SENATE

Tuesday, September 18, 2001

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. Prof. Kenneth Ramchand.

PAPERS LAID

1. Report by Personnel Management Services Limited on the investigation into matters arising from the Auditor General's Report on the North West Regional Health Authority.[*The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette)*]

2. Draft Estimates of Expenditure for the financial year 2002. [*The Minister of Finance (Sen. The Hon. Gerald Yetming)*]

3. Draft Estimates—Details of Estimates of Recurrent Expenditure for the financial year 2002. [*Hon. G. Yetming*]

4. Draft Estimates of the Revenue and Expenditure of the Statutory Boards and Similar Bodies and of the Tobago House of Assembly for the financial year 2002. [*Hon. G. Yetming*]

5. Draft Estimates of Development Programme for the financial year 2002. [*Hon. G. Yetming*]

6. Draft Estimates of Revenue for the financial year 2002. [*Hon. G. Yetming*]

7. Public Sector Investment Programme for the financial year 2002. [*Hon. G. Yetming*]

8. The Medium Term Policy Framework—2002—2004. [*Hon. G. Yetming*]

9. Review of the Economy 2001. [*Hon. G. Yetming*]

10. Report of the Auditor General on the accounts of the Agricultural Development Bank of Trinidad and Tobago for the year ended December 31, 2000. [*Hon. G. Yetming*]

ARRANGEMENT OF BUSINESS

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, I beg to move that the Senate deals with Bills Nos. 1, 2 and 3 Second Reading, followed by Motion No. 1.

Agreed to.

FREEDOM OF INFORMATION (AMDT.) BILL

Order for second reading read.

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, I beg to move,

> That a Bill to amend the Freedom of Information Act, No. 26 of 1999, be now read a second time.

Mr. President, there are two simple amendments to deal with the Freedom of Information Act, sections 4 and 25. As you recall, Mr. President, this Act was assented to on November 04, 1999 and came into effect in its entirety on February 20, 2001.

The Act promotes transparency and accountability in public affairs and encourages participation in the formulation of Government policy thereby facilitating its strengthened democracy.

Mr. President, the Act extends to all members of the public the right of access to information held by agencies of government, requiring that each of these agencies officially advise the public about their policies, the nature of their operations and the official documents available for public scrutiny. The Freedom of Information Act therefore provides the machinery through which any member of the public may request and, with some exceptions, gain access to information formerly treated and classified as confidential.

In these ways, the Freedom of Information Act challenges the conventions of secrecy and confidentiality that have become hallmarks of the public sector's operations. By conferring the right to information, we believe that all members of the public now have the opportunity to become better informed about the conduct of State affairs. Armed with the necessary knowledge, the public may now demand greater accountability by public officials and seek to ensure greater efficiency in the conduct of the affairs by those of us who serve.

Hence, Mr. President, the Bill now seeks to amend sections 4 and 25 of the Act. As you would recall, when this Bill was first brought to this honourable Senate, section 4 said:

> 'Minister' means the Minister of Government to whom responsibility for information is assigned;"

Shortly after that it was amended to say:

> "Substitute the word 'Minister' and include the words 'the Minister responsible for public administration'."

As you know Mr. President, over the past six weeks, again portfolios in the Government have been realigned and the Information Division is no longer under the Ministry of Public Administration. The Information Division is now with the Prime Minister's office and, as such, we would like to revert to the original definition because we feel that the field of information really belongs to the Minister responsible for information and, as such, that is what we are seeking in this amendment.

In addition to that, section 25 aims to remove all doubt that the Minister who is authorized to certify documents relating to national security, is the Minister with the responsibility for national security. If one reads 25(1) it states:

> "A document is an exempt document if it contains information, the disclosure of which would be likely to prejudice the lawful activities of the security or intelligence services."

Section 25(3) requires that the Minister must issue a certificate. That is fine, but the document is an exempt one. As such, without this amendment, any Minister will be able to issue such a certificate once it fell within the scope of section 25.

As such, the implications are that any Minister would have the authority to determine which documents are likely to prejudice the lawful activities of the security and intelligence services, as well as the defence of Trinidad and Tobago.

In all practicality, Mr. President, only the Minister of National Security will have the requisite knowledge and information for making such a judgment. Accordingly, the object of this amendment is to allow decisions concerning sensitive documents to be dealt with only by the Minister of National Security himself.

The passage of these amendments would allow for the enhanced operating efficiency of the legislation and would facilitate the achievement of our goal of

greater accountability and transparency in public service. The Government believes that the future of the nation—and indeed our legacy—lies in the strengthening of our democracy through the empowerment of those we serve, and I therefore wish to assure you of our continuing commitment to this ideal.

Thank you, Mr. President.

Question proposed.

Sen. Glenda Morean: Mr. President, the amendment, as the Minister has stated, seems simple enough. However, with this Government, nothing is simple. Because the very introduction by the Minister of the reasons for the changes was certainly not simple.

The proposed amendment defines the word "Minister" in section 3 as the Minister of Government to whom responsibility for information is assigned; but we cannot tell from day-to-day to whom such responsibility is assigned because with the slashing of portfolios, one day it is assigned to Minister "X", next day to Minister "Y". And we have to remember that this Freedom of Information Act is intended not only for the academically equipped but, in fact, also for the man-in-the-street. How is the man-in-the-street to know who the Minister is? We cannot even tell ourselves, and we cannot tell the man-in-the-street to check it in the *Gazette* because by the time the *Gazette* comes out, there may have been another change, or the particular Minister may have joined a gang of four or maybe five.

Of late, Mr. President, in keeping with the theme of the Act that is being amended, this Government is freely giving information about gangsters in the Cabinet. A gang of four actually sitting in the Cabinet and purporting to deal with matters of State, oblivious of the disquiet its Members are causing to the population. So while I have no objections to the principle of the amendment, I have a difficulty with the manner in which this Government is demonstrating its inability to govern the country, and perhaps I might say it had an iniquitous beginning and it would probably have an even more iniquitous end. As the Bible says: As it was in the beginning, so shall it be in the end.

Additionally, Mr. President, I welcome the clarification as to which Minister the public should turn to for information relating to utterances of Members of the Government. Because I am sure we will recall that this Government went up and down the country during the last election campaign boasting that they had created 60,000 new jobs during its term of office. No back-up statistics were given, but now that the dust has settled, we have the second-in-command in the Government referring to that statement as a mere allegation. Mr. President, this is not

something which somebody told me, I have heard this with my own ears. So hopefully with this amendment, we will now be in a position to obtain correct information with the passage of this Bill.

With respect to the second amendment, despite the fact that we have an already over-burdened Minister of National Security, the proposed amendment of section 25 would perhaps enable persons whose homes have been searched recently to obtain information from this Minister as to whether the search was politically motivated or not. And this is all about information.

The passage of this amendment should enable such persons, or any other person for that matter, to obtain from the Minister of National Security information as to who gave the order for the search in the first place. I therefore welcome and support this amendment. My only hope is that systems would be put in place for the implementation of provisions for this and the parent Act so that the citizens would be facilitated in obtaining information without the usual obstacles associated in dealing with Government departments.

So, while we are concerned about the sort of information that the Government is giving out and also about its ability to properly govern the country, we have no objection, as such, to the amendments proposed.

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): I thank the hon. Senator for her contribution, but I think that public authorities under the Act, sections 7, 8 and 9 have to publish where they have to go to get information and, as such, the man-in-the-street would know who is ultimately responsible for dissemination of information.

Section 4, as I said, really relates to the Minister with overall responsibility and administration of the Freedom of Information Act, and as such, that would be published, as I said before, under sections 7, 8 and 9.

With respect to the realignment of ministries, I think that change must occur and when one realigns ministries or anything as a matter of fact, it is to become more efficient and more effective, whether it be in the private sector or in Government. All the Prime Minister has done is realign our ministries to become more effective so that we can deliver services more effectively to the people of Trinidad and Tobago, and that is what we have done.

He has a huge portfolio, but he is very effective and very efficient and he gets things done, and as such, as the Prime Minister, he sees it fit to put the Information Division under his portfolio at present.

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.

Clause 1 ordered to stand part of the Bill.

1.50 p.m.

Clause 2

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

Sen. Gillette: Mr. Chairman, I beg to move that clause 2 be amended by deleting the word "three" in clause 2(a) and substituting the word "four". I think it is just an error there.

Question put and agreed to.

Mr. Chairman: Did someone raise a query?

Sen. King: Mr. Chairman, I was asking whether we have amended the section 25 aspect of this in clause 2, or whether we have togo to section 25 and amend that?

Mr. Chairman: Clause 2 incorporates (a) and (b) so you do not have to deal with (b) separately.

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

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

Senate resumed.

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

ARRANGEMENT OF BUSINESS

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, the Leader of the Opposition as well as the Leader of the Independents agreed to go straight to Bill No. 3.

Agreed to.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Order for second reading read.

The Minister in the Office of The Attorney General and Ministry of Legal Affairs (Sen. The Hon. Gillian Lucky): Mr. President, I beg to move,

That a Bill to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, be read a second time.

Mr. President, since 1995 this Government has been pursuing an aggressive legislative agenda, geared towards one major goal, that is to transform Trinidad and Tobago into a State that is in keeping with modern realities.

It has long been acknowledged that our laws are outdated and are in urgent need of reform and revision. The intention is to introduce a modern system of governance and this is aptly demonstrated by this Government's enactment of legislation in numerous new fields such as intellectual property, electronic commerce, scientific legislation, equal opportunities, social justice and social welfare among numerous pieces of amending legislation.

Mr. President, the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill, 2001, is also representative of that goal. The introduction of this Bill demonstrates my Government's intention to continue to pursue this goal of modern governance.

This Bill seeks to further the modernization process by proposing further reforms to the system of criminal justice in this country.

One of the noted problems plaguing the administration of justice in this country is the issue of judicial delays and as we all know by now, justice delayed is justice denied. Justice is such an important aspect of any society that it would be most unfortunate for the citizenry to see its government doing nothing about the problems affecting the judicial system. Over the past few years this Government has achieved great reforms in the administration of justice.

Indeed, law as a tool of social engineering has been used to effect reforms in criminal legislation, such as the Supreme Court Act, the Jury Act, the Evidence Act, the Criminal Law Act, the Summary Courts Act, the Sexual Offences Act and a host of other pieces of criminal legislation; together with the enactment of new criminal legislation ranging from the Military (Prohibition Training) Act of 1996 and the Negotiable Instruments (Dishonoured Cheques) Act, 1998, and the Justice Protection Act, 2000, amongst others.

The main purpose of this Bill, as its short title indicates, is to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 which is the parent Act. The Bill, which now comprises 12 clauses, will not have retroactive effect and requires a simple vote.

Mr. President, I take this opportunity to first summarize the essential elements of the Bill. The Bill would first provide the conditions upon which a written

statement by either party, that is the prosecution or the defence or accused person, to a preliminary enquiry, may be tendered into evidence. It then sets out the procedure a party must follow in order to have such a statement admitted into evidence.

The Bill then goes on to provide two methods whereby a magistrate may commit an accused person on the basis of what is called a "paper committal". The first method is to give the examining magistrate the power to make an order of committal without consideration of the statement. However, it is to be noted that the magistrate cannot follow this method where: (a) the accused is not represented by counsel or (b) counsel for the accused wishes to make a no case submission. The second method is to consider the statement and allow both parties to make submissions to the court before making a committal order.

