope of the Bill, that it shall apply to every transaction that under the Bill creates a security interest in a motor vehicle. For the purposes of the Bill a security interest is defined as any interest in a motor vehicle securing payment or other performance of an obligation. It shall include the interest of a lessor under the lease with an immediate right of possession in the lease and/or with an option to purchase and also a lease with a one-year term.

Part II of this Bill, Mr. President, outlines the validity of charges and rights of all parties. Clause 4 states that subject to the Bill and other laws, a security agreement—defined in clause 2, as an agreement that creates or provides for a security interest—that creates a charge is effective subject to its particular terms.

Clause 5 outlines the requirements of a registrable charge. An agreement creating such a charge shall be enforceable against any third party claim if:

“(a) the motor vehicle is in the possession of the secured party”

that is, the party who has the security interest; or

“(b) the debtor has signed a security agreement...”

as defined under clause 2, which identifies the motor vehicle and contains a statement that a security interest is taken in all the debtor’s present and acquired personal property.

Clause 6 states the form of the charge which is detailed in the Schedule to this Bill.

Clause 7 gives the secured party the authority, if he so desires, to render the priority of his security interest subordinate to another such interest he may have.

Part III of this Bill deals with the effect of registration under this Bill and the resultant effect of priorities. It contains clauses 8 to 10. Clause 8 states, with certain exceptions to the provisions of this Bill, that any unregistered charge—that is, any charge on a motor vehicle not registered in accordance with the provisions and forms of this Bill—shall be unenforceable as against any subsequent purchaser or secured party who has registered his charge first.

Basically, Mr. President, this places the onus upon the purchaser to register his charge, or risk losing his interest in the motor vehicle he has purchased, as only charges registered under this Bill shall be given priority.

Clause 9 makes registration under this Bill exclusive to this Bill alone. Therefore, Mr. President, such charges made under this Bill are thereby exempted from the need for registration under any other Act. In other words, Mr. President, there shall be no need to register these charges under other provisions of legislation relating to or requiring the filing of documents or recording the same. Therefore, laws such as the Companies Act, the Bills of Sale Act, or the Co-operative Societies Act are excluded from this process.

Sen. Daly: Could you please state what is meant by the provisions of the Bills of Sales Act, and the co-operative Societies Act which are excluded from this process? Could you explain a little more on that for me please?

Sen. The Hon. S. Baksh: Mr. President, in terms of the registration of charges under this Bill, it will be the only place under which it will be registered. Under the other legislation, the Companies Act and the Bills of Sale Act, and possibly, under the Co-operative Societies Act, there was a similar process of registration. Now, this will be registered only in one place with a centralized registry. And it is under this Act they will take precedence over everything else.

Clause 10 states that where a person may furnish materials or services with respect to a motor vehicle already the subject of a charge any lien or an equivalent right of possession over such materials or services shall in his term have priority over a registrable charge, notwithstanding its prior registration. This is one of the exceptions to clause 8.

Part IV, Mr. President, contains clauses 11—24, and goes into details of the registration process. Clause 11 establishes the Licensing Authority, the Transport

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Commissioner, as the Registration Authority under the Act, charging him with the responsibility for the registration of motor vehicle charges.

Clause 12 establishes the Authority's central office and attendant registration system at the Transport Division, Port of Spain offices, with the ability to designate suboffices, as and when necessary, by means of regulations.

2.45 p.m.

Clause 13 makes provision for the designation of authorized officers to serve at the aforementioned sub-offices so designated in order to conduct the business of registration on the Authority's behalf.

Clause 14 outlines the method by which persons can apply for the registration of a charge on a motor vehicle by means of tendering a financing statement. The financing statement is designed in such a way that the following information integral to the charge is to be given: names of the parties to the transaction; the addresses of the parties; the date of the transaction; the vehicle registration number; the amount of money secured by the charge; and other prescribed information depending upon the nature of the transaction.

Upon compliance with clause 14 in its entirety, the particulars as described above shall be entered by means of the financing statement into the register by the Authority. Under clause 15, each charge shall then be issued a number assigned to it according to the time of acceptance of the financing statement. The number given is the determining factor of priority of registration.

Clause 16 allows the person with the option of tendering his financing statement through the mail if he cannot appear at the offices of the Authority in person. The effective length of a registration on a charge shall be for a period not exceeding five years. Such period shall be indicated on the financing statement by which the registration is effective.

Clause 17 also provides for amendment or renewal of a registration. However, it must be done before the original registration expires. In the case of a renewal, a renewal period shall not exceed five years. This is done by means of the tendering of a new financing statement either renewing or amending the original registration as the case may be.

Clause 18 establishes the requirement of new information with regard to the charge that must be registered where the holder of the charge assigns his interest in the security. For these purposes, it is necessary to tender a fresh financing

statement that indicates that the assignee of the security is now the secured party. Once this new statement is registered, the assignee becomes the secured party of record for the purposes of the register.

Under clause 19, Mr. President, a registration of a charge may be cancelled by the registration authority:

- (a) Where he receives notice from a secured party of record acknowledging that a liability under a charge has been released, satisfied or discharged, or
- (b) In the absence of said notice, may cancel a registration by entering into the registry the details of a release or discharge once presented with affidavit evidence of same brought before an interested party and lodged with the Authority.

Such cancellation by the Authority may only be effective 14 days after the authority has given notice to the affected secured party and all other interested persons on the register pertaining to the charge in question. If necessary, provision is made for the authority to summon a party to the charge in order to show just cause why the cancellation should not take place.

Provision is made under clause 20, Mr. President, to effect a change on the register through the tender of a financial charge statement made out on the prescribed form. This provides for information regarding the charge itself and amendment of the security arrangement, a change of name or address of the parties to the charge, and/or a clerical error. It is further provided that such change shall be made at any time during the period within the registration.

One will recall that it was previously provided at clause 7 of this Bill that a secured party may subordinate his interest to any other security. In such a case, clause 21 provides that a financing charge statement could be registrable at any time during which such subordinated interest is effective.

Clause 22, with regard to the renewal of registration, already touched upon clause 17 of the Bill and allows for:

- (a) The renewal of registration by way of a financial charge;
- (b) And if the application is made before the expiration of the current registration period, and the renewal of registration by way of a financial statement if the application is made after the expiration of the current registration period.

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Clause 23, Mr. President, recognizes the fact that there shall inevitably be some omissions, errors or misstatements on the face of an entry of a registration or the cancellation of a charge. In such cases, the Authority may, of its own accord, or on the application of any party to the charge, rectify the registration under the following conditions:

- (a) For the purpose of priority, registration of the charge shall be effective from the date of rectification.
- (b) Notice must be given by the Authority to the party concerned, as well as all interested parties.
- (c) If having cancelled a charge, the Authority is satisfied that the affidavit or other documentary evidence that was relied upon is materially false, the cancellation itself may be revoked.
- (d) Mailing of notices shall be made to addresses current or amended of parties as stated on the register.

A prospective consumer or persons desirous of searching the register for information or on a motor vehicle shall make a request and pay the prescribed fee under clause 24. The Authority shall issue a certificate to the applicant stating whether there is or is not a financing statement or financing charge statement registered on a vehicle, whether it is still effective and, if so, the particulars stated, including its number in regards to priority.

