

*Leave of Absence**Tuesday, October 09, 2001***SENATE***Tuesday, October 09, 2001*

The Senate met at 1.30 p.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Members, leave of absence has been approved for the following Members Sen. Jearlean John and Sen. Yetming from today's sitting and Sen. Mary King, for the period October 09—16.

SENATORS' APPOINTMENT

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

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Arthur NR Robinson
President.

TO: MR. DEREK IRVIN OUTRIDGE

WHEREAS Senator Mary K. King is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago: NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DEREK IRVIN OUTRIDGE, to be temporarily a member of the Senate, with effect from 9th October, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator Mary K. King.

Given under my Hand and the Seal of the President of
the Republic of Trinidad and Tobago at the Office of
the President, St. Ann's this 5th day of October,
2001.

THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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

/s/ Arthur N.R. Robinson
President.

TO: MR. VINCENT CABRERA

WHEREAS Senator JEARLEAN JOHN is incapable of performing her functions as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, VINCENT CABRERA, to be temporarily a member of the Senate, with effect from 9th October, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator JEARLEAN JOHN.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's this 5th day of October, 2001."

OATH OF ALLEGIANCE

Senators Derek Outridge and Vincent Cabrera took and subscribed the Oath of Allegiance as required by law.

BAILIFFS (AMDT.) BILL

Bill to amend the Bailiffs Act, 2000; brought from the House of Representatives [*The Attorney General*]; read the first time.

Motion made, That the next stage be taken at a later stage of the proceedings [Hon. L. Gillette]
Question put and agreed to.

ORAL ANSWERS TO QUESTIONS

**University of the West Indies
(Full-time Staff)**

10. Sen. Prof. Julian Kenny asked the hon. Minister of Human Development, Youth and Culture:

- (a) Could the hon. Minister inform the Senate of Government's general policy regarding full-time staff of the University of the

West Indies being involved in private consulting and other business activities, with particular reference to the time the University permits full-time staff members to be involved in such activities and the terms of such concessions?

- (b) Could the hon. Minister inform the Senate of the numbers of full-time staff members of the Faculties of Agriculture and Natural Sciences, Engineering, and Medical Sciences who have been given approval to engage in business activities and private consulting during the year 2000 and contributions made by full-time staff in that year to the consultancy funds of the University and of the three named faculties?

The Minister of Human Development, Youth and Culture and Minister of Education (Hon. Ganga Singh): Mr. President, the response to the question is as follows:

The rules governing outside the university/consultancy are contained in the “Rules for Academic and Senior Administrative Staff” and were approved by the University’s Finance and General Purposes Committee on October 08, 1999. A copy of the rules, which was reproduced from the Statement of Principles/Codes of Ethics for Academic and Senior Administrative Staff would be circulated.

Consultancy Rules

Definition of Consulting: Clause 38(a) of the “Work outside the University/Consultancy Rules” defines consulting by a staff member to include “...activities that are conducted on behalf of persons or bodies outside the University that fall into the area of competence related to the staff members’ regular academic duties in the University, and that are not part of grants or agreements between the University and outside persons and bodies.”

Substantial Consulting

The Consultancy Rules define “substantial consulting” as consulting so extensive as to suggest the possibility of interference with the performance of the staff member’s normal academic duties. In this regard, consulting in excess of one day a week is considered substantial.

Staff members are required to inform their heads/deans in writing of any consultancy which they intend to undertake, its duration and their arrangements to ensure that their university work obligations are dutifully and diligently carried out.

1.40 p.m.

Staff members shall not compete in their personal capacity with the university for the consultancies. Staff shall not undertake substantial consulting without the written approval of their heads of department or deans. In cases where the head of department or dean so requests, for professional reasons, the approving authority may be the campus principal. The relationship of the work proposed to the staff member's area of specialization and to their academic duties shall be important considerations in the approval process.

Leave of absence: If consulting involves repeated absences from the university for substantial periods of time so as to interfere with the performance of the staff member's academic duties, the staff member shall be expected to apply for a leave of absence, a reduced workload or part-time appointment.

Use of university facilities: Staff members shall obtain prior approval of any consulting commitment that will involve more than an inconsequential use of university facilities, supplies and other services, including those rendered by the support staff, without making appropriate financial arrangements in advance.

Payment into department account: Members of staff shall pay by August 01 of each year, not less than 15 per cent of the net earnings made in the previous 12 months, together with an appropriate payment, where applicable, to the fund or relevant department account for the use of the faculty's or department's equipment, materials and services.

Reporting obligations: Staff members shall report annually on their consulting activities. Such reports shall set forth the time spent, the distribution of the consulting activities throughout the year, the nature of the work, the allocation of time between the public and private sectors, and the identity of the clients. However, the names of clients or sponsors in situations where established professional secrecy or discretion normally prevails, will not be reported.

The reports shall also include other information such as details on frequent travel, ethical issues and periods of intense activity which may have affected the staff's academic duties, which may be relevant to an evaluation as to whether the consulting has been of overall benefit to the university. In addition, the individual faculties may, by resolution of faculty boards, require additional information.

Further guidelines: When consulting, staff members shall not purport to represent the university unless expressly authorized to do so by their deans. Staff members shall not use university stationery for consulting purposes without the

written approval of their deans. Except for occasional lectures, seminars or scholarly presentations, staff members shall not teach at other institutions without the prior written approval of their deans.