The Indictable Offences (Preliminary Enquiry) Act was amended in 1994 by virtue of Act No. 20 of 1994, to provide for preliminary enquiries to be conducted on the basis of written statements tendered in evidence by the prosecution. This method of conducting a preliminary enquiry which is commonly called the "paper committal system" exists in the United Kingdom as is seen in the legislation of the United Kingdom, called the Magistrates Court Act, 1980, section 102, and some other Commonwealth jurisdictions including some in the Caribbean. For example, the Caribbean Procedure (Preliminary Enquiry) Act, 1995 of Dominica; and the Magistrates Jurisdiction and Procedure (Amdt.) Act, 1984 of Barbados, which came into force in October 1998.

Increasing delays in the courts led the Government to introduce the paper committal system in 1994, however, it soon became apparent to the magistrates, lawyers, prosecutors and the police that the 1994 amendments that were intended to speed up preliminary enquiries were actually contributing to delays. The new system was just not working. The 1994 amendments proved ineffective because the magistrate was obliged to take the evidence of an accused person who wished to give evidence and to allow the cross-examination, if desired, of the maker of a tendered statement. Thus the 1994 amendments were inherently contradictory because they allowed for the admissibility of written statements and then defeated this purpose by providing for the calling and cross-examination of these witnesses by the defence, which constituted in the first place, the major cause of the delays.

It is on record that since the enactment of these provisions only three such preliminary enquiries were concluded, thus defeating the purpose for which the amendments were intended. As a result of the failure of the 1994 amendments, the Government established a committee in 1996 under the chairmanship of Justice

Lennox Deyalsingh, as he then was, to consider the matter and make recommendations.

In its report, the committee pointed out that the ineffectiveness of the 1994 amendments was due mainly to three procedural factors. One, the accused who is given the right to cross-examine the maker of the statement exercised this right and would normally call all the prosecution witnesses and so create great delays. Two, the accused is entitled to give oral evidence which has to be written down, contributing to more delays; and three, the accused after having been given copies of the written statements, may often elect not to proceed by way of the written statements but by oral evidence, thus requiring the witnesses to attend court and give oral evidence in chief and them to be cross examined.

2.00 p.m.

The Deyalsingh Report also stated that since the enactment of the 1994 amendments, only three such preliminary enquiries were concluded, thus defeating the purpose for which the amendments were intended. The report further pointed out that the 1994 amendment "made the situation worse", and as a result "there arose a tacit understanding between the magistrates and the prosecutions that no proceeding would be brought under the 1994 amendment until it died a natural death."

To address the procedural deficiencies in the 1994 amendment which created enormous delays in preliminary enquiries, the report recommended *inter alia* that preliminary enquiries be by way of written statements from the prosecution witnesses with no cross-examination. The committee indicated that this is the law obtaining in England and that this will not prejudice the accused person, because he will have the right to cross-examine the prosecution witnesses at the trial. However, the Government does not accept the recommendation to deny a person who is charged with a serious criminal offence, of his or her right to cross-examine the witnesses. Such a recommendation may well be suited to the English judicial system, but I do not think that it can be justified constitutionally or otherwise in our society at this time.

The proposed amendments also arose as a result of the outcome of a recent judicial decision and concerns by the Director of Public Prosecutions, that certain existing deficiencies in the Act should be addressed. The Court of Appeal, in the case of the Director of Public Prosecutions against Margaret Thomas-Felix and others, which is reported as Court of Appeal No. 9 of 2000—the decision was given in July 2000—indicated that the deficiencies in the Act should be corrected

by amending the Act in Parliament. The court pointed out that the subsections of section 24(a), which is part of the 1994 amendment, are so confusing and contradictory that the only solution to produce a workable system of paper committal is to amend the Act.

I would therefore respectfully ask Members of this honourable Chamber to note that in the report of the commission appointed to enquire into and report and make recommendations on the machinery for the administration of justice in the Republic of Trinidad and Tobago—that report is often referred to as the Mackay Report—the commission found that: "The present system of preliminary enquiry is seriously deficient", and recommended that paper committals be used, generally. Hence the main purpose of the Bill is to seek to modify the 1994 amendments to provide a workable system for the use of written statements in a preliminary enquiry. The Bill seeks to correct the deficiencies and inconsistencies of the 1994 amendments which have rendered the procedure ineffective.

I wish to stress that the Bill does not seek to abolish the paper committal procedure. It is quite clear from all the recommendations received by my Government, whether from the Deyalsingh Report, the Mackay Report or the Director of Public Prosecutions, that the system of paper committal should be continued but reformed. Hence the central focus of this Bill is to propose procedural changes to the system of paper committal in order to achieve a workable system. When I say, a workable system, what I really mean is a system which would facilitate the expeditious hearing and completion of a preliminary enquiry before a magistrate, or an enquiry with as little delay as possible. Most of us here are aware of the marked delays which plague preliminary enquiries.

First, the Bill specifies the conditions upon which written statements by any party may be admitted in evidence in a preliminary enquiry. For example, the statement must be signed by the witness, sworn before a clerk or justice of the peace and contain a declaration that the statement is true. The Bill also makes special provision for statements by minors, persons who cannot read or write and for exhibits referred to in the statement.

Secondly, the Bill provides the procedure that a party must follow in order to tender a written statement in evidence in such an enquiry. For example, it must be served on the other party before it is tendered in evidence; it must be marked by the magistrate when tendered and if there is any inadmissible part, the magistrate must so indicate in a written note on the statement.

The Bill then seeks to provide two means of proceeding by way of written statements in a preliminary enquiry. The first is to confer on the enquiring

magistrate the sole discretion whether or not to commit the accused for trial to the High Court without consideration of the evidence as presented by the prosecution by way of the admitted written statements. However, he cannot make an order of committal if the accused is unrepresented or if his attorney at law wishes to make a no case submission. If either of these situations arises, the magistrate must then adopt the second option.

The second option is for the magistrate to proceed on the basis of a consideration of the evidence, that is, all the evidence, including the written statements tendered in evidence. Furthermore, in order to provide a workable procedure, the Bill introduced other major changes. First, it prevents the accused from calling the maker of the written statement to give evidence, but where such a person is called by the magistrate—and that power is within the sole discretion of the magistrate—the accused has the right of cross-examination. As I mentioned earlier, there seems no justification to deny an accused person of such a fundamental right notwithstanding what other jurisdictions may have provided for in their respective legislation.

Secondly, once the accused accepts the written statements from the prosecution, he is prevented from opting to have the preliminary enquiry conducted by way of oral evidence. In other words, the accused must proceed by way of a paper committal.

The police had indicated to the Attorney General that an accused would normally accept the written statements—that is the written witness statements—from the prosecution, and then being aware of the case against him, opt to have the preliminary enquiry conducted by way of oral evidence. Such an unfair situation cannot be allowed. The police therefore recommended that the law should be amended to deny the accused the option of choosing to proceed by way of oral evidence after he has accepted the written statements from the prosecution.

Finally, under the existing law, that is section 23(5) and (6) of the parent Act, where an enquiring magistrate does not commit an accused for trial, the Director of Public Prosecutions can apply to the High Court to have the accused committed by a judge, but if the judge refuses, the Director of Public Prosecutions has no right of appeal. The Bill would give the Director of Public Prosecutions a right of appeal but only to the Court of Appeal, to test the decision of the High Court.

I now propose to go through clause by clause, the amendments that we seek by way of the Bill that is presented today. Clause 1 provides the short title of the Bill. Clause 2 provides the interpretation provision and clause 3 inserts two new

clauses: section 16C and 16D. The proposed section 16D would provide for the admissibility of written statements as evidence in a preliminary enquiry if certain conditions are satisfied. Among the conditions specified are that the statement is signed by the witness, sworn before a clerk of the peace or justice of the peace and served on the defence as soon as is practicable before it is tendered in evidence.

Section 16C also proposes that the magistrate may also call the maker of a written statement to attend the enquiry to give oral evidence and once the defence accepts service of the written statement, they are precluded from requesting a preliminary enquiry by way of oral evidence.

I wish to point out that when the Bill was passed in the other place, three amendments to the proposed section 16C were accepted by the Government. The first two changes were to subsection (9) to provide: (a) that the statements of the prosecution should not only be accepted by the accused person, but also by his attorney at law, so that there would be no room to question the giving and receiving of these statements; and (b), that once the statements had been accepted, the magistrate must proceed to conduct the enquiry in accordance with section 23A or 23B.

In other words, the Bill seeks to make it very clear that acceptance of the prosecution's written statements by the defence prevents the magistrate from proceeding by way of an old style preliminary enquiry, that is, to call the witness to give oral evidence. He must proceed to hold the enquiry as a paper committal.

The third change to section 16C was the addition of a subsection (10) to provide a new schedule, that is, the third schedule consisting of part A and B to the Act, to ensure that the accused person and his attorney at law cannot, after having accepted the prosecution's written statements, claim that they never received the statements. They must both sign the statutory form.

This is important, because if such a claim can be made and sustained, then the defence, with the statements in their possession, can call for an old style enquiry and thus have an unfair advantage over the prosecution. Hence the need for documentary proof that the statements have been served and accepted by the defence. This will also serve to deal with a situation where sometimes it is claimed that the rules of disclosure have not been adhered to by members of the prosecution team, and therefore, there will be documentary evidence which would state which documents have been passed over to the defence and ensure that there is no room for ambiguity.

2.10 p.m.

The proposed section 16D would provide for the filing of a copy of the written statement with the Clerk of the Peace for the proper identification of any document or object referred to in a written statement and for the procedure to admit a written statement in evidence.

Mr. President, I once again wish to point out that the proposed section 16D was amended in the other place. Two new subsections (8) and (9) were added to this section. The new subsection (8) sought to remedy a possible lacuna in the Bill by expressly providing that the written statements of each witness would be deemed to be their evidence-in-chief, that is, their oral evidence. Hence, these witnesses would not have to be called at the enquiry to give evidence from the witness box. This would help to reduce the great amount of delay associated with a preliminary enquiry. The new subsection (9) also seeks to remedy a possible lacuna in the law by expressly providing that an accused person is entitled to challenge any part of a written statement. The intent, of course, would be to prevent it from being admissible in evidence against him.

In the other place the Attorney General agreed that such an important right should not be left to be implied; after all, the rule of law, particularly in its application to criminal legislation demands clarity and certainty.

Clause 4 seeks to insert a new section 17B which would come right after section 17A. The proposed section 17B would provide for the tendering into evidence of a written statement of an accused person and for its admission as evidence in the trial. Clause 5 seeks to insert five new subsections 23A—G, after section 23 of the parent Act.

The proposed section 23A would allow the magistrate to commit the accused person for trial without considering the contents of the written statement tendered under section 16C unless the accused is unrepresented or counsel for the accused makes a no case submission. The proposed section 23B would provide for committal based on the written statements tendered in evidence. This proposed section would allow the accused to submit that a prima facie case was not made out and for rebuttal by the prosecution. Thereafter the magistrate may either commit or discharge the accused based on a consideration of all the evidence.

Mr. President, two amendments were accepted to section 23B by the Government in the other place. The first change was made to subsection (2) to clarify that the magistrate’s direction or discretion under this subsection would not be to the Clerk of the Court or to any other person but to the prosecutor. The

second amendment was made to subsection (4) to provide for greater procedural clarity. The amended subsection now provides that the magistrate shall entertain a no case submission by the defence only after all the evidence of the prosecution has been admitted and not just after the admissibility of the written statements. The original subsection left it open to the defence to make two no case submissions, one after the written statements were admitted and another after the close of the prosecution's case.