The Authority may also furnish a certified copy of the financing statement or financing charge statement to the applicant. A certificate presented to the applicant, or a certified copy of a statement shall, for the purposes of the Bill, be evidence of their contents and of the due and proper registration of the charge.

Part v, Mr. President, consists of clause 25. This clause establishes a fund to be known as the Registration of Motor Vehicles Assurance Fund. This fund shall consist of moneys derived from Government appropriations, as well as fees collected under the Act. This fund shall be administered by the Comptroller of Accounts. The purpose of the fund is to compensate persons who have suffered loss and damage through their reliance upon a certificate issued by the Authority under clause 24; that is because of errors, omissions or misrepresentations on the certificates issued. A person so aggrieved and claiming to have suffered loss or damage may also have recourse to the courts to apply for compensation.

Part VI deals with various miscellaneous provisions of this Bill and contain clauses 26—34.

Clause 26 entitles selected persons: the debtor; persons with interest in personal property of the debtor; or an authorized representative of both, to apply for or demand in writing from a secured party the following information: a copy of a security agreement concerning the party's motor vehicle; a statement of indebtedness; and information as to the location of the security agreement.

Clause 27 directs that the secured party who receives a request under clause 26 shall comply with such requests.

Clause 28 provides that should there be noncompliance on the part of the secured party, the persons making the demand may apply to the court for an order compelling the securing party to comply with the said request.

Clause 29 provides that a secured party who has complied with a request under clause 26 is estopped from denying the accuracy of the information requested, but only to the extent of the information relied upon. A successor in the security interest is also considered.

Clause 30 makes it an offence to:

- (a) remove, conceal, destroy, alter, mutilate or falsify any register, entry book, certificate, index or other records relating to the registration of charges without the written authority of the Authority; and
- (b) knowingly supply false information with respect to the registration or cancellation of a charge.

Persons are liable in the former category of offences to a \$100,000 fine and a 10-year prison term, and in the latter category of offence, \$50,000 fine and a five-year prison term.

3.00 p.m.

Mr. President, clause 31 allows the Minister to make regulations as necessary, for the better functioning and carrying out of the Act including *inter alia* the following:

- (i) The form, content and manner of financing statements and financing change statements.
- (ii) The Registry and duties of the Authority.

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- (iii) Content and use of notices under the Act.
- (iv) Records of the registry on methods of disclosure.

Clause 33 amends the Bills of Sale Act Chap. 82:32 to include motor vehicles as chattels and, therefore, including bills of sale of transactions creating a registrable charge for the purposes of this Bill.

Mr. President, let me reiterate that the Bill has been redrafted to address concerns that arose out of the original sitting. These may be summarized as follows:-

1. The nature of the interest to be covered by the Bill, with the expanded definition of “charge” contained in clause 2 of the Bill.

There is a two-fold effect:

- (a) Arrangements such as conditional sales contract, hire purchases, leases on bills of sale—agreements that make a purchaser an apparent owner without necessarily having title to the motor vehicle are brought within the legislation.
 - (b) Other security interests which fall outside of the proposed legislative scheme because of their small monetary nature, brief duration or otherwise are excluded rather than having them clutter up the register. The most obvious example is the Pawnbrokers’ agreement.
2. Documentation to be filled: The purpose of the register is to report quickly and relatively inexpensively whether a charge is registered, for the purpose of simplification and for the avoidance of having to file original documents into the register.
 3. Provisions made for financing statements: Summaries of transactions in the prescribed format providing information as to names and addresses of parties to the transaction, dates of the transactions, a registration number and the description of the vehicle, the amount of money secured by the charge and other prescribed information.

It is accepted that the state should be liable in cases where the report of a search fails to reveal a charge that is in fact registered or if the sequence of registering is incorrectly reported and as a result a person suffers loss and damage.

Mr. President, it is possibly on the first occasions under such an Act that the state will accept the responsibility for compensation for error of employees within its service.

As we continue to improve legislation for motor vehicles in all its forms, I hereby submit the Bill entitled the Registration of Charges (Motor Vehicles) Bill, 1999 for the consideration of Members of this honourable House. I beg to move.

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, as I sat here listening to the hon. Minister of Works as he presented this Bill, I noted that he was extremely cautious in his presentation and, I take it that from the last occasion when he brought a previous Bill in this Parliament, that is the reason he may have attempted to present this Bill with greater care.

However, even after listening to him, I am not too sure that the Minister himself understood and knew exactly what he was talking about and dealing with. It is very clear, Mr. President, from his presentation as he tried to walk us through this Bill.

Once again, upon perusing the provisions of this Bill, I myself had great difficulties in trying to follow some of the provisions. The Bill itself is, clearly, a codification in many respects of some very complex legal principles. I heard the hon. Minister just now talk about being estopped; and any law student would know that in law, that concept of an estoppel is indeed a very complex one. I see that in this particular piece of legislation there is that kind of provision: very legalistic, very difficult to follow through and it is of concern to us, because at the end of the day, we have to ask ourselves the question, for whom is this Bill intended?

If it is for the motoring public, then certainly, the Bill should come in a form in which it would be more user friendly and easier for an average citizen to, at least, read through the Bill and be able to understand or appreciate some of the provisions in it. But certainly, Mr. President, in its present form it leaves a lot to be desired.

We need to ask ourselves, what is the mischief that this Bill is seeking to remedy? In terms of that mischief, Mr. President, we on this side are mindful of the fact, that in Trinidad and Tobago there is, indeed, no real, as the Bill puts it here in the Explanatory Note, comprehensive registration system of charges with respect to motor vehicles.

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Mr. President, I know for a fact that throughout the length and breadth of the country there are several people who have had some very unfortunate experiences. I myself can recall an instance when a gentleman had purchased a motor vehicle from another person and that gentleman whom we shall call "X", is one who can be described as a *bona fide* purchaser for value. He bought this motor vehicle only to realize some months down the road, that the vehicle had, in fact, been the subject of a charge. There was in fact a hire purchase arrangement with respect to that motor vehicle and the person from whom he bought that vehicle had not been paying the instalments. In fact, he had taken out that loan the day before he actually sold the vehicle to "X" and with the instalments not being paid, the financial company did what they are authorized to do and proceeded to seize that vehicle from "X" and "X" was left without a vehicle and left in limbo.

Mr. President, I myself had the experience of having to come to the registry right here, located downstairs in the Red House, in an effort to do a search to see whether there was anything registered as a charge, with respect to that vehicle.

3.10 p.m.

From that kind of first-hand experience what is very evident is that there is no formal registration system and we accept that and we know it is indeed a problem which needs to be dealt with. In looking at the provisions of this Bill we on this side are not too sure, in fact, we have great concerns about the registration system that is being proposed in this piece of legislation.

Mr. President, if we were to look at clause 11(1) of this Bill we would see that it is being proposed that the Licensing Authority be designated as the registration authority for the purposes of this Act and shall be responsible for the registration of all charges on motor vehicles. It says:

"The Licensing Authority appointed in accordance with section 4 of the Motor Vehicles and Road Traffic Act is designated the Registration Authority for the purposes of this Act and shall be responsible for the registration of all charges on motor vehicles."

Clause 11(2) says:

"In furtherance of subsection (1) Licensing Authority shall be responsible for monitoring a Register of Charges on Motor Vehicles hereinafter called 'the Register'."

Clause 12(1) says:

"A registration system, including a central office, branch offices and a Register of Charges for Motor Vehicles, is hereby established for the purposes of this Act."