It was felt by the Attorney General that the subsection should also expressly preserve the right of the accused person to cross-examine any of the prosecution's witnesses after the making of a no case submission. It was felt that section 23D by itself was not sufficient and that such a right must be part of section 23B(4). Hence, the reference to the right of the accused person to cross-examine being expressly mentioned in section 23B(4). This was not a matter to be left by way of implication.

The proposed section 23C would deem a statement admitted into evidence under section 16C to be a deposition. The proposed section 23D would retain an accused person's right of a cross-examination in a preliminary enquiry. The proposed section 23E would make it a summary offence for the maker of a written statement which is wilfully tendered in evidence to make a false statement or a statement which he believes not to be true. The proposed section 23F would provide that section 55 and Part VI of the Summary Courts Act, Chap. 4:20, shall not apply to proceedings under this amendment. Section 55 of the Summary Courts Act provides that:

> "If, upon the hearing of any complaint, it appears to the Court that the case ought to be tried as an indictable offence, all further proceedings in the case as for a summary offence shall be stayed, and depositions shall be taken, and the case shall in all other respects be dealt with as if the charge had been originally one for an indictable offence."

That particular section will not be applicable.

Part VI of the Summary Courts Act, sections 94—100, provides for the summary trial of indictable offences. Under Part VI the magistrate can reduce a charge to an indictable offence to a charge for a summary offence. Hence, if this is done by the magistrate, the legislation which deals with indictable offences will not be applicable.

The proposed section 23G would confer, as of right, a right of appeal to the State to only the Court of Appeal against the decision of the High Court made

under section 23 of the parent Act. Section 23 of the parent Act allows the Director of Public Prosecutions to apply to the High Court to have an accused who is discharged by the enquiring magistrate to be committed for trial.

Clauses 6 to 9 are merely consequential changes arising out of the earlier amendments referred to. Clause 6 seeks to repeal section 24A of the parent Act and renumber the prevailing sections 24B—24D as sections 24A—24C. Clause 7 seeks to amend the renumbered section 24A by deleting the reference to section 24A which is now repealed by clause 6 and to insert the reference to section 23A(1) or 23B(9). Clause 8 seeks to amend the renumbered section 24B by removing the reference to section 24A and inserting the reference to section 23A or 23B. Clause 9 seeks to amend the renumbered section 24C by removing the reference to 24A and inserting the reference to 23A or 23B.

Clause 10 seeks to amend section 39(1)(a) of the parent Act by inserting certain words, the consequence of which is to extend the categories of depositions which can be read as evidence at the trial. In this case the new category is the deposition of a witness who does not attend the trial to give evidence for any other reason apart from those reasons such as death, physical or mental incapacity, which in fact, are listed in the section. The new clause 11 merely provides for the third schedule, the nature and reason of which I had earlier explained, and clause 12 provides that this amending section shall not apply retrospectively.

Mr. President, I am fully aware that reform to only the lower governing preliminary enquiries will not by itself solve the major problem of delays in the criminal justice system. The Government is aware that infrastructural and administrative changes are required. To this end, the Government has already, over the past few years, repaired, renovated and built new magistrates' courts and provided more and better facilities.

The Government recently introduced new legal aid legislation and is also attempting to introduce a system of night courts. Both these measures are intended to help reduce the backlog of magisterial matters and thus reduce delays in the magistracy.

Senators may be happy to know that only recently the Administration of Justice (Miscellaneous Provisions) Bill, 2001, was passed in the other place and in clause 13 of that Bill it was agreed that a magistrate should have the direct power to appoint a legal aid attorney to represent an accused person rather than the present system of having to refer the appointment to the Director of the Legal Aid

and Advice Authority. The police and the Director of Public Prosecutions recommended this change and it is supported by the Law Reform Commission. That requirement to refer the matter first to the Director of the Authority has proven to be a delaying and cumbersome process contributing greatly to inefficiency in the Magistrates' Courts.

I am sure that Senators would therefore appreciate the holistic approach that is being adopted to deal with the problems in the criminal justice system and to modernize the administration of justice. I, therefore, respectfully call on Senators to support the Bill.

Mr. President: Madam Minister, before you close, the Senator would like to ask a question.

Sen. The Hon. G. Lucky: I am sorry.

Sen. Morean: I would just like to have a clarification. The Bill I have goes up to clause 11 but I heard the Senator refer to clause 12.

Sen. The Hon. G. Lucky: Mr. President, Hon. Senator, if it is that clause 12 is not before you—I thought, in fact, it would have been in the amendments—it would, in fact, be dealt with at the committee stage of the Bill. It is something we would be seeking to insert. [*Interruption*] I indicated to the hon. Senator that that would be something which would be dealt with elsewhere. It is not the intention that it would have retrospective effect.

In the circumstances, Mr. President, I beg to move.

Question proposed.

2.20 p.m.

Sen. Glenda Morean: Mr. President, as the hon. Minister has stated, several attempts have been made to amend what is referred to as the provision for paper committal. It seems that this enactment, though relatively minor is testing the drafting skills of the Minister's advisors. The Explanatory Note to this Bill sets out the objectives of the provision.

However, the attempts at enacting the provision began with an amendment to the parent Act, Chap 12 No. 1 with Act No. 20 of 1994. In fact, there was an amendment before that. I think that it was No. 18 of 1994, although that did not deal with paper committal. That dealt with bail and so on. This was followed by Acts No. 6 of 1996; No. 28 of 1996; No. 19 of 1998; No. 32 of 1998 and now, this present amendment. It would be tidier, when we have to deal with amendments of

this nature, where there are several amending Acts to the parent Act, if we can get a compilation of the Act as amended, so that we would not have to refer to all these different pieces of legislation, in order to make sense of the amendment. This is the exercise we had to undergo in order to understand what we were doing. Perhaps, this would assist the drafters in their quest to remedy this defect in the law effectively.

Yesterday, at the opening of the law term, the hon. Chief Justice referred to this defect in the law and attributed it—to use his term—to defective drafting of the relevant provisions. That is really so. Let us hope that today, as we seek to amend the parent Act, that we enact effective provisions this time.

The amendment is all well and done, but the mere passing of this Bill will not by itself correct the mischief that is sought to be corrected, namely, the length of time that a matter spends before the court before it comes to final conclusion. As was pointed out yesterday also, by the hon. Chief Justice, skilled persons are needed to ensure that legislation serves the purpose for which it is intended. In other words, the office of the Director of Public Prosecutions must be adequately staffed in order to effect this saving on time. This Government must be prepared to go one step further than just enacting legislation. It must also employ the required personnel and give them the proper incentive to attract and retain them in the particular departments. I am dealing particularly with the DPP's department that would be dealing with the putting into effect of this legislation.

We all know that the rate of attrition of skilled legal personnel is very high in that department. The reason for this is trite knowledge. Without proper remuneration, the department will continue to have a high rate of turnover of lawyers passing through its doors. Legislation or no legislation, we would be faced with the same difficulties.

With respect to the actual provisions of the Bill, clause 3 which seeks to introduce a new section 16(c)(1), while it seems quite clear on reading it, in the last sentence there seems to be something missing. It says that:

> "Notwithstanding sections 16 and 18, in a preliminary enquiry a written statement by any person shall, if the conditions mentioned in subsection (3) are satisfied, be admissible as evidence to the like extent as oral evidence to the like effect by that person."

I believe that something ought to be inserted there after the word "to". Perhaps, the words "would have" if given by that person. I think that is what is intended. After the word "evidence", instead of the word "to", we should say "as

oral evidence would have if given by that person." I believe that is what is intended.

Subsection (2) states:

"A statement mentioned in subsection (1) may be any of the following:

"(a) a statement made to and written by the police;"

I think what is intended here is that if the policeman writes the statement, then it would be acceptable. Instead of saying "written", what is intended is "committed to writing". I suggest that that subclause be amended to replace "written" with "committed to writing". You are seeking to ensure that the written statement satisfies all the conditions which are set out in subsection (3) and will support what I have just said.

I also think that subsection 2(c) where a statement is made by a witness himself, should be in his own handwriting. That should be included. After the word, "himself", the words, "in his own handwriting" should be included. You are saying that a statement mentioned in subsection (1) may be any of the following. One is a statement made by the witness himself. You are dealing with written statements, so that should be in his own handwriting, to remove any doubt as to what is being said.

I have a little difficulty—and perhaps, the hon. Minister will clear up that—with respect to subsection (4), when read in conjunction with subsection (3). The section is saying that "notwithstanding section 16 and 18, in a preliminary enquiry, a written statement by any person…" Any person here, will include a witness. It may be that witnesses are being treated in a different way in this clause. It is true that you have set out provisions for the manner in which the conditions are referred.

Section 16C(3) states:

"(a) the statement purports to be signed by the person who made it;

(b) the statement was sworn before a Clerk of the Peace or Justice of the Peace and shall be authenticated by a certificate signed by him;

(c) the statement contains a declaration by the person who made the statement to the effect that it is true to the best of his knowledge and belief…"

There seems to be some conflict between the provisions of subsection (4) and the overall provisions of subsections (1) and (3). I think that this ought to be clarified.

Since one of the provisions for admitting the statement is that it must be sworn before a Clerk of the Peace or Justice of the Peace and be authenticated by a certificate signed by him, I am still a bit puzzled as to why there would be the provision in (d) which states:

> "if the statement is written on behalf of a witness who cannot write, the person who wrote the statement shall read it to the witness before he puts his mark or thumbprint on it and it shall contain a declaration by the person who wrote it that it was read to the witness and he appeared to understand it and he agreed to it;"

If the statement in any event has to be sworn before the Justice of the Peace, that exercise has to be undertaken by the person who is swearing. In any event, the person who is taking the oath, the Justice of the Peace or the Clerk of the Peace will have to read it over to the witness. I do not know if there is a reason for it, but I would like that to be explained. Is this necessary or is it a bit of superfluity?

Since section 23C provides that:

> "a written statement admitted in evidence under clause 16C is deemed to be a deposition within the meaning of section 16(3)",

why is it necessary in subclause (2) of 16D to have the last three words "and any depositions"? Why is there this provision? From what we see here, any written statement from the definition becomes a deposition. If we are following the procedures as outlined by the new provisions, then why would it be necessary for additional depositions? While it is true that we have not totally got rid of the original provision, and there may be cross-examination, it is only if that provision is being made for that eventuality. It does not state that here. A written statement filed under subclause (1) by either party to the enquiry shall be tendered by such party and may be admitted into evidence by the magistrate under section 16C. Where a statement is so admitted it shall be marked by the magistrate as a court exhibit and kept together with all other written statements and any depositions.

I would like an explanation as to why "any". Perhaps, the word "other" may be left out, if we are marrying the two procedures. That could be the only explanation for that, otherwise, these three words should be left out, lest we create further confusion.

2.35 p.m.

In clause 23D, I had a query with respect to the magistrate holding an enquiry and having cross-examination, but I think that has been explained with respect to giving the option to the accused. These are the remarks I would make with respect to the proposed changes to the Act. Thank you.

Sen. Prof. Ramesh Deosaran: Mr. President, I have a few comments to make, and I must, in the very first instance commend the Minister for the rather exhaustive presentation she has made, not only with respect to the general purpose of the Bill, but in trying to delineate the respective clauses so as to enlighten us as to what can be achieved by passing this Bill. It has been very informative to know that this Bill evolved from a previous Bill where, from experience, nothing much has been achieved. To me, without crying over spilt milk, I consider it amazing that the loopholes as they were, could not have been detected, knowing the agility within the legal profession to detect such opportunities and such legislation having themselves been drafted by lawyers. It is amazing!