And later on in this Bill nearing the end there is a clause 31 which says:

“The Minister may make regulations respecting—

- (b) the location and hours of business for the offices of the Registry or for any of the offices;”

So the hon. Minister of Works and Transport would have that authority to designate any place or any other place to be a branch office. It reminds us so much of the recent Bill with which we were dealing to set up private garages and we must express concerns about this kind of arrangement.

Mr. President, in establishing a registration system as is being proposed under this piece of legislation, there are many practical concerns which we need to express and I am sure “John Public” is very much aware of some of the problems which exist at the Licensing Authority and our major concern is the ability at present of the Licensing Authority to administer this registry. These are very real concerns especially in the light of events that have been unfolding over the last few months and are well documented and well publicized.

Only this morning there was a gentleman on The Morning Edition, Mr. Kuarsingh, I am sure the Minister of Public Administration would know about whom I am talking, and they were speaking about how the public service is coping with this Y2K issue and how prepared it is to deal with it and it was stated that in order to equip the public service you need in excess of \$100 million to deal with this phenomenon. When we are talking about the computerization of our public service I have to raise the concern about the state of things at the Licensing Authority. It was mentioned this morning that the present computer system at the Licensing Authority is some 16 years old. It is a very archaic computer system which exists there and I recall the several occasions when the present Minister of Works and Transport in his usual public relations obsessed style came to this Chamber time and time again and talked about the great plans which they have to computerize the licensing division.

Many of us remember the 1996 budget presentation of the hon. Minister, his very first budget presentation when he made a promise to update the computer system at the Licensing Authority. We have to ask what has happened since then? I would certainly like to know how much money has been allocated for the upgrading of the computer system at the Licensing division, if any at all, and when. I would like the Minister to give us an idea of the time-frame because it is very relevant to the system that is being proposed under the Bill at which we are looking this afternoon.

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In the 1996 budget presentation of the hon. Minister, he again talked about plans to transform the licensing division and I have extracts of that particular debate of the *Hansard* where on December 20, 1996 the Minister of Works and Transport in talking about the transformation of the Licensing Division said:

“A careful study of the situation at the Licensing Division was done at the beginning of 1996 and it revealed that an immediate to short-term programme, as well as a medium to long-term programme, was required. These programmes were intended to address the undermentioned state of affairs at the Division’s offices:

- (a) the unreliability and insecurity of the Authority's core client records (motor vehicle registrations and licences, driving permits);
- (b) the untenable scale of evasion of the Authority’s core functions (vehicle registration and licencing, drivers permit) and consequently, the inequitable collections from these core functions;
- (c) inefficiencies in the usefulness of the Authority’s core records for primary use by such agencies as the Police Service Administration, Inland Revenue Department;
- (d) poor and inefficient service to its client, (long lines and loss of productive man hours);”

I remember the boast, “No more long lines at the Licensing Authority” and we would have to pay at the pump, but if one goes to the Licensing Authority today, one still has to line up.

This is the hon. Minister of Works and Transport identifying problems to be addressed at the Licensing Division and I am merely repeating it for the sake of the record, because what we are dealing with this afternoon is very relevant to the ability of the Licensing Authority to administer this new registration of charges system at the Licensing Division. It goes on:

- (e) touting on a scale that boggles the mind;
- (f) an extremely inefficient management system;
- (g) an obsolete computer system inappropriate for financial and management procedures.”

Mr. President, it is very interesting and I always enjoy reading the speeches of the hon. Minister of Works and Transport because he says all the things people

want to hear him say, but when it is time to examine the pace of implementation, this is where I have my greatest difficulty with whatever promises the Minister makes.

Having identified these problems, we have to ask the question what measures have in fact been implemented to alleviate these problems? What has the Minister done to date?

I remember when a speech was made in this Chamber and the short-term measures were announced about introducing an anniversary date for the renewal of licences and reference was made for a medium-term programme as well, and one of the things mentioned in that medium-term programme, if I may just quote again from the *Hansard* of December 20, 1996. The Minister said:

“In addition to these two measures, we will commence our medium to long-term programme for 1997 with the following initiatives:

- the introduction of new personalized number plates.
- the introduction of licensed private garages for checking the safety of aged private vehicles;
- the introduction of traffic wardens in Port of Spain and San Fernando on a pilot basis.
- related administrative improvements to enhance the efficiency of the operations at the Licensing Division, for example, installation of modern day computerized facility and organizational improvements and training.

Specifically, the Transport Division will work in collaboration with other state agencies to improve the safety of the motor-car environment. There will be a co-ordinated effort between the Transport Division and the Customs to ensure that all relevant information is collected when used motor vehicles enter the country.”

I have taken some time to repeat this statement verbatim because we would like to know what efforts have really been made since this pronouncement to ensure that there is greater co-ordination between the Transport Division and the customs with respect to ensuring that all relevant information is collected when used motor vehicles enter the country.

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Mr. President, I have raised that as an issue because from my information and following the report and what has been happening, it is a fact that at present there is very little in place in terms of keeping a proper record of the entry of vehicles in whatever form they come into our country, and I am talking in particular about used motor vehicles. There is no proper record of entry of these foreign-used vehicles and no proper system to record, for example, engine and chassis numbers because a foreign-used dealer can easily bring into this country a container filled with engines and body shells to be assembled. What system is in place to ensure—when that container, whether it has parts for a motor vehicle in whatever form it comes—that the engine and chassis numbers are duly recorded?

Mr. President, it is a very serious situation existing and I am raising this issue because only this morning, and last night on the news, there was an interview with the Japanese Ambassador based in Trinidad about a report of Trinidadians being in jail in Japan and for the last few weeks we have been getting reports. There is a newspaper report in the *Daily Express* of Friday April 2, 1999 on page 3, which says: “32 Trinis jailed in Japan: Baksh launches probe into foreign-used car-stealing scam”.

Mr. President, for the record, I merely wish to state our position with respect to the foreign-used car industry. We on this side from the outset have been advocating that before you open up the market with respect to foreign-used cars there were certain checks and balances which were needed to be put in place first. There was need to have certain mechanisms in place and notwithstanding our concerns being expressed, I am sure there are some of us who would remember just after this UNC Administration came into Government one of the first things they did was to open up the foreign-used car market and that is when they allowed fully assembled used cars to be brought into the country and a certain duty was paid on it.

3.25 p.m.

As a result of that opening up of the market, there is mushrooming of the foreign used car industry in Trinidad and Tobago, to the extent that today, I am sure that there might be well over 100 used car dealers in the country. Many of them are, in fact, legitimately carrying on a very good business. Certainly, we know that these foreign used cars, because of their cost—provide a very accessible mode of transport for people in Trinidad and Tobago—accessible and affordable. But, we have concerns about what is taking place.

If you remember, last year, after the floodgate was opened up, the hon. Minister of Finance sought to tighten it a bit by increasing the registration fee. Suddenly, two months after, he reverted to the old fee that was charged and the situation simmered a bit. What has been happening, is that there are allegations being made about persons involved in the industry. It is rather unfortunate, because it is tarnishing the reputation of so many other persons who are legitimately involved in the business. There are hundreds of people who are presently employed or gaining employment through that industry. It has opened up many other areas of activity for employment.

For the records, I would like to refer to a newspaper article published in the *Trinidad Guardian*, on Tuesday March 23, 1999. In this article it is stated that:

“Foreign used car dealers are feeling the heat following last week’s disclosure by the Minister of Works, Sadiq Baksh, of rampant fraud within the industry.

Foreign Used Car Dealers Association President, Clyde Ali, said yesterday that the entire industry, including those doing fair and honest business, is now being perceived in a negative light.

He said that this was not impacting well on the businesses.

“Public perception is that the entire industry is involved in unscrupulous acts which is untrue. That is in the minority. There is in fact, a group of dealers who try their best and who are sincere and operating above board. They provide the best quality product and service and their reputation is going down the drain,” he said.

Ali said the Association’s 40-strong members are disenchanted at this point in time, especially because of the growing distrust being shown by the public...

The article goes on—he said that a symposium was recently held with the Ministry of Works and Transport at the forefront. Reference is made to that symposium. It is stated that:

“The Association has always lobbied for measures to regulate the industry and reiterated the need for this to take place as quickly as possible.

It’s not going to be done easily and certainly won’t take place overnight but we want to be perceived the same way all other businesses are perceived.”

The recommended regulations outlined in the 1997 budget include the licensing of dealerships based on the meeting of specific criteria, the issuing of a

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cancelled certificate of registration on all vehicles (to prevent stolen vehicles entering the country), and limiting the age of imported vehicles.”

Mr. President, this article, in fact, refers to just a few of the measures that the foreign used car dealers association has been clamouring for. They have called on the Government to implement some of these measures in an effort to regulate the industry.

Only late last year when we were debating the 1999 budget—on October 21, 1998, the hon. Minister of Works and Transport had this to say:

“Importers of new and used vehicles for the retail trade must be registered dealers who must be approved and registered by the Ministry of Trade and Industry after satisfying the following requirements:

that they be registered under the Companies Act (Trade);

have a permanent address and location approved by the Ministry of Trade and Industry;

be registered by the Board of Inland Revenue, Value Added Tax office and National Insurance Board;

provide adequate repair and service facilities;

all imported used vehicles be inspected at the point of entry, the inspection to focus on collaborating the engine chassis and shell numbers with the information provided on the import document;

a clearance certificate completed in triplicate and verifying the information on the vehicle to be issued by the Customs and Excise Division of the Ministry of Finance, with a copy of the certificate being issued to the importer for presentation at the time of registration, the other copies to form part of the Customs and Excise Division and the Licensing Division of the Ministry of Works and Transport;

that the certified copy of ownership of the vehicle clearly states that it is imported to be a used vehicle;

in accordance with the Motor Vehicles and Road Traffic Act Chap. 48:50 private vehicles must be subjected to periodic inspection, this system to commence with the inspection of vehicles over 10 years old on a biannual basis, with all vehicles over five years old undergoing periodic inspection in the medium term;

that a licensing system to be administered by the Ministry of Trade and Industry be introduced for all new and used car dealerships;

all motor vehicles be required to pay an annual licence fee of \$10,000 and post a bond for \$500,000.”

Mr. President, these are some of the measures the hon. Minister acknowledged that need to be implemented in order to regulate this industry. We must ask him to tell us how far these measures are being implemented? If the Minister is seeking our support to set up a new registration system of charges at the Licensing Authority, our concern is that there are several issues that need to be dealt with at the Licensing Division first.

Perhaps, if we can get some assurance that the Licensing Authority is in fact, in a position to deal with this new registration system, then this debate may have been completed. But, once again, we have the hon. Minister of Works and Transport, as the records will show, coming to this Chamber from time to time making fanciful promises and statements and when asked about the state of things, one would realize that it is far off from what, in fact, he has been saying.

If one goes down to the Licensing Authority on any day, one will see the same archaic system with long lines and outdated computers. You know, Mr. President, what is unfortunate is that in recent times officials from this Government have been boasting about setting up complaints desks to deal with the problems that are being raised with respect to the foreign used car industry.

We are saying that instead of setting up complaints desks, we would like the hon. Minister to oversee the implementation of the measures that he has been boasting about for the last couple years since he has come into Government. Every year they keep repeating that these things need to be done. We want to see them implemented, not just talked about.

Mr. President, the long and short of it is that, if it is that we can stand here today and say: “yes the Licensing Authority—all is well, everything is in place, it has the manpower to implement this new registration system and so forth, then certainly we would not hesitate to give support to this Bill. Because we recognize the need for a registration system of charges with respect to motor vehicles, but we have very serious concerns about setting up such a registration system at the Licensing Authority at this present point in time where we know that all is not well.

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In one of the hon. Minister's speeches he spoke about the purpose of the Licensing Authority being—if I may just quote the hon. Minister himself—that the Transport Division which operates under a legal—

Mr. President: Please give details.

Sen. N. Mohammed: Certainly, Mr. President. Again, I refer to the hon. Minister's budget contribution of December 20, 1996. The hon. Minister said that:

“The Transport Division which operates under a legal mandate of Chap. 48:50 is charged with the licensing and inspection of all motor vehicles for safety and roadworthiness.”

From that time to the present, Mr. President, we have to ask, what is happening with respect to the ability of the Licensing Division to monitor or to inspect motor vehicles for safety and roadworthiness? We know that a Bill came here to deal with the setting up of private garages. But if the Licensing Division is geared to monitor these matters, why is it that on a daily basis we hear, read and see the most gruesome accidents taking place? We see vehicles on the roads with no lights, vehicles in a condition which is not roadworthy and these vehicles should not be on the roads. What system is there to enforce or to monitor these matters? These are very serious concerns.

3.35 p.m.

For the motoring public in terms of driving, there are rules and regulations pertaining to the use of our roads. What kind of enforcement or monitoring is taking place with respect to the implementation of these rules and regulations? Very little, Mr. President, very little. The Licensing Authority employees are already operating under tremendous hardships. They are certainly ill-equipped to deal with this registration system of charges that is being proposed here this afternoon, and this is our greatest concern with this particular piece of legislation.

Mr. President, when we look at the Bill, itself, and I think it is clause 9, when the hon. Minister made a statement that the method provided is exclusive in this Act for giving notice of a charge subject to this Act, and when questioned about the exclusiveness of the procedure, we have to be very concerned because, to me, it suggests that once this registration system is established at the Licensing Authority, it will be the exclusive procedure for registering charges. We must express some concerns because from time immemorial in our country where we have a procedure for the registration of certain legal documents, deeds and so

forth, we know that a bill of sale is a formal legal document and there is an Act that governs the procedures involved with bills of sale.

Very often an individual intending to purchase a motor vehicle would go to a bank invariably to borrow money. The first thing the bank would do—if it is a new vehicle better yet—is, after performing various checks they would proceed to register a bill of sale whereby they would hold that motor vehicle as collateral for the moneys being advanced in order to purchase that vehicle. Where are those documents registered? They are registered right here at our Registry located downstairs at the Red House. For a number of years that is where bills of sale, like any other deed or formal legal document of that type, are kept, right here in the Registry.

If you wish to set up a register of charges, I may be wrong, my suggestion would be that the first thing that should have been done was considering setting up such a system in the very same Registry where these other documents and legal documents are, in fact, registered. I am sure my colleague, Sen. Carol Cuffy-Dowlat, who is an attorney herself, would understand the significance of having the Registry right here where all other legal documents are registered. You just need to beef up the system a bit or, depending on what is happening, certainly there would be a need for greater collaboration.