We all understand the great difficulty that the Government and the judicial system have in curbing the increasing case loads by seeking to solve what has been called severe case backlogs. The Judiciary, I understand, is now asking for five more judges—and these things are quite expensive—to deal with the major problem that this Bill seeks to solve, at least partially. I must confess that I am not very optimistic at this stage and I will try to outline rather briefly what my reservations are.

In the second instance, it is rather disappointing to merely hear that the paper committals did not work because certain things were not properly arranged with the precision that was initially intended. I think we wanted a little more empirical evidence from the cases that were tried and where the preceding legislation failed.

I do not think it is enough to say that the loopholes were exploited as I am inferring from the Minister's presentation. I think there is a conglomeration of circumstances, to which I would allude. It is a good instance to show you without proper evidence, how we can remain unconvinced about the ultimate effectiveness of even these fresh amendments. All these things cost. The repetition of amendments and the other things that go with such an activity are very costly. They might not seem so visible to the Minister of Finance, but they do cost the national budget under different expenditures, especially when the untidiness in the amendments leads to not only further but, protracted legislation, appeals and trials.

I believe the set of amendments in this particular Bill is really tickling the tail of the elephant. It will do very little to shake the system in the way it needs to be shaken up at the Magistrates' Court level. I am still not convinced why what we had before did not work, and I am saying this in all faithfulness. I think we would have liked to hear why it did not work. I would want to be assured that these

amendments would help fill the breach. But when I see to some extent, like Sen. Morean the cacaphony of amendments here in terms of detail and moreso, what I consider very confusing phraseology—and I refer to the lack of clarity—I would bet that we would have to revisit these amendments later on.

Clause (3), as Sen. Morean rightly pointed out, tries to put a new section 16C. There are two lines here. It should "be admissible as evidence to the like extent as oral evidence to the like effect by that person". This might mean something to lawyers. They get profit through confused language and the need for expertise to interpret on behalf of the hard-pressed victim who is victimized twice by suffering from an offence, and by having to go to court to face the ordeal of procedure, which is well enunciated by a book I have here: *Law—The Science of Inefficiency.* It speaks robustly about the ordeal of procedure that people have to endure having been victimized once, and sometimes repeatedly. I would not burden the Senate with quotations from the text but it is enough to mention the phrase, "the ordeal of procedure". This is what is involved here.

I am not as stupid as I might look. I think I have some sense to understand the English language but for the life of me, I find this exceedingly difficulty to understand; or is it that we are still in the doldrums where the courts are only for distinguished lawyers? I say so with great respect. Of course, from what I heard this afternoon even Sen. Morean could not understand part of it. What happened? Are we not in trend with what is happening in England and the United States, for example, where the pressure for getting more simplicity in the legislation has been a clarion call for many years? What is it? Is it that one wants to sound bright or to impress people that the law should be difficult and, therefore, one should be afraid of it?

I think we have to take—using this as an example—a new approach to legislation. The paramount one being a bit more simplicity without being trivial and that could be attained. It has been achieved by the several pieces of legislation now under review by the British government. I would like to know most succinctly whether it is the lawyers themselves, whether it is the procedures themselves, whether it is the weakness or the indecisiveness of the magistrates? What is it? It has to be more specific if it has to call upon us for a revision of what we have attended to previously. So I say we are merely tickling the tail of the elephant—I am very pessimistic about this, and further evidence of my pessimism has come from an experience that I had.

I was a member of an advisory commission of a former Prime Minister, and Sir Ellis Clarke chaired that commission. My assignment, together with another

distinguished attorney—I will not call his name—was to go to the Magistrates' Court and listen to some of the reasons for the regular and burdensome adjournments, punctuality and the other administrative problems that seemed to be affecting the Magistrates' Court, including procedures like these. And I must tell you, Mr. President, it was chaos in the courts we visited.

The unpunctuality was horrendous. Lunch time and just after lunch magistrates would leave, close up business—with people having come from Toco and different places to these courts only to find them not serving the purpose for which they are supposed to function. Then there was the seating accommodation and things like air conditioning. It has been a very horrendous experience but the more chaotic thing was the extent to which the cases were not being conducted. They were being postponed one after the other. I think we will have a similar situation. That chaos has not been healed and one of the very tragic results is the rising backlog of cases that is occurring in the Magistrates' Court.

If one looks through the several clauses, as I have tried to do, one would see certain loopholes. Perhaps for some reason you are saying that you would have to accommodate the rights of the accused, I certainly agree, and you would have to take a certain action—that is the magistrate—if one or the other accused is not represented by counsel. There would have to be a whole set of procedures. If that person has no counsel, does it mean that the counsel is not there at that particular time in court, or is it that he does not have counsel at no time whatsoever? On this matter of having counsel and the right to counsel, I think, from experience, that in itself could be manipulated to twist the system by claiming you have no counsel and compelling the magistrate to subscribe to this provision. I think that needs tightening up not merely in language, but in the prerogative given to the accused. I think it could be exploited to delay the process.

Clause 5 which is one of the more extensive clauses, speaks about people signing documents and giving statements that might be false and wilfully so. I must tell you that the adversarial system of trial encourages a lot of lying. It is a system of enmity. One side against the other and one set of witnesses against the other—and without being specific in the allegation—I must tell you from experience and from what the country knows, a lot of falsehoods are paraded in the courts. I think that kind of safeguard is not only absolutely necessary in the Bill, but the courts should now take a serious look at the falsehoods brought through evidence before its doors. It could have serious implications for innocent people being convicted and vice versa.

2.50 p.m.

Of course my corollary to this whole adversarial system of trial that we use—with due respect to distinguished members of the legal profession—is that we need to have a second look at how we can meet any slight modification, if only to give the judge and the magistrate a little more room for participation in the trial, rather than having the outcome of trials, as is evident in this Bill, resting so heavily on the competence and the agility of the lawyer. That has serious consequences.

We know that the best lawyers are the most expensive ones. That in itself has serious implications for the outcome of a verdict. What does it mean? If someone cannot afford an expensive lawyer who is, more likely than not, a very good lawyer, it means that as the adversarial trial progresses, that person will very likely be at the bitter end of the process. That is not only the economics of justice, but it is, in large measure, the tragedy of the judicial system. We are speaking about very big issues. As the Minister herself mentioned, they are trying to see what kind of reforms they can bring upon the judicial system to help it to deliver justice.

I think it is a commendable clause where provision is made for the State to have the right to appeal to the Court of Appeal. That speaks for itself. It is a very commendable provision. It needs to be so because there seems to be a need to balance, in these instances, the right of the State on behalf of the people with the right of the accused. The irony, be it as it actually is, is that the success of this Bill will not depend upon these provisions. The irony is that it will depend on the ethical conduct of lawyers to appreciate the objectives of the Bill and to see that the objectives are carried out in the public interest.

I make that point very seriously. It is true that lawyers have the responsibility to fight as hard as they can for their clients, but their ethical standards which, if abided by, can help this legislation, when effected, attain its objectives. I refer in particular to the code of ethics No. 15, attached to the Legal Profession Act. It states—I am merely giving one quotation to support the point that I am making about the role of lawyers in making sure that the legislation is effected fairly on all sides:

> "An attorney-at-law shall endeavour by legal means where the needs of society require, to promote and encourage the modernization, simplification and reform of the laws."

This is a document abided with, presumably, by the legal profession itself. I will say no more on that point because I do not wish to tread on sensitive areas unless the occasion starkly arises.

There are four conditions that would contribute to the success of this kind of legislation. I just quoted one—the ethics of the legal practitioner. The need, perhaps more than the first one, for magistrates to command what goes on in their courts and to resist bullying by very assertive lawyers as to what transpires in a case. This is a condition that has been staring us in the face for a long time, even in the days of the de la Bastide Commission of Enquiry into the magistracy. I am not speaking about corruption. I am speaking about an apparent weakness.

We need assertive lawyers to make their points, but when one looks at what the precedent Bill has not achieved and what we are trying to achieve in this Bill, if we do not have strong magistrates in our courts, this will not succeed. As the Minister herself has pointed out, there is a great deal of discretion in the hands of the magistrates to decide which way to turn in the face of what is before him or her. We cannot have magistrates who continue to appear as babes in the woods when confronted by some of the most articulate, and I will say, agile attorneys at law in the country. There is too much at stake.

I need not go into the process used for hiring magistrates. That is another story about the five-year requirement and training. However, on the face of it, sometimes you believe they are not in charge of their courts at all and the lawyers are in charge. I am telling you what I have seen with my own two eyes. I congratulate such lawyers. They are entitled to represent their clients properly. I have some distinguished colleagues, whom I have known for a long time.

If one goes into what can be easily called the administrative jungle—the court house, the Magistrates' Court, for example—one would see things one never knew existed in something called a court house. That is why some people prefer to deal with civil law rather than criminal law. A magistrate should not be scared of lawyers. I am repeating what I have seen and I wish to go no further except to say that if we do not have strong magistrates, this legislation, if it is enacted, will fail once again.

I must commend Sen. Morean for her incisiveness. She is quite right in terms of the phraseology and she is equally correct in making reference to those who represent the State; those who represent the people; those who represent, as it were, the public interest in such matters, meaning in this case, the office of the Director of Public Prosecutions.

That office is staffed now by one-third of its required strength. How does one expect, with the increased load this Bill seeks to give the office of the DPP, to get greater efficiency and reduce case backlog and have the administration of justice

work smoothly as is intended through this Bill? These are the theories, the expectations that cannot stand meticulous scrutiny. They would not conform to the empirical reality once this Bill, as did its precedent, gets enacted.

It has saddened me to learn that the current office holder is now seeking to leave the office to join the Judiciary. I wish him well, but at this time I think that that office can ill afford to lose his services. It is an office to which he has brought some remarkable thoroughness and frankness. I think it will be a loss if he chooses to leave that office at this time, even though he might see it as being for his own professional enhancement.

The other condition, the fourth one, that will have severe effects on this Bill, is what the Minister and the drafting people and governments always agonize over. How does one balance the rights of the accused with rights of the prosecution and the State? That is where I think a great humbug will reside. On one hand, you want paper committals as a fast track measure to ease the case backlog and to push cases up to the High Court where they are required for trial by jury. Yet, there are certain conditionalities, certain caveats as it were, where there are the rights of the accused, especially if he does not have an attorney present, to cross-examine the evidence. That is really making it not a paper committal, but a quasi-paper committal. There will still be almost a trial within a trial. I agree, the Government wants to preserve the rights of the accused, but it is going to lead to a very serious or very difficult situation eventually.

I think the message should go out to the public now, Mr. President, that they have to seek alternative means of resolving their disputes. I am not speaking about very serious offences like rape and murder. There are many disputes that can be treated through alternative routes rather than going to the courts. I wish that that culture of reconciliation, of mediation, could penetrate all corridors of the society, rather than rushing to the courts, being the litigous society that we have grown to be.

It is not the first time that I am making reference to this phenomenon. Sen. Daly has repeatedly made mention of it. We need to keep saying it, perhaps, hoping that it would become the norm, a part of our culture, because that is what is burdening the courts and leading to all these pieces of legislation. Senators will be surprised to know the kinds of cases that come before the magistrates. Clearly, the time has more than come to use and seek alternative means of dispute resolution—conflicts over land and things of that kind.

We have become a litigous society. The smallest provocation, people run for a knife and kill the other one by the bar; run for a gun and shoot the other one. The

anger is not only horrendous but, in the end, it becomes counter-productive. Crime leads to poverty, not only does poverty lead to crime. When a person commits a crime, he goes through an ordeal of procedures and gets his wallet soaked one way or the other. In fact, there is a Chinese proverb that goes this way:

> If by chance, the wind blows a piece of paper in the courts, it will take two oxen to pull it out.