We know it is good to have a sort of one-stop shop where in a very short space of time you can get a record of whatever transactions that exist pertaining to a particular motor vehicle. But all that we are saying is, given the present state of things at the Licensing Authority, we are not satisfied that the Licensing Authority is presently equipped to administer this Register as well. This is a whole new layer of bureaucracy that you are going to set up and you need to put your house in order first.

We have concerns about making the procedures under this Act exclusive in the sense that with respect to the registration of charges all those charges would now have to take place at the Licensing Authority. What about situations where you have debentures and floating charges and so forth? Sen. Montano is an accountant and very often I know he has had to deal with situations where he has acted as a receiver. There are legal implications involved in this system that need to be looked at before we give our support to this Bill.

The other matter is that in this Bill, clause 15 I think it is, deals with the priority of charges and states that the issue will be dealt with according to

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numbers whereby a charge will be given a particular registration number. It may well be a practical procedure but I wondered, what about using a date as well? It is just an issue. I do not know if the Minister can shed some more light on it. Why numbers and not dates? Then there is clause 25—

Sen. S. Baksh: Mr. President, I think that clarification here would help. The number will be in sequence and it will come from the—it will follow the sequence and pattern in date and time so, in fact, it is correlated and the number will make it much more practical in its application. One would be in a better position to trace it, just remembering that we have put in these safeguards, because we are now liable, financially and otherwise, to make sure that this takes place.

Sen. N. Mohammed: I am glad to hear the hon. Minister even refer to priority in terms of time as well too. But in clause 25 of this Bill, Mr. President, references are made to—well it speaks about setting up an assurance fund which:

“...shall consist of—

- (a) moneys appropriated to it by Parliament from time to time; and
- (b) fees collected under this Act.”

But in 25(4) reference is made to:

“...compensation out of the Fund within one year from the date of an Order of the Court...”

and reference throughout this particular clause is made to a court. Which court? Can we go to the Petty Civil Court? Can we go to a Magistrate’s Court to make an application for compensation? Or would it be the High Court? It is just that I find it is very vague the way it is stated in the Bill.

Then in the Schedule one would see that there are several typographical errors and omissions in the “Motor Vehicle Charge” referred to here on page 19. It says here:

“Debtor hereby warrants that:

(1)”

I think the letter “T” is missing from the word there. It should be “T-h-e”. It says:

“The Collateral is brought or used primarily for...”

And then at the back, page 20, paragraph 9 of that same Motor Vehicle Charge says:

“At the request of the Secured Party, the Debtor will join with the Secured Party,”

and then it repeats the same thing:

“the Debtor will join with the Secured Party”.

Clearly, those few words need to be deleted.

Mr. President, the main concern here is that if they wish to set up a Registry of this type, we are saying that notwithstanding their utterances over the past three and a half years, or however long they have been in Government, we are very dissatisfied that they have seriously been tackling the problems existing at the Licensing Division. We know that to have a system of this type set up there, certain transitional arrangements need to be put in place, and that in itself is an awesome responsibility. We do not know how long it will take but for very basic functions that are supposed to be carried out at the Licensing Division, we know how many problems can exist in terms of getting some very basic things going, far less to add a whole new layer of bureaucracy in that division. We are very concerned about the issue of whether the Licensing Authority should, in fact, be the agency in charge of administering this Register.

Mr. President, with those few concerns I would just like to urge the hon. Minister to please—with all the promises that have been made, especially the measures that were outlined in 1997, the regime that we are talking about, especially when it comes to the foreign used car industry, all we are saying is that there is need to put systems in place. You need to have certain checks and balances. The Minister himself has spoken about tightening up the screws, but all we are getting is really lip-service because from my information, for example, there is very little link or collaboration taking place between the Customs and the Transport Division. If the Minister can tell us what mechanisms exist at present for that collaboration, we will be happy to know.

In this time of computers, Mr. President, one would expect that with the type of Registry being envisaged, in the fullness of time with an efficient computer system, one will be able to make the necessary linkages with other agencies in order to properly administer a register of charges on motor vehicles. For the time being we would like the Government to seriously consider locating this Registry

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at the Land Registry where so many other charges on motor vehicles are already being kept, until such time as you feel that the Licensing Division is in a better position to deal with this issue of registration of charges, because it is just going to open up the system once again to even further problems.

My information is, Mr. President, that at present with the failure of the Government to really seriously tackle the computer upgrade at the Licensing Division, they still rely on a manual system of record keeping. Can the hon. Minister tell us how many registered motor vehicles there are in the country; new, foreign used, whatever they are? For that kind of recording to be kept, let us assume there are 800,000 or even a million vehicles in the country, can you imagine being in the Licensing Authority and seeing a room full of card copies of certificates of ownership being filed under a manual system? No wonder we have been reading reports and we know of situations where all kinds of problems have emerged.

In fact, Mr. President, in the last couple of years there has been a spate of constitutional motions being filed by citizens in this country who have tried to get some redress because their motor vehicles, which they may have bought in very good faith from other persons, have been seized by the police as being suspected stolen vehicles. It is a matter that has been causing great concern and hardship for many, many people. So we recognize that there is a need to have some register but our basic system of record keeping at present is very, very deficient. It leaves a lot to be desired.

We need to put things in order first before we seek to come with this new system. My suggestion simply is, for the time being, consider leaving it at the Land Registry.

3.50 p.m.

Mr. President, I thank you for the opportunity to participate in this debate.

Sen. Martin Daly: Mr. President, I am glad that Sen. Mohammed has laid such great emphasis on the unsuitability of the Licensing Authority to be the registration authority of charges on motor vehicles. That is a very important aspect of this legislation, but in order to understand why that is so, I do not think we need to spend a long time on foreign used and all the various ills of the Licensing Authority. Of course, this has nothing to do with the officials there, but with the track record of the Licensing Authority, but suffice it to say, that many people would be satisfied that if you wanted to place something valuable in safe storage,

the Licensing Authority would be one of the last choices. That is how one could best summarize it. It really has a very, very, very unfortunate track record, and I think the Minister would acknowledge that. I certainly want to record my agreement with Sen. Mohammed, that I am not satisfied that the culture there has changed sufficiently to entrust them with this. But there is a technical reason why this should not be placed in the hands of the Licensing Authority.

I would do my best, Mr. President, as with some of these dry matters, to explain it as easily as I can. This Bill really is not about motor vehicles in the first instance. This Bill seeks to deal with the problem of legal charges which are quite simply, any form of restriction that is placed on free ownership and free transferability of any item, whether it is a mortgage or some kind of option—whatever it is. What this Bill seeks to do, and it is very commendable, is to solve a very long-standing problem relating to charges on motor vehicles. But before we deal with motor vehicles, we have first got to understand what is a charge. I have already indicated what it is.

In order for someone not to be a victim of having, for example, a car sold, mortgaged or encumbered to more than one bank, to stop the consumer getting stuck—whether it is land or a motor vehicle, whatever the subject matter of the charge—we have developed over 300 years, a system of registration and charges. This means that if you create an encumbrance on something you own, that encumbrance will only defeat the claim of someone else, if you have registered it in a public registry. It is as simple as that. Of course, you can charge something more than once. It is like going to the pawn shop twice with the same item. It is a very simple thing, there is no mumbo jumbo about it. You can have a first or second mortgage, and so forth, so you can charge something more than once. Therefore, the simple problem that has to be solved is, who has the first claim on the subject matter of the charge. That is what this is all about, and that is why the word "priorities" is used. It simply means whose charge ranks first.

We have had a difficult problem in Trinidad and Tobago for a very long time. As I have indicated there is a variety of ways in which you can charge things, including motor vehicles. In the case of motor vehicles the most popular form of charge and one that is used by most financial institutions is a chattel mortgage. Just like you mortgage a house, you can mortgage something that is not a house. That mortgage is registered under a very archaic, Victorian piece of legislation called the Bills of Sale Ordinance.

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You can also have hire purchase, which is a form of charge, and other types of credit sales and so forth, which are charges. Unless we pass this legislation, as I understand it, we will continue to have a problem where only one type of charge is traceable, that is the chattel mortgage. So it is necessary, first and foremost, in relation to motor vehicles, to provide a centralized register of all the different types of charges that are placed on motor vehicles.

I am not explaining this just for the edification of those who are not lawyers, it is very important when I come to ask the Government to seriously reconsider not locating this function in the Licensing Office. We have had a hint of the problem already. All of the charges that are registered under the aegis of the Ministry of Legal Affairs and, ultimately, under the aegis of the Registrar General, have sequential numbers, as the Minister has explained. Whatever you register you get a sequential number.

Just to take two simple examples, I, for instance, might send my clerk out on any given day with a mortgage bill of sale for registration, that is a chattel, it is not real property, and I might send him out with a mortgage of land to register. Both of them, although they are quite different types of property and charges, are registered in the Registrar General's department, and they get a sequential number. It is entirely up to the clerk what he does. I do not care as long as he complies with the deadline. So depending on which one comes out of his bag first, or how well-organized he is, to take it simply, he would tender the mortgage on the land for registration, and whatever the current number is—to make it easy, it might be 908. It is the number of the year so it might be 908 of 1999. He hands up the mortgage, the land mortgage is registered as 908 of 1999; then he hands up the mortgage bill of sale on a motor car and it is registered as 909 of 1999. That is precisely how you determine the priorities.

If someone then comes with a mortgage on the same piece of land or motor vehicle they would get 910 and 911 of 1999. My difficulty with locating this—apart from my sharing Sen. Mohammed's misgivings about the state of the Licensing Office and the culture there—is that if you now have two places where things are being registered, it is going to affect efficiency of priorities, because the numbers are not being given out by the same authority. That is the simple, technical reason why you ought not to have a separate place licensing motor vehicles.

It could work if you have a separate registry for motor vehicles, if the passage of this law meant that you would not have to continue to register charges on motor

vehicles with the Registrar General. Despite the best efforts of the Minister and his legal advisors, I am quite clear in my mind—and I am sure Sen. Montano will talk about this—that at least in relation to charges given by companies on all their moveable property, which happens to be called a floating charge if part of the company's property which is the subject of a floating charge includes motor vehicles, that charge is still going to have to be registered in the Companies Registry under the aegis of the Registrar General anyway.

So, there could be a situation, on my reading of this legislation, where a charge on a motor vehicle may still have to be registered in more than one place. I do not mean necessarily simultaneously, but it could be in more than one place; you could have a variety of things. The charge might be in the form of a floating charge which has to be registered in the Companies Registry, and now would have to be registered with the Licensing Authority as well. I think that is going to meet with terrible difficulty, because you are going to have—well, the best word I could call it is a kind of cross registration, because you are going to be registering in two places. To my mind, it is going to muddle up the priorities. I think it is a serious mistake.

I think it is being done this way because it is probably being assumed by the Minister and his advisors that it would not be necessary to register charges on motor vehicles anywhere else. I simply do not agree. I think there are certain types of charges on motor vehicles which would still, for the protection of the lender, have to be registered elsewhere. You are going to get a terrible muddling up in the priorities, therefore, I think it is doomed to confusion.

Another reason why I do not think that it should be taken away from the Registrar General's Department is, all of the expertise relating to the law of charges, priorities and registration, resides in that department and has resided there forever, since Adam was a boy, and it is very complicated. I tried to make it as simple as possible for the purposes of what I am suggesting, but this is a very complicated area of law: the question of the registration of charges and priorities. It is very technical, and it is important that you have a proper system and people who understand what they are doing.

I think all of the expertise in this area of law resides in the Registrar General's Department and, therefore, it is reinventing the wheel, in my opinion, to now start other people on the business of the registration of charges, priorities and the proper way you go about this. It is very, very detailed, and I believe in some cases they even record the time. So I think it is a mistake. I believe it is a very good

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objective and something that people involved in property law of any kind have been calling for, for the longest while, but I think it is a huge mistake to put it in the Licensing Office. I really would like the Government to reconsider that, particularly, as on my reading of this legislation, it would still be necessary to register charges on motor vehicles in the Registrar General's Department anyway. I feel very strongly about that and really have great misgivings about it.

Mr. President, there are one or two other technical things I would like to raise. I cannot save them for the committee stage because I have not had the time to do any drafting, and because I think they raise certain policy matters which the Minister would have to satisfy himself about. I would have thought that the one thing you want to do when you pass this law is to remove motor vehicles from registration under the Bills of Sale Ordinance completely. I would have assumed that was the objective.

I really have not had as much time as I would have liked to study this. When I look at clause 33, I see that far from trying to remove motor vehicles from the purview of the Bills of Sale Act—in fact, the Bills of Sale Act is being amended to make sure that motor vehicles are included in the definition of personal chattel. I am quite confused by that. I would have thought the whole objective of this would be to very clearly cease the practice of registering charges of motor vehicles mortgaged under the Bills of Sale Act, and to get rid of that altogether. It seems to me clause 33 is inconsistent with the declared objective of the Act. It is entirely possible that I have missed some link in the Act, but at the moment it seems to me that clause 33 is doing the exact opposite of what it should be doing, and that is, killing registration of the Bills of Sale Ordinance as a matter of normal practice.

The other thing I am unhappy about, Mr. President, is that the new form of motor vehicle charge is quite properly included in the Schedule at page 28. I am quite happy to earn some money doing litigation, but I think there is a huge ambiguity in this Bill. I really think that the persons who drafted it have not made up their minds about what they are doing about the right of the lender to retake possession. As difficult as it is for us to work with the Bills of Sale Act, it is very clear that the present practice of lending against the security of a motor vehicle, that if the borrower defaults in making the instalments by contract contained in the

bill of sale, the lender has a clear and unrestricted right to seize the subject matter of the bill of sale and if necessary, to enter the property of the borrower to do so.

4.05 p.m

Now what concerns me about this—I really think that this form must say plainly—and if it is the intention—as I think it should be, because otherwise it is going to be a complete waste of time, and I will explain why. If it is the intention to permit the lender to continue to seize the property of the defaulting borrower, then this form should say so in plain and unambiguous terms. It is extremely ambiguous, because if you look at page 30, immediately before paragraph 10 of the form, it says:

“Until default the Debtor may have possession of the property and may use and enjoy the same subject to the provisions hereof.”

That hints at the fact that upon default you will no longer enjoy possession.

Paragraph 10 defines all the acts of default, including failure to pay, although it is in very elaborate language. I do not know why we simply cannot say: “fails to pay any instalment”. I do not know why we have to go into all this mumbo jumbo.