That is the platform on which I would advise the national community, through you Mr. President—and to ease this Bill a bit from the pressure that would otherwise come upon it—to seek alternative means of conflict and dispute resolution.

3.05 p.m.

I am honoured by one of the rare occasions when I see the Minister of Finance smiling. I do not know if the reason is because of my allusion to a Chinese proverb but I think—and I welcome his implicit support—[*Laughter*]—There are other things, you see.

Whilst we are on the point, we know what is happening to our institutions in the country: in the magistracy, the Judiciary, everything needs sprucing up. The Minister is correct, we need infrastructure, and there is legal aid and night court. Well I thought night court would have never seen the light of day, because this has been so long pending. I hope that if it is one of the many things she intends to do in her tenure—if she can bring this night court to proper fruition, family court, and night court. She is right, this night court will help to reduce delays.

The magistrates, too, have a significant role to play in this, as I have said. All institutions must now try to function effectively. They have to stand their responsibilities as professionals. I thought there would have been a strong magistrates' association, as we had in the days of old. There was a strong magistrates' association, which met regularly. I am quite sure Sen. Daly and Sen. Morean would remember. They used to have their workshops and seminars and before things came to the fore they used to go through them professionally and get consensus among themselves, so that we could have had a greater benefit of the experience. There is no such association actively functioning now. In fact, a few years ago there were two; the magistracy was split into two different associations. These things helped to weaken the objectives of what the Government has put in the Bill.

The Bill speaks, as well in several instances about sending the accused—the accused always has the option, most times—to trial by jury. Mr. President, before

I make that last point, I think it should be ringing in our ears—as I am quite sure my colleague, Sen. King would point out in the very near future—that judicial effectiveness and judicial efficiency is tied directly to economic prosperity. It is not something as a building there to visit on rare occasions. What that institution and the magistracy do, as independent variables, is to contribute to the engine of growth. It is simple to understand that. I am sure those who are in industrial relations or who are doing civil law, would recognize the delays: the civil suits**,** where you have to pay out money, which is then passed on to the consumer.

The whole question of occupational health and safety legislation, which has to come either through the Industrial Court, or, on further appeal, to the mainstream Judiciary; judicial effectiveness has a direct link to economic prosperity. If you look at the World Bank figures and compare countries where their judiciaries are strong, effective and independent, you will see those countries are at the top of what you would call an index of economic prosperity. This is a simple Bill, in a sense, I do not have much faith in its outcome, for the reasons I have respectfully outlined, but I am going to give it a try and hope it works. That is why we are here, to help build and see how far we can assist.

Another myth in the judicial system rests on this trial by jury. Now, a lot of what trial by jury is supposed to do, rests on faith. As we recall "The lamp that shows freedom lives" and so on, but that was a long time ago when societies were not as compact as they are; when the question of multi-ethnicity was not so pronounced; where communication links among different people and groups were not so intense; where newspapers were not so readily available; where the jury used to be locked in a room for days and sometimes give them no water or food for a couple of days, until they came to a verdict. Those were long-time days.

We should know, and I am quite sure the Attorney General's office should also know—there are so many units in that office; communication officers and—that by gathering comparative legislation from England, the country from which we inherited this system, that England is moving fast ahead with reforming its trial by jury system. I will not take the time here to enunciate those specific reforms, but we are far behind. We are still living in mystical land, with blind faith in an institution that needs serious reforms. We continue to live with it and it has its perversity—that is the word—in several trial outcomes. I need say no more on that point, except to suggest that we are not listening to what the country from which we inherited the system is doing.

Mr. President, let me talk about Singapore, the country to which we are aspiring. In Singapore—this is a book called, *Trial by Jury*, which states on page 18:

> "Some Commonwealth countries abolish trial by jury because, as explained in the case of Singapore, it was not working well and did not guarantee a fair and proper administration of justice."

They did put something in place—a group of laymen and judges—but there were modifications to meet the challenges of the day and to reduce the corruptibility, at least, in its manifest or potential form, from the system we call, trial by jury. The time has, indeed, come—I would not bother to quote what Lord Devlin or Lord Denning said but it is in the same tone—in this country to also have a comprehensive look in terms of reform and moving away from the myths upon which trial by jury resides.

I would like to submit respectfully, that our hard-working Minister—I am not afraid to say so; she is very hard working. That presentation she gave took work. No matter what is going on around her, she has her face and her energies focused on what is the priority task at hand and today we have all benefited from that. I do hope what I am saying—it is certainly not a criticism of her, she is fighting with an elephant, as it were, and it is just a tickle. Now a tickle can make you jump very high [*Laughter*] so I hope that [*Interruption*] it is located in the right spot, as it were. You will forgive me, Mr. President, just for the record this book was written—they always ask me for the author, so I am pre-empting that request—by Prof. Ramesh Deosaran, *Trial by Jury*. [*Desk thumping*]

Mr. President, I wish the Bill well, I know the difficulties—that is what I was trying to suggest, that there are huge difficulties—and I hope as time goes by, with the focus, the energy and the intellect that the Minister has demonstrated time and time again here, those things will be applied to really keep us making a big dent in reducing not only the case backlog but bringing further integrity to the administration of justice.

Thank you very much, Mr. President.

Sen. Martin Daly: Mr. President, this is the second time that I will have to apologize to the Chair for the state of my vocal cords, they are not normal today. I have not had a professional diagnosis but I am told—according to the street diagnosis—that the flu that I have is known as the Judas. So let me crave your indulgence, as I am suffering from the Judas.

Sen. Montano has told me that in some quarters in the street the flu is described by another "J" word, but even on the streets, that sort of "J" word is frowned upon, particularly when it emanates from high places. So the street has settled for Judas as opposed to the other "J" word. [*Laughter*]

Mr. President, may I begin by identifying with two or three things which my distinguished colleague, Sen. Prof. Deosaran, has said and I will in no way amplify them. He is certainly right about the state of the DPP's office and I wish to identify with that because the DPP's office had a problem of workload in the ordinary course of its business, which is conducting prosecution on behalf of the State. The DPP, however, has acquired a new jurisdiction recently and that is considering reports on financial matters with a view to taking further steps. It is now the convenient resting place for reports which suggest impropriety on the part of anyone in public office. So they have a whole unofficial department and I really do not know how they are going to meet the demands of that new workload, not only without more lawyers but without the manpower that is necessary to conduct financial investigations. So I totally sympathize with the situation at the DPP's office and I hope in the not too distant future, someone would issue a glossy brochure saying what the DPP has to do and how little staff he has to do it with.

I also agree, entirely, that the professional etiquette among lawyers is responsible for a number of our problems in the administration of justice and no one should dispute that. I totally agree that we need to use more mediation, I have said it repeatedly and I would say it again. I said it in an interview, which I gave to the press today on another matter: We need mediation at all levels of the society. Every time we have a big issue between big men we have what I describe as a snarling tiger syndrome. If you raise an issue, people always assume you are attacking some particular individual. We seem incapable of conducting discussions of issues in this country without people taking it personally. The fact that I have a thick skin, I suppose, I do not get drawn into those kinds of ad hominem disputes.

I have a profound disagreement with my colleague about trial by jury, but today is not the day to go into that. What I would like to do, Mr. President, as briefly as I can, is to show why, as the legislature and why as legislators, whatever party we belong to, we consistently fail the public on issues like this, which really are bipartisan issues. One of the astounding things about Trinidad and Tobago is nearly everywhere else in the world people have been temporarily humbled by the events of the World Trade Center. People are giving thanks for their lives, however modest or primitive, and people are generally moving away from confrontation and quarrel and seeking to do things together. Every public utterance—of course it has a measure of propaganda in it, nobody denies that—that has been made in the United States since Tuesday last has been to the effect that we are not republicans, democrats, right wing or left wing, or "RAM" or "MPM" as I like to quote Bally's calypso: "We are all in this together".

We do not seem to have learnt any lessons. The stridency in our society has continued to grow on an upward curve and we seem to be the only people in the world who have not taken pause as a result of the misfortunes of others. We continue to quarrel and fight and call each other names. I do not understand that. We do not seem able to resolve the simplest issue without confrontation and maybe, whatever our views are about the tragedies of war, we ought to take a look at these things.

3.20 p.m.

Everybody has a favourite story arising—well favourite is a wrong word—a particular story that has astounded them in those events in the United States. For me, I have always tried to say that we have to be bipartisan about important things and we cannot score political points about important things. To me, the most amazing thing of all was, on day three or day four there were rescue workers who were working in the rubble with the knowledge that other buildings could collapse and cause them to die. They had written on their forearms—I do not know if anybody had seen this—their names and social security numbers in case they were killed in the course of their rescue act and there would be difficulty identifying their bodies.

Can you imagine the commitment to country and to fellow man that it takes to be so concerned that you are going to die that you make those kinds of preparations for the identification of your body in a situation where, I suppose, you could walk away and say, "Well, I am not going into the building", or, "I want overtime to do it", or, "I want a hazard allowance" or "a height allowance to do it"? When are we going—and I would be saying more about this in the budget debate because the budget has opened up whole questions about the public expenditure and how we regard public property and that we have to be constantly spending our time looking for safeguards to protect public property because we are not sufficiently advanced as a society that we protect public property out of a sense of duty. That is so amazing.

So all of this is by way of background to say that this Bill—and the Minister in the Ministry of Legal Affairs has been her usual and candid straightforward self about it—is not going to take us very far along the road to having efficient paper committals, and I would like to explain why. I would like to suggest that we have to make some attempt to get together to produce a Bill that will do something. As I understand it—I am not a criminal lawyer but I have tried to take instructions about it—the conventional form of preliminary enquiry requires every single person who is a witness for the prosecution, and who has given a written

statement to the police, to have to go in the box and give evidence-in-chief according to their statement, and that takes a long time. With the simplest statement you might have to lead the witness for an hour or two. They tell me that there are people who give evidence for the prosecution and it sometimes takes four hours to give their evidence-in-chief.

So as I understand it, the purpose of the paper committal is to show to the court and to the defence lawyers what the witnesses will be saying on behalf of the prosecution and give them an opportunity to pick holes in it at that preliminary stage, if they can. Someone eventually came up with the idea that in order to give the defence sight of the prosecution's case and an opportunity to pick holes in it, it was not necessary for the witness to go in the box and give evidence, oral evidence, of what was already written down. So the idea of the paper committal was to give it to the defence and give it to the magistrate. At that stage you are only trying to find out if there is a prima facie or first-sight case on a low threshold of proof and so everyone can look at the statements. If the case is palpably bad, it will appear on the paper and the defence lawyer can point out to the magistrate why the statements are insufficient to allow the matter to go forward any further.

So as I understand it—and I do not doubt and would not be the least bit perplexed if the Minister corrects me if I have not understood it. As I understand it, the first purpose of the paper committal is to avoid witnesses for the prosecution having to spend time in the witness box giving evidence that is already written down, at a time when the guilt or innocence of the defendant is not going to be definitively or finally determined. Now, as I understand it, the first piece of legislation which was passed in 1994, advanced paper committals—and if I remember correctly there was a parliamentary committee about it. I think I actually served on it for one or two meetings and then, owing to pressures of work, had to give up. However, as I understand it, the Court of Appeal has delivered a judgment in which it has said basically two things: that the way the 1994 legislation is drafted, once the accused says, "I want to lead evidence on my own behalf in the Magistrates' Court", that effectively vetoes the paper committal; and likewise, if the defence says they are making a no case submission, that effectively vetoes the paper committal.