Paragraph 11 states

“Upon the occurrence of any such event of default and at any time thereafter the Secured Party may....”

It gives a lot of mumbo jumbo that the Secured Party is really the lender, and what the lender can do upon an event of default. Nowhere in paragraph 11 does it say that the lender may retake possession. There is a hint of retaking possession in an isolated paragraph at the beginning of paragraph 10. Nowhere in clause 11—where what you can do upon an event of default—is retaking possession defined.

Mr. President, I am sure you will know, and anyone with banking or legal experience will know, that unless you can retake possession of the subject matter of the charge it is a waste of time, because court procedures are lengthy, serving people is difficult, and all these different things.

The reason credit has been so readily advanced—maybe that is a wrong thing, but I am not entering into that debate—is that if you lend money on the security of a motor vehicle, secured by a mortgage registered under the Bills of Sale Ordinance, you can retake possession of the vehicle. You do not have to sue anybody, issue any writ, stand in any line, wait on the court, or anything of the kind.

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I find it quite amazing that in relation to events of default there is not a plain statement—at least I have not seen one; it may well be there—I have not seen a plain statement about the retaking of possession. Certainly, it should be in paragraph 11, which spells out what you can do on occurrence of default.

So, in summary, Mr. President, I am going to resist the temptation largely because Senator Mohammed has done it so often—I nearly said so well—but so often she has spent time on the state of the Licensing Authority. I will resist that temptation under the guise of registration of charges on motor vehicles, and talk about the complete impotence of the authorities to do anything about the new total quality deaths by motor cars which are now a new feature of the total quality programme. It is the complete impotence by the authorities to do anything about this.

Mr. President, I think you know how strongly I feel about senseless killing. We have a new rash of senseless killing, which is: you are just “licking down” people on the roads, left, right and centre and the authorities seem completely impotent to deal with it. I think it is really the hallmark of a nation that is nowhere near total quality, if human life is—as my mother used to say— “the sheep is wringing a fowl neck”. I think Senator Kuei Tung and those of us who grew up in Newtown would understand that analogy very well.

We have really got to a stage in this country where disposing of a human being is as quick and as cheap as wringing a fowl neck and with just as few consequences. I nearly said something unparliamentary.

I hope, Mr. President, that in our present rate of regression, we are not going to continue to “wring the neck”, metaphorically speaking, and then start to eat the victims, but at our present rate of regression where we do not seem to care about killing, maybe that is going to be. Is it regression, scientifically? I hope we do not regress so far, that we kill people cheaply and eat them. Some of the savagery that is going on I am sure it will be said that I am unpatriotic, but that does not bother me. Perhaps, if we kill a few people on the way to Chaguaramas on May 26, the authorities would be compelled to deal with the problem.

I will resist that temptation further, Mr. President, and say that I really want the Government to be very clear in the drafting, about whether there is a right to retake possession upon an event of default and, if necessary, to go back to Cabinet and consider our pleas to locate this registration system in the Office of the Registrar General where the traditional expertise lies, and to avoid any kind of confusion in having parallel systems of registration.

Thank you, Mr. President.

Sen. Danny Montano: I will make a very brief intervention at this point. I am just following on from the comments of Senators Mohammed and Daly. I would just like to advise the hon. Minister that, as I see it, while the Bill is well-intentioned—and I think something like this is necessary—the Bill in its present form, is unworkable for two primary reasons. I think both of them have been touched on. The first one deals with the fact that the Licensing Office cannot, in its present form, effectively manage the registration of charges. They are struggling, as it is, and not doing a particularly good job in terms of the registration of motor vehicles. We have many problems there, and their equipment has got to be upgraded and modernized. That system of registration of vehicles must be completely sorted out before we could give them the added burden and responsibility of the registration of charges.

It is not that difficult, Mr. President, if in fact you want to simplify the access to information, to have the information registered in the Red House in the central registry, and simply accessed by computer by the Licensing Office. That would be a far more sensible application of trying to achieve the objective, of trying to have, what I am sure the Minister would see as a one-stop shop at the Licensing Office. In other words, if someone is going to license or change the registration of ownership of a vehicle, it makes a certain amount of sense that as he is doing that, the Licensing Officer, himself, could do a quick search and identify whether or not there is a charge on the vehicle.

However, given the state of affairs at the Licensing Office, it is simply going to be unworkable. However, it is easily within the competence of persons in this society, to complete the registration where it should be done—in the central registry—and simply have the information accessed by computer from the Licensing Office. Their systems need to be upgraded in any event, so it seems to me that is what we should be doing first, rather than creating the confusion that this is going to achieve.

The second point I want to draw to the Minister's attention is a very serious point. As my colleague mentioned, I have had the opportunity on one or two occasions to act as receiver, and the question of floating charges on vehicles is a very serious issue, because there are many, many circumstances when a bank or financial institution takes a floating charge over the assets of a company, the vehicles of the company are bought and sold without any form of specific registration of the charge over the vehicle.

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A charge is only registered specifically if it is a mortgage bill of sale. Under a floating charge, under a debenture, no charge is registered. If one wants to have those things registered, then it should be registered again all in one place. It becomes a very complicated problem.

If one looks at clause 5(1)(a) it says:

“(1) A security agreement creating a charge in a motor vehicle is enforceable against a third party only if—

(a) the motor vehicle is in the possession of the secured party;”

In other words, if a receiver, acting on the instructions of a bank, goes into a company and wants to take possession of vehicles that have been improperly moved, hidden and subsequently transferred, he cannot do so because he is effectively stopped by that provision. He does not have possession of the asset, and according to that provision, he has no right to the possession of it, and there is nothing in this Bill—as Sen. Daly pointed out—that allows him the right of access to pick it up.

So, it becomes a hopelessly complex and confusing situation, and with the greatest of respect, this is going to be a complete nightmare to every financial institution in the country. The minute that this thing is passed, there is going to be a mad scramble to try to find out which assets are in existence under every single debenture in the country! They are going to create an absolute nightmare! It means furthermore that directors of a company can no longer free trade the motor vehicles under the floating debenture because they are going to inform the bank and get the thing registered and deregistered, and so forth. It is just unworkable.
[Words expunged]

Mr. President: Did I hear you correctly, Senator?

Sen. D. Montano: I apologize, Mr. President. Indeed. *[Laughter]* Mr. President, I really said everything that I intended to say at this point. *[Laughter]* I urge the Minister to look at that clause very seriously because it is going to create a very serious problem. Having worked with it, having worked in this situation before, I can tell that it is going to seriously prejudice the lending institutions in the country; it is going to seriously compromise the existing securities outside there, and this needs to be rethought. A right of access to the equipment and to the motor vehicles needs to be clarified under clause 11 of the Schedule to which Sen. Daly referred.

I urge the Minister before he rushes into trying to load the Transport Division, that he seriously considers upgrading the technical equipment at the registration office; that he completes the registration exercise of all vehicles on the road; computerizes it with Y2K-ready equipment; and, if anything, have the charges registered in the Central Registry and simply access the information. It is very simple and very easily done. It would simplify it so that one would only have to get things registered in one place.