So for precisely the same reasons as Sen. Prof. Deosaran pointed out would have arisen, the same sort of situation will arise in this Bill, as Sen. Prof. Deosaran has pointed out in the Bill now before us, that it was entirely up to the accused to sabotage the whole paper committal by simply saying, "I want to give

evidence. I want the person who has made the statement to give oral evidence or my lawyer is making a no case submission", and the whole paper committal goes through the window. Now, what we are doing is seeking to remedy that, but only in a very modified way.

First of all, there is an exception which, as Sen. Prof. Deosaran has pointed out, will be ruthlessly exploited. If you have nine accused, you can be certain that one of them will appear without a lawyer and that fulfils the exception under section 23—well, I will read the Bill number—the proposed 23A(2), and obviously that would be the smart thing to do. Then likewise, as I understand it, under 23A(2)(b), if the lawyer makes a no case submission, that will also put restrictions on the paper committal. As I understand what we are doing now, it will no longer make the paper committal invalid. What it will do instead is give the magistrate some other options, and, if I understand it correctly, that then gives the magistrate the option of continuing with the paper committal but only if he then has the statements read out aloud.

So all right, if the person actually giving evidence is going to take four hours to go through their statement by question and answer—and we have not done a time and motion study, as it used to be called, but you can rest assured that for somebody who has given a statement that it would take them four hours to be examined in chief on, it is probably going to take an hour, an hour and a half at best, to read it out, and that is assuming that the agile lawyers do not keep interrupting and saying, "You are reading it too fast", you know, and so on. So the whole thing may be a complete farce. So now, what are we going to do?

We are going to have a paper committal that can be disrupted by the situation that is provided for in 23A(2)(a) and (b). So we are not really getting rid of the problem of—well oral is the correct word. We are not really getting rid of the problem of oral evidence. We are simply now going to have oral evidence presented in a different form, which is equally unnecessary and equally time-consuming. Then, as I understand, what else will happen is, quite rightly in a Bill in this form the right to cross-examine the person who has given a statement is being expressly preserved at the Magistrates' Court level. So if somebody wants to prolong a paper committal, first off they contrive to fulfil conditions and ensure the statement will have to be read out. So that will be time-consuming and that preserves oral presentation of evidence. Then they can prolong it further by insisting they want to cross-examine at this stage and I do not think that is taking us very far. It is only a limited remedy to the defects that have been pointed out by the Court of Appeal and I believe that the problem—and, quite candidly—and she is always very candid and straightforward.

There are many politicians who are very able but we cannot always describe them as candid and straightforward. In her candid and straightforward way, the Minister has hinted to us and pointed out to us that there are these limitations. So this Bill really is not going to take us very far and in, what, another five years' time we are going to hear that one of the reasons for the backlog in the Magistrates' Court is that the new paper committal system which we are providing for here has only brought limited relief to the Magistrates' Courts.

Now, I know what the problem is. The problem is that if we are going to curtail the rights of defendants at the Magistrates' Court stage—and let me make it very plain, I am not one of those who advocate the curbing of civil liberties of any kind very easily. I am a civil libertarian but, I mean, there does come a point sometimes where you have to strike a different balance. The problem is, if we are going to curtail the rights of defendants at the Magistrates' Court stage, which I emphasize is not the final determination of the person's fate and therefore, in my judgment, is permissible under certain conditions, then we are going to have to pass legislation with a special majority, and nobody said it but I know that is where the problem lies.

Now, on these Benches it is not our business to find out why we cannot get a special majority on this. All I know is that if we were doing this Bill in a bipartisan way and everybody accepted that we needed to have paper committals, we could pass a piece of legislation that would take us much further along the road to getting rid of the oral presentation of evidence in the Magistrates' Court and I want to emphasize and I want to be consistent with what I said. Minister awesome—Assam, sorry. [*Laughter*] I let something slip there that is private to the Independent Senators, oh dear. We do have nicknames and they are all very complimentary. Well, I had better leave that alone.

The point about it is that we have to find out—we have to take a bipartisan approach to certain things. Crime is a matter on which we must have a bipartisan approach and the state of the courts is something on which we have to have a bipartisan approach, and I am not in any way seeking to resile from what I am saying that we need to have a more peaceful time in our country. We could agitate every issue under the sun but we have to do it in a calmer, quieter and more civilized way, and we have to stick to the issues and not the personalities.

In the spirit of that, it does seem to me that if we are going to genuinely assist in relieving the backlog in the Magistrates' Court, we have to come together and decide on what is the appropriate curtailment of the rights of defendants in the Magistrates' Courts. We have to do so in a bipartisan way, not only in order to get

the pooling of ideas, but in order to ensure that we have a Bill which everyone can support and therefore can take us where we really want to go. I feel, Mr. President, despite the pressure on my vocal cords, I would try as far as possible to sketch out the problem as I understand it, having taken some advice from persons who practise in the criminal area.

I think I have done two jury cases in my life; both had to do with motor car accidents, and I am quite satisfied that I am really not cut out for seeing keys being removed from people and "Take him downstairs", and so on. I am really not cut out for that but I have tried to talk to some people who practise in this area so I could get an idea of the problem. Particularly, I was part of the legislature when the first paper committal Act was passed. So, Mr. President, it seems to me that we have had one failure at introducing paper committals, which was the 1994 Act. That failure has been very forcibly pointed out by the Court of Appeal.

We have precedents in other countries, not Singapore, for paper committals which we can follow, but, because we are subject to a written Constitution, we cannot always follow those precedents unless we have a three-fifths majority. There is nothing wrong with that because the United Kingdom, from whom we adopt and follow a lot of legislation, now is subject, in effect, to a written constitution because they have all the human rights provisions of the European law as part of their constitution. It is very interesting seeing the courts in England now wrestling with the problems of effectively having a written constitution and how they are seeking to balance to get around these things.

One thing you can be sure of is that they take steps to try to make the system work. They do not allow what people call technicalities—there is no such thing as a technicality. I mean, if you put eight parts of sand into one part of cement and the building falls down, that is not a technicality and so, likewise, if you build weak legal structures and people take advantage of them or damage results, that is not a technicality, but we can ensure that we construct the law in a way that is technically sound but takes us where we want to go.

I mean, I recognize, Mr. President, I am taking a long time to make a simple point but it is because I have got to the point, really, in the course of the discharge of this very onerous public duty where it does become a bit frustrating to have to come back to the legislation which was passed during one's lifetime in a Parliament—and I think Sen. Prof. Kenny sometimes feels the same way, that we keep coming back to the same problems. We had an Environmental Management Act that eventually everybody had to accept was not valid because it was not passed by a special majority. We had a securities—it is another matter that is

mentioned in the budget and we will come to it, but we had a Securities Industry Act—[*Sen. Daly coughs*] Well, Judas is kissing me. [*Laughter*]

We had a Securities Industry Act that we tried to work without a special majority for—I have forgotten how many years. It might have been 15 or 20 years, I really do not remember—for a very long time, when everybody in the commercial world knew that the Act was subject to challenge. The end result was that the regulatory bodies under that Act could never take a step against anyone, however obvious their breach of it, because they were immediately met by the threat—it was such an easy point that even the non-agile lawyers knew it. They were immediately met with the point that, "If you try to go after me for breach of this Act, we are going to have the whole Act declared unconstitutional." So it was a useless piece of legislation. We eventually rectified it; but we should not have to be coming back to these things all the time.

We should develop a maturity in our parliamentary system—[*Sen. Daly coughs*] Excuse me. I am not sure how many kisses Judas gave. We ought not to have a parliamentary system where we cannot get these things right the first time and when—[*Interruption*] Are you ready to answer me, Reverend? Sorry, Mr. President. We ought not to have a parliamentary system where we have to fix things once, fix them twice and keep fixing them over. So I am hoping that somehow we would be able to—there is nothing wrong with this Bill as far as it goes, but I am hoping that we would be able to do better. Thank you, Mr. President. [*Desk thumping*]

Sen. Rev. Daniel Teelucksingh: Mr. President, just two comments—very brief—one which is to say that I want to support the hon. Minister if she thinks that this piece of legislation is going to address, as she says, some of the chronic problems of the judicial system, especially the delays. Sen. Morean and Prof. Deosaran concentrated on personnel in the system. I just want to share with the hon. Minister a concern, not specifically about personnel, but indirectly about personnel. I want to talk about facilities.

They spoke about personnel. I want to refer to facilities at the Magistrates' Courts and to tell you, Sir, that within the last few days there were problems, maybe a week or so ago, at the magistracy in Chaguanas. I live in Chaguanas and I drive around there and I have an idea of what happens in the magistracy. I see so many prisoners come down in these vans, Mr. President, and their families are around, only to be told that, "There will be no court today because, you know, the lawyers could not function, the facilities were bad", and so on and valuable time was lost and you had a postponement of many cases.

Recently I visited the Princes Town magistracy—I will tell you why on another occasion—and it is most interesting. You know, you sit there as a layman, Mr. President, and you wonder what is happening if those are the conditions in courts in Trinidad and you expect our magistrates and all the personnel to function under adverse working conditions. This is in answer to maybe the query as to why the magistrates leave early. If they had a chance they would just dismiss court early and they have very good reasons to do that. I could not imagine—and this is the question I asked myself. I have been at the Arima court, the Chaguanas court and the Princes Town court and I could tell you about that. I sit there with my slipper and just look on as a layman at what is happening.

I cannot imagine that in our courts where you have all the workers, all the personnel in place, and there are reasons for everybody to be so uncomfortable, so dissatisfied and ready to go home. I always ask myself, if there are problems in the courts, do you have to wait for the works department to come? What is the bureaucracy? Why is it that, if the magistrate sits in a court where the air-conditioning system has broken down, there could not be a fan? Why can there not be fans? What about chairs? Who is responsible for this? Do you have a maintenance crew at each magistracy? Do you have people around or do you have to apply to this one and that one at various levels? Listen, it is extremely frustrating—very, very frustrating—and I think we need to speed up the granting and the maintenance of all these facilities for the magistracy. We need to do this. It is extremely important and we would ask ourselves as lay people, who monitors all of this?

3.40 p.m.

I do not think it is the magistrate when he comes with all his assistants and the supplemental members of staff, and so on; ancillary staff. Who is responsible for all of this? It is a question I want to leave with the hon. Minister and ask that she address these immediately, for all of these contribute to the postponement of cases and to the adding of the backlog which has been there for the longest while.

I want to identify, sitting down and listening to cases over the last few years as a layperson. While Sen. Prof. Deosaran was speaking, I wondered when he would talk about terrorism in the courts and the terrorizing of magistrates. I have been awed when I sat and listened to the kinds of pressures of magistrates; and really and truly, I want to agree with him. If we are not careful in the training, the preparation and the selection of magistrates, there can be chaos in the courts because somebody else will run the court and not the magistrate.

We need to be very careful in the selection of magistrates, the need to look at qualifications, experience and the necessary kind of training to tell them, "Look. You are in charge and nobody else." Otherwise, there can be the perversion of justice. He does not have to surrender. This is very important. I agree. I identify with that concern of Sen. Prof. Deosaran.

I want to close, Mr. President, by saying really over the last few days, one of the best news items after all kinds of disastrous things, whether in Trinidad or overseas, came yesterday for me. That is an indication that there is some measure of healing in the tensions that existed between the Judiciary and the Executive. I thought that was most welcome like a breath of fresh air, that it is so different from the last two opening sessions of the law term.

Yesterday was different and it is very important for us between yesterday and today, that from responsible and worthy representatives of these two major estates of the realm, the Judiciary and the Executive, was the assuring and the comforting announcement which we waited to hear for the longest while. This is good news, because I tell you, Mr. President, some of us have been extremely concerned that we live in a time of so much schism and factiousness at different levels of governance in this country—that in itself, that sense of unease, has created too many problems in the lives of not only those who rule and govern, but going right down the line to the man-in-the-street.

Whenever there is healing, a sense of healing, a message of well-being, some kind of achievement towards the restoration of respect and goodwill between states like the Judiciary and the Executive, this is most welcome. At this time, as we want to compliment all those who have been responsible for that, it had to be the hand of God, in spite of the way some of us behave sometimes.

We want to congratulate, nevertheless, all those who have been cooperating with the mind of God. We may move on to underscore this though, Mr. President—our commitment to the preservation of the independence of these arms, that is, the Judiciary and the Executive, and to insist—a message for all the people in these various departments, everyone—on the need for the maintenance and the preservation of a healthy and mature interfacing between them for the good of the nation. This is extremely important.

Sen. Daly spoke about the North American experience and lessons from it. I want to say that I sat and I heard one of the greatest preachers of all time, Billy Graham. He spoke at that memorial service about the crumbling of structures, and I do remember, as Sen. Daly will remember, and some of us will have picture

images of all the news items of this great disaster of last week—Billy Graham reminded me of all those structures, maybe the bricks and the steel, everything coming down, falling. The towers came down, and he spoke about falling towers, but unshaken foundations.

We need to understand that we have our problems at all levels in the society. Sometimes the bricks may fall and the towers might shake, but the foundations of our society must remain. The test is the foundations. Foundations in good relations, and so forth. Foundations in ethics and morals. That is so very important. Self-respect and respect for one another. I hope that whether it be in the governing party, in the Opposition, in the relationship between the Executive and the Judiciary, at every level in the society, we need to continue to preserve the strength and the power of those foundations, because we are going to be exposed to all kinds of attacks.

So externals might just crumble, but the foundations are so very necessary and important; and I want to apply this thought to the whole question of these two very important aspects of governance in this country: the Executive and the Judiciary. This is why I think that yesterday's news, coming from the opening of the law term, is so well-received by the population.

I want to thank you so much, Sir.

Sen. Christine Kangaloo: Mr. President, my comments on this Bill will be brief because they echo similar sentiments that have already been stated by the previous speakers. The issue of judicial delays, Mr. President, has long been raised as early as the Gurley report in 1992 when the issue of paper committals was raised and recommended as a procedure which would result in the speedier administration of justice.

Mr. President, with respect to the Bill which is before us today, I have certain concerns which basically go into the drafting of the Bill, and which I feel will lead to serious ambiguities which would, therefore, affect the operation of this Bill. The first thing I want to raise is section 16C(3) which deals with the conditions with respect to the statements. Namely, that the statements must be signed by the person who made them, and at (b) it says that the statement must be sworn before a Clerk of the Peace or Justice of the Peace, and shall be authenticated by a certificate.

Mr. President, my concern here—and I am hoping that the hon. Minister can address my concern—is what happens if the witness or the maker of the statement is a child? Because as I understand it, the Administration of Justice

(Miscellaneous Provisions) Act, which is Act No. 28 of 1996, set out to make certain amendments and basically says that a child's evidence in criminal proceedings shall be given unsworn. My difficulty here is that you are saying that statements must be sworn, but what is to obtain in a circumstance when you have a child? Someone who is under age who has to give that particular statement.

Now, as I understand it, reference was made to the English proceedings, and I do not think in the English proceedings the requirement of the statement being sworn is present. Again, that same concern with respect to the child giving a statement will again be reflected at subsection (4) when they talk about the statement being made by a person under 18 years, it shall state his age and that an adult of his choice must be present with him. Again, Mr. President, I ask that we address the concerns with respect to the Administration of Justice (Miscellaneous Provisions) Act.

Then, I move on to section 16C(b), and this section, to me, Mr. President, is very unclear. I believe that when we are dealing with legislation, any legislation, we must tighten up the language so that no ambiguities can arise, and this clause talks about an account shall be given orally by the magistrate. Really and truly, what account? Is it that the magistrate has to set out his reasons for not admitting part of that particular statement? If it is so, then I think the words "an account" really should be changed to reflect what will be the procedure.

I move on, Mr. President, to 16C(9). This provision causes great concern to me, because it basically says that where the written statements are given by the prosecution and accepted by or on behalf of the accused, the accused is not entitled thereafter to object to the preliminary enquiry in accordance with the previous clauses.

Now, I know that we are all concerned here about what happens in courts, but I really must make a plea for the accused here. Really and truly, this seems to be an onerous clause. As I understand it, in a criminal trial, an accused is free to change his plea at any time. I am not sure if I am wrong on that, and the learned Minister will be able to advise; but if in a criminal trial an accused can change his plea, then I do not understand why we have this carte blanche provision that once the accused and the prosecution accept the statement, why a change cannot be made. I would suggest that some sort of residual discretion be left with the magistrate in a case like this, Mr. President.

Sectioin 16D(1) deals with the filing of a written statement, and my comment on this is that the filing—I understand that in England there is no requirement of

filing; and I am simply pointing out that filing increases the bureaucracy and, in this sort of system, I would think you would try to avoid that situation. I also want to point out that the legislation as drafted in 16D(1) is quite clumsy, because it is presuming, when it says "by either party", that there are just two parties in the particular matter. It is presuming that there is one accused. I would suggest that at the committee stage that would be changed to "any party".

Again, in section 16D(7), I just do not understand this clause, and I will ask the hon. Minister to explain, because I am not sure whether this clause is, at all, necessary.

Mr. President, I move on to section 17B(2). And this is the clause that says that where the accused person or any of his witnesses—and I am reading witnesses; I am assuming that is what it will be—decides to tender a written statement, he shall give a copy of it to the prosecution and the original to the magistrate. Now, this seems a little strange and it seems to be giving an unfair advantage to the accused, because we had earlier that the prosecution witnesses must have their statement sworn and filed, and everything else; but it seems to be saying here that the witness can decide during the course of the preliminary enquiry to tender that written statement, and I am wondering if this is not giving an unfair advantage to the accused.

With respect to 23A(4), it speaks of the magistrate with appropriate modification of the language. Now, in the Indictable Offences (Preliminary Enquiry) Act, what the magistrate has to say to the accused is set out—the exact words—and I am a little concerned that when you speak about the appropriate modification of the language, you are putting too much of a burden on the magistrate. This may lead to different magistrates doing different things and, perhaps, the language itself should be set out here which would lead to a consistency in the application of the provisions of this Act.

With respect to 23B1(b), I am not sure if I have the correct copy, but I do not have a subsection (a), so I am not sure if this is correct. I am sorry, Mr. President, but my copy does not have it. With respect to 23E, Mr. President, I also want to know, what is the point? This is the provision which is now creating an offence and saying that anyone who gives a written statement which he knows to be false is liable on summary conviction to $50,000 and imprisonment for seven years but I am wondering as to why we have this particular clause when we have already stated that these statements must be sworn and there is a penalty for giving false evidence on oath already. That is already covered by different legislation, so my concern here is why do we have this particular clause?

Finally, I will deal with section 39. Section 39C is including the words, "for any other reason". This clause is dealing with a situation where the person is committed to trial and the prosecution is saying it wants the evidence of the witness by the statement to be given as opposed to the witness being present. Now, in the original legislation, Mr. President, it sets out the reasons that this can be done. The witness may be dead, ill or unable to travel, or incapable in consequence of some condition of mind to give the evidence or is absent from Trinidad and Tobago.

Those situations I believe should be contained in this amendment. We should not be adding for any other reason, because I believe that this could lead to an abuse of process, and an abuse of the powers of the prosecution and I, therefore, feel, Mr. President, that the original conditions as set out in section 39 should remain.

Finally, to end off, I simply wish to say that I have listened to what the hon. Minister had to say with respect to the holistic approach of this Government with respect to legislation affecting the courts, and that sort of thing. I want to point out that this holistic approach must not just be with the legislation. It is all well and good to have the legislation put in place, but since December of 1999, I understand there have been about 20 legal officers who have left the office of the Director of Public Prosecutions; and the hon. Minister should know about this.

At this present time, I do not even know if the back-up facilities are in place to assist in this type of legislation. A simple example, Mr. President. They talk about the statements to the police. Now, I would assume that those statements can be tightened up. And they talk about the statements to the police, so the work of the police is being increased.

4.00 p.m.

I do not know if I have ever gone into a police station and seen any policeman taking a statement on a computer. So the back-up facilities must be there as well because the bureaucracies and demands for these different offices will be increased and, therefore, this holistic approach must not just be in bringing the rush of legislation here, it must also be in the support systems.

Finally, in respect of administration of justice. Again, it is not just good enough to bring legislation. The holistic approach must also be one which engenders respect for the administration of justice, respect for your judicial officers, respect for the judges of the Supreme Court, so that when you bring all this legislation, and you go about the country denouncing Judges and talking

about certain persons not being guaranteed fair trials or decisions, then Mr. President, I must say that is no sort of holistic approach to anything in speeding up the administration of justice, or to improving the administration of justice in this country.

Thank you, Mr. President.

The Minister in the Ministry of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Gillian Lucky): Mr. President, I have heard all the contributions that have been made by hon. Senators. Certain amendments have been suggested, certain procedures have been questioned, and because the parent Act has been amended on many occasions without having any real significant effect, this afternoon, I am respectfully asking for an opportunity to defer the Committee Stage and my response to the Bill, in terms of answering the many questions that have been raised by Senators to a later sitting of the Senate, so that I will be given the opportunity to take into consideration all the suggestions and concerns that have been raised and deal with them in such a way that we will be able to allay those fears. [*Desk thumping*]

Mr. President: I will put it in the form of a Motion to get the "Ayes" and the "Noes". Hon. Senators, the question is that further consideration of this Bill be deferred to a later sitting of the Senate.

Question put and agreed to.

MOTOR VEHICLES AND ROAD TRAFFIC (AMDT.) REGULATIONS, 2001

The Minister of Transport and Minister of Tourism and Tobago Affairs (Sen. The Hon. Jearlean John): Mr. President, I beg to move, the following Motion standing in my name:

Whereas it is provided by section 100 of the Motor Vehicles and Road Traffic Act (hereinafter referred to as "the Act"), that the Minister may make Regulations in respect of, *inter alia*, the better carrying out, generally, of the provisions of the Act and in particular for the safety, control and regulation of traffic and the use of vehicles or any class of vehicles on any road and the conditions under which they may be used:

And Whereas it is also provided by section 100 of the Act that Regulations made under that section shall be subject to affirmative Resolution of Parliament:

And Whereas the Minister has on the 11th day of May, 2001 made the Motor Vehicles and Road Traffic (Amdt.) Regulations, 2001 (hereinafter referred to as "the Regulations"):

And Whereas it is expedient that the Regulations now be affirmed:

Be it Resolved:

That the Motor Vehicles and Road Traffic (Amdt.) Regulations, 2001, be now approved.

Mr. President, the Motion before the Senate seeks to amend the Motor Vehicles and Road Traffic (Amdt.) Regulations 1999, itself an amendment of the Motor Vehicles and Road Traffic Act, Chap. 48:50.

The measures contained therein are the regulatory framework governing motor vehicles inspection in the country, be they at the private testing stations, or at centres under the direct control of the Transport Commissioner.