Again, I do not know exactly what the solution would be in terms of dealing with the floating charges under a debenture, but I do know that what they have here is going to cause a nightmare and will create havoc in the industry. With those few words, Mr. President, I thank you.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I rise to support my colleague on this very important piece of legislation. The purpose of the Bill, as outlined in the Explanatory Note, is to establish a system for the registration of charges held on motor vehicles, and a charge is defined to include a variety of forms of legal interests that might be created in a motor vehicle for the purpose of securing the performance of some obligation. The Bill also seeks, by the establishment of the new system, to eliminate the uncertainty that besets transactions on motor vehicles on account of the absence of a comprehensive registration system.

This Bill has taken some 10 to 12 years before reaching this Parliament in its present form, and I think this is a tribute to the Hon. Minister of Works and Transport who introduced this Bill two years ago in the other place, I recall. But Parliament was coming to an end, so there was a lapse in terms of the Bill coming back here.

We have been trying, Mr. President, as you know, to clean up this country and to clean up public administration inefficiencies that we have inherited over the last 35 years. This Bill essentially is about public administration. It is about bringing about greater efficiency and quality service to the population. Now, as Sen. Daly has said, and also Sen. Nafeesa Mohammed, maybe the mechanism is something we can look at, but the question here is bringing to the consumer—bringing to the citizen—service at an efficient, effective and affordable rate in terms of this particular arrangement because, as we have identified in this Bill, we have never had a comprehensive registration system in Trinidad and Tobago.

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Mr. President, I am sure that hundreds, if not thousands, of motorists who have purchased vehicles on a second-hand basis would have, in fact, suffered all kinds of difficulties, may have been defrauded and may have had to go to lawyers and spend long times in the courthouses of this country just trying to get justice because they were fleeced and defrauded by certain persons who they dealt with in terms of a transaction. It took us 10 years! I am not blaming the PNM because the PNM was always a Government of chaos. *[Laughter]*

Sen. Daly: I am always very reluctant to interrupt my good friend, but is the Minister aware that this Bill was developed by the Law Commission and not by any specific Government? Because I have a letter from a member of the Law Commission from which I quote:

“This Bill was developed by the Law Commission and I have been involved in all stages of that development going back to 1988.”

Sen. The Hon. W. Mark: Very good. That point is well-taken. In fact, I was coming to that because I was informed by my good colleague. *[Laughter]* *[Desk thumping]* I spoke specifically to the Minister of Works and Transport, and he advised me that it was the Law Reform Commission that took the initiative. *[Laughter]* But I am saying that it is almost 11 years and the Bill is here and, as I said, it is to the credit of the Minister of Works and Transport that we have been able to bring this Bill to Parliament, of course, having gone through the exercise at the initial stages of the proceedings by having the Law Commission established to work on this particular piece of legislation.

As I said, Mr. President, this is about public administration. It is about the thrust that we are taking as a Government to bring about greater levels of efficiency and effectiveness. It is about transparency and accountability. I want to make it very clear that we have noted the views that have been expressed by the Opposition and by the Independents through Sen. Daly so far, because we are also about eliminating—even though sometimes we get the impression that the Opposition is even opposed to that particular issue.

We are also about tackling corruption, whether it is in the public service or in the public sector of Trinidad and Tobago. That is why today, there is a Bill that is in the Parliament of this country dealing with the issue of accountability, transparency and any acts of corruption that may take place in a ministry, in a department, in a Government agency, or involving any Minister. When that Bill becomes law, they can investigate me. They can investigate any Minister! We can

go back to the past and investigate. The point about it is that this Government is committed to dealing with this issue.

In fact, as we speak about it, I expect to get a report by the end of this month. There is a task force that has been established by the Ministry of Public Administration with Cabinet's approval, headed by Dr. Hamid Ghany, to deal with a formulation of a code of ethics for the public service of this country and an appropriate enforcement agency to effect that particular code of ethics. *[Desk thumping]* So, we expect a report on that very shortly to deal with that issue.

So, Mr. President, this particular piece of legislation, as I said, is to deal with the issue of a comprehensive registration system to, at least, help the small man and to help the people, generally, in this country so that they can have access to information. In Trinidad and Tobago today, our public service is way behind times. We are trying to bring our public service up to a level of civilization insofar as technology is concerned. We still have a manual public service in Trinidad and Tobago, and what we are aiming for—this Government of the United National Congress and our colleagues in the NAR; our Government of national unity—*[Laughter]* This is all part of the thrust!

We are committed to what is called “electronic government”. We want, for instance, that a police officer can stay at home on his or her computer and access information. That is the future! So, when we talk about the UNC, we are talking about electronic government 2000 and beyond! That is where we are going. *[Desk thumping]* *[Laughter]* We want to revolutionize! We are part of the information age, and this is what we are about.

Sen. Prof. Spence: I wonder if the Minister is endorsing Minister Griiffith’s statement that the Government Broadcasting System is going to be the CNN of the Caribbean?

Sen. The Hon. W. Mark: I am dealing with electronic government. *[Laughter]*

4.30 p.m.

Sen. Daly: May I ask whether this Minister is suggesting that Government Ministers are going to have electronic access to the Treasury? *[Laughter]**[Desk thumping]*.

Sen. The Hon. W. Mark: Mr. President, I would say that for instance, we want to ensure whether it is Sen. Daly—now, I am responding to you Sir—the school children of this country, ordinary citizens, members of the public service,

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the large body of citizenry in our country must have access to information on time and on line, in terms of getting information. The only way we can revolutionize our country is to get on the information superhighway by technologically revolutionizing the public service of Trinidad and Tobago, and that is what we are about. [*Desk thumping*].

We have to do this Sir, because we are concerned about the young people in our country and we know that for instance, the world today is in an electronic mode and, therefore, Trinidad and Tobago cannot be left behind Public Administration demands that this system that we are introducing be of a quality, standard and nature that people could access their information and the service that they require as I said, on time and on line.

Mr. President, we are hoping, that based on the suggestions made by Sen. Daly, Sen. Montano and Sen. Mohammed, we would look at all these matters because we are a Government of inclusion, not exclusion. So, we would listen to what you have to say and take it into account and test it to see if it is possible.

Mr. President, as we said, this is a very important matter and I have a lot to say on this matter [*Laughter*] and I also want to indicate that some of the points that have been raised, we would want to discuss them among ourselves at another level, because we want to ensure that whatever we do, it is in the interest of our country, Trinidad and Tobago.

With those few thoughts Sir, although I want to reserve the right Mr. President, to continue my presentation. I want to take this opportunity to adjourn the Senate for today and we shall continue next week Tuesday, April 20, 1999 at which time for instance, we would look at some of the comments made by Sen. Daly, in particular, as well as Sen. Mohammed. I shall be continuing with my contribution because I have just been very brief, so far.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to move that the Senate do now adjourn to Tuesday, April 20, 1999 at 1.30 p.m.

Mr. President, may I inform my colleagues that apart from this Bill, we must complete the three Bills that were tabled today. I just want to remind my colleagues of those Bills so that they would know, and we would like them to be taken as a package, that is:

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- (1) National Insurance (Amdt.) Bill, 1999
- (2) Old Age Pension (Amdt.) Bill, 1999
- (3) Public Assistance (Amdt.) Bill, 1999

They are integrated although they are separated and they are critical for the system that the Government announced in its 1998/1999 Budget.

Mr. President, we are going to continue this debate. We are going to complete this exercise and I want to ask my colleagues to be prepared for a long session, which could take us into the night because we want to complete these three Bills as well as the Registration of Motor Vehicles Bill.

Mr. President, I beg to move.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.35 p.m.