Members of the Senate are no doubt aware that within recent years, there has been a proliferation in the number of serious and fatal accidents occurring on our nation's roads. However, some comfort may be drawn from the fact that in the year 2000, the number of persons killed in road accidents was significantly lower than in the previous year, 1999. There can be a correlation, and with the introduction of the vehicle testing programme, it had some effect regarding the reduction in the fatality rate from 182 in 1999 to 140 in 2000.

It is against this background that this Motion is presented so as to tidy up the area of vehicle inspection which has decreased significantly to the extent that owners of private stations have been suffering financial difficulty in servicing their debts.

I just want to give a little scenario from the time the amendments were made for the vehicle inspection garages. November 01, 1999 to January 02, 2001. Senators may recall that the then Minister of Works and Transport had brought to this honourable Senate in 1999, a Motion amending *inter alia* Regulation 27 of the Motor Vehicles and Road Traffic Regulations.

The Motion was duly passed; however, there was an error that came to light in January of this year. The 1999 Motion was purported to have been made by the President. However, this was not the true position under the Motor Vehicles and Road Traffic Act.

In 1997, Parliament amended the Act at section 100 in order that the power to make regulations would reside in the Minister with responsibility for transport instead of the President. The Motion that was passed in 1999 was unfortunately reflective of the previous position; that is, the President was made the acting

authority. This has since been corrected by way of passage of the Motor Vehicles and Road Traffic Validation Bill.

The Motion here today seeks to correct various areas in the Regulations where the correct terminology is indeed needed, that is, the use of the term "authorized examiner" instead of "proprietor", and the word "motor cycle" rather than "trailer". The Motion further seeks to provide the necessary enforcement of inspection via the creation of an offence where any registered owner of a vehicle who either fails to produce the vehicle for inspection, or drives the vehicle without obtaining the necessary certification, shall now be guilty of an offence and liable to a fine.

Let me now seek to highlight some of the areas within clause 27, and their practical application that I am sure would be of interest to hon. Senators.

The law and administrative measures: Essentially, the law at this point covers two issues:

(a) Vehicles to be tested at the Licensing Authority, situated in Port of Spain, San Fernando and Tobago.

(b) Vehicles to be tested at the 70 private testing stations.

With respect to (a), it makes it mandatory for all owners of vehicles of a certain class or description to present those vehicles for inspection annually by the Transport Commissioner. These classifications are: public service vehicles; omnibuses; rented cars; taxis; maxi-taxis; goods vehicles; trucks; pickups and trailers. For the first time, the inspections will take place on an anniversary date basis and not a calendar basis, as was the case previously. None of us could forget the chaos that prevailed during this calendar basis system at the end of the year.

In the new procedures, the inspections will be in an organized, uniformed and orderly fashion as against a disorganized manner when owners had to find themselves at the Licensing Office at the beginning of each year.

In the case of (b), these stations are strategically located across the country and shall be the centres for the inspection of private vehicles and motor cycles. These vehicles must be five years old and over before they are required to be inspected. In the case of private cars in excess of 22,070 kilogrammes., these will be inspected by the Transport Commissioner along with private vehicles owned by the State, which include central government and ministries only.

How to become a proprietor of one of these garages: Before one is certified by the Transport Commissioner to own and operate a testing station, one has to have

the necessary approval from the following agencies: The Town and Country Planning Department, the relevant municipal corporation, local health authority and the fire department. In addition, the testing stations have to be approved by the Transport Commissioner. The premises must have appropriate office space and facilities, waiting room, appropriate testing area, pits, hoist, a ramp to facilitate under-body inspection of vehicles and relevant tools.

Additionally, there must be public liability insurance coverage and this is coupled with a registration fee of $1,000, and a renewal fee of $500 which is payable annually to the Licensing Authority.

How does one become an examiner in this system: One must be a holder of a Higher National Certificate in Auto and Diesel Mechanics or alternatively, the holder of a First City and Guilds of London Certification in Auto and Diesel Mechanics, and have had practical experience of three years as a mechanic. Where the person does not hold any of the above, he or she is required to write an examination as to their knowledge in auto mechanics set by the Licensing Authority. Once successful, the applicant is granted a certification as an examiner on the payment of $300 for a period of two years and this is renewable every two years for the same fee.

Mr. President, the measures to be adopted by the Transport Commissioner to cope, once legal notice is corrected: The Transport Commissioner has instituted measures to cope with an influx of vehicles. Owners upon the passage of the Validation Bill—the amendments I think came back to the Senate last week. This would also take one week to present the certified copies requested.

The Transport Commissioner has also advised owners that in many cases, vehicles with registration documents in their possession may very well be sufficient to have their vehicles inspected at private garages and at the Licensing Office. The following types of vehicle documents would be acceptable at both centres once there are no changes on the copies in relation to the vehicles themselves. Where there are changes, the required amendments are to be made at the Licensing Authority before proceeding to the testing station.

Quality initiatives and the redress by the public: The law has provided for a host of measures where members of the public are unfairly treated at testing stations:

(a) They can appeal to the Transport Commissioner who will review their cases and make a ruling on the decisions of the private car testing station.

(b) In cases where a proprietor commits serious breaches of the terms of his or her contract with the Transport Commissioner by conducting their business in a manner contrary to what is expected, they can be decertified and licences terminated. Further, if such a person is involved in fraudulent dealings pertaining to the operations of the testing stations, they can be charged a fine of $40,000 if convicted.

(c) Examiners too can be similarly decertified if they are involved in fraudulent dealings or issuing false certifications of vehicles. If convicted, such person can be fined $40,000 upon conviction.

(d) In cases where members of the public are dissatisfied with the inspection services at Licensing Offices, the Transport Commissioner will similarly review the matter and take such corrective actions as appropriate against delinquent officers.

The Transport Commissioner shall cause officers of the Licensing Authority to visit testing stations aimed at maintaining standards of vehicle inspections and monitor administrative and management systems thereby ensuring that the public receives fair treatment and efficient service.

Mr. President, the supportive initiatives will go with clause 7, because we know on its own, it will not create the system we are trying to implement at this time. Therefore, the motor vehicle testing programme should be viewed against the background of the beginning of a host of initiatives soon to be implemented by the Ministry of Transport.

In our strategic development plan for the next two years, we have proposed to the Ministry of Finance direction of adequate facilities which would include modern facilities inclusive of computers aimed at providing an efficient service to the public.

In the area of information technology, the computer will interlink our network with the police department so as to provide officers on patrol, and at stations ready information to confront traffic violations.

Insurance companies and the private testing garages will also have limited access. The Tobago House of Assembly is also embarking on a number of initiatives aimed at providing suitable Licensing Offices in Scarborough in 2002, and at a later date in Roxborough to meet the needs of the people in Tobago.

In addition, the computer will facilitate the management of the soon to be established points system, which is a driver disqualification programme so as to keep a strong check on the number of road violators on the nation’s roads.

Mr. President, the amendments proposed are to clause 27 of the Motor Vehicles and Road Traffic Act, and thereby making the private testing stations programme more efficient and effective.

Mr. President, I beg to move.

Question proposed.

Sen. Howard Chin Lee: Mr. President, I am honoured today to be able to express my views at this forum. This happens to be my maiden speech and I thank you for giving me the opportunity. [*Desk thumping*]

Mr. President, with respect to the Motion for making regulations to the Motor Vehicles and Road Traffic Act regarding safety control and regulations of traffic, I would like to take this opportunity to go beyond this measure to bring to the Senate's attention a more holistic approach to achieving this end.

True enough, we must ensure that there are laws to regulate the conditions of the vehicles that are on the roads. However, we need to pay attention to the duly authorized inspection stations and examiners who perform these inspections. We also need to pay special attention to the roads on which we drive and the state of the drivers who drive these vehicles.

4.20 p.m.

Mr. President, it is noteworthy to point out that as much as we make the legislation more specific, impose fines of up to $5,000 to $40,000 and insert new regulations, these would all be ineffective if the authorized examiners to which they apply are not in themselves up to standard. It is suggested then that certified inspection stations are monitored and randomly checked. They should be inspected to ensure that the equipment and mechanics meet the requirements to adequately inspect vehicles.

In addition to which, there is no point in creating laws if there is no enforcement. Case in point, the Member for Tobago East in the lower House pointed out that in Tobago there are insufficient officers to inspect vehicles on the road. There is absolutely no enforcement of the law. Consideration must be given to the enforcement of the law and the amendments made to it. Where is the enforcement of speed limits? Where are the regulations whereby drivers are immediately reprimanded for driving under the influence of alcohol? Too many of our drivers, young and old, are irresponsible. I am not saying that our citizens should not enjoy themselves, but that they must exercise caution. There should be some enforced regulations against drunk driving and an increased awareness of the benefits, for example, of a designated driver.

With regard to the road conditions, Trinidad has some of the worst roads in the Caribbean. Where is the logic in ensuring that a vehicle is roadworthy when the road is not? Sure enough, there are road paving exercises taking place all over the country, some of them continuing for the past five years without seeming to finish. I ask, Mr. President, what is the logic in that? Where is the road safety in that? How does a vehicle owner expect to maintain a well functioning vehicle when it is placed under undue stress? Not to mention the congestion that follows.

Our roads today are more dangerous than they have ever been. This is due largely to the fact that there are more cars than ever on the nation's roads. The increase in number certainly means that they should all be functioning at the optimum. It also means that the other factors to road safety must seriously be considered.

In short, and in closing, in order to provide for safety control and regulation of traffic, not just the regulations of the Road Traffic Bill should be considered, but properly enforced regulations for road conditions and the responsibility of our drivers. Thank you.

Mr. President: Congratulations to the Member on his maiden contribution.

I think we would break for tea at this stage and resume at 5.00 p.m. You want to go through and finish?

Assent indicated.

Mr. President: All right, sure.

The Minister of Transport and Minister of Tourism and Tobago Affairs (Sen. The Hon. Jearlean John): Mr. President, I really wish to congratulate Sen. Chin Lee on his maiden contribution and thank him for his thoughts and insight. Basically, I would get the *Hansard* to get all that he has said but I just want to respond to the comments on drunk driving and the road safety campaign.

The Ministry of Transport on August 24 concluded an exercise where we had sought public comments on the Breathalyzer Bill, so that piece of legislation has gone back to the CPC for them to look at the various comments and for input into the Bill that should be before the House within a month or so. So we are looking at that because drunk driving accounts for a significant percentage of the road fatalities.

Additionally, we are now on an aggressive road safety campaign and we are advising and using children to articulate the thinking, not only of the Ministry, but

of the citizenry at large. We are partnered with the various insurance companies to get our message out.

When we have the computerization of the licensing division —that has gone out to tender—the Licensing Department will network with the 70 garages and that would be a good source of capturing much of the data on these road fatalities.

Mr. President, having said so, I wish to thank hon. Senators for recognizing that these Regulations are necessary. I beg to move.

Question put and agreed to.

"*Resolved:*

That the Motor Vehicles and Road Traffic (Amdt.) Regulations, 2001, be now approved.

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, let me first of all take the opportunity to congratulate Sen. Chin Lee on his maiden contribution. It was a breath of fresh air. He came from good stock [*Laughter*]

I question why he is on that side.

Mr. President, I beg to move that the Senate do now adjourn to Monday, September 24, at 10.30 a.m. At that point in time we hope to begin our debate on the Budget.

The Minister of Finance has assured me that it should be completed this week. In the event that that occurs, we would begin debate on Monday and we would like to complete it next week, hopefully, by Wednesday or Thursday.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.26 p.m.