Notwithstanding the definition of consulting in clause 38(a), the present regulations shall be applicable in matters of copyright. Where members of the academic staff spend a substantial amount of time on activities related to the preparation of copyright items such as books, records, films or software items, not directly related to the performance of their academic duties, they are expected to make full disclosure of these activities to their heads of department. A “substantial amount of time” shall be determined by the definition of “substantial consulting”.

Consulting and other clinical activities undertaken by full-time members of the Faculty of Medical Sciences shall be governed by the regulations and procedures of the Faculty of Medical Sciences and its teaching hospital. Special arrangements for consulting may be made for other professional faculties with the approval of council.

The records of the university indicate that six full-time staff members of the faculties of Agriculture and Natural Sciences, Engineering and Medical Sciences have been given approval to engage in business activities and private consulting during the year 2000. In addition, 50 persons from the Institute of Engineering have been involved in projects that were completed in the year 2000. The breakdown by faculties is as follows:

| | |
|---|------|
| Faculty of Agriculture and Natural Sciences | - 3 |
| Faculty of Engineering | - 1 |
| Faculty of Medical Sciences | - 2 |
| Institute of Engineering | - 50 |
| Total | - 56 |

Staff contributions to the consultancy fund are prepared by academic year, August to July. For the academic year August 1999 to July 2000, the total contribution to the fund was \$126,330. Contributions in the academic year August 2000 to July 2001 amounted to \$104,826. A breakdown by faculties is as follows:

| Faculty | Amount | Amount |
|---------|-----------|-----------|
| | 1999/2000 | 2000/2001 |
| | | |

| | | |
|----------------------------------|---------|---------|
| Agriculture and Natural Sciences | 75,214 | 60,569 |
| Engineering | 36,626 | 27,806 |
| Medical Sciences | 14,490 | 16,451 |
| Total | 126,330 | 104,826 |

Staff contributions by the Institute of Engineering to the consultancy fund for the year 2000 totalled \$662,170.81.

Thank you, Mr. President. [*Desk thumping*]

Sen. Prof. Kenny: A supplemental question, Mr. President. The question really asks what was the Government's policy regarding what happened in the university, and I formed the impression that the Government has just simply accepted the university consultancy rules. So I am asking the question: Does the Government have any plans for bringing the system under a little closer control?

Hon. G. Singh: Mr. President, in terms of the Government's policy, we recognize the independence of the academic institution, the University of the West Indies, and these rules for academic and senior staff were drafted with representation from the Government being represented on the University Finance and General Purposes Committee. If the hon. Senator is indicating, based on his personal experience as a professor at the university, that there is need for closer scrutiny of the consulting and research—that area of the university—it is certainly something that we would bring to bear where we represent the University Finance and General Purposes Committee. But certainly, we want to preserve the independent academia at the level of the university.

Sen. Prof. Kenny: This is not really a question; it is a response to the Minister. I do sincerely hope that the Government does, in fact, look a little more closely at what happens, because I have been a full-time member of the university staff, as many others here have been, and being a full-time member of staff of the university, it means that you do not have time to run businesses or consultancies.

1.50 p.m.

Hon. G. Singh: Mr. President, just by way of response, certainly the concerns of Sen. Prof. Kenny would be taken into consideration and I would do what it takes to ensure that there is closer scrutiny at that level.

Sen. Outridge: Mr. President, I am not a full-time member of the university. I am a part-time, post graduate student and I can concur that there are certain instances, and I want to know whether or not the university takes it into account where students have supervisors that they rely upon for advice and consultation throughout the academic year, and where they have more than one supervisor, whether the University takes it into account to ensure that there is proper coordination, so that the actual supervisors, at least one, would be available at all times to the students.

Hon. G. Singh: Mr. President, you can understand my predicament. That is really an administrative matter for the University of the West Indies. It is our hope that with the recent appointment of the new principal, we would have a more customer-oriented and student friendly environment. That is one of the mandates that will, perhaps, seek to deal with the concerns of the hon. Senator.

Leaded and Unleaded Gasolene

11. Sen. Prof. Julian Kenny asked the Minister of Energy and Energy Industries:

- (a) Could the hon. Minister inform the Senate of the respective total domestic sales of leaded and unleaded gasolene by volume in the year 2000 and of the actual quantities by weight of lead additives used in the gasolene sold domestically during that year?
- (b) Could the hon. Minister state Government's target date for the total elimination of the use of leaded gasolene in Trinidad and Tobago?

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, in the year 2000 the volumes of domestic sales of leaded and unleaded gasolene, along with the corresponding grades of lead additives where relevant were as follows: super gasolene, known as 95 octane No. 370,243,000 litres; tetraethyl lead additive, 48,132 kilograms. Regular gasolene which is known as 83 octane No. 22,050,000 litres; and tetraethyl lead additive, 1,323 kilograms. Unleaded gasolene 56,969,000 litres.

Mr. President, the issue of removing leaded gasolene from the domestic petroleum retail market has been on the Ministry's agenda for quite some time. It has its genesis in Declaration 23 of the Plan of Action of the Summit of the Americas under which participating countries including Trinidad and Tobago made a commitment to the phase out of leaded gasolene. One would recall that the Centre for Environmental Studies, Environmental Institute, Faculty of

Engineering of the University of the West Indies, St. Augustine, was commissioned to detail a plan for such action. Major findings as contained in the report of that study team, dated December 1997, were as follows: that there are significant negative health effects associated with chronic exposure to lead to warrant its removal from gasoline in Trinidad and Tobago; it was also noted that gasoline is the source of lead to the environment and to humans; also, the potentially detrimental effects associated with the use of unleaded gasoline in cars designed for leaded gasoline appear to have been exaggerated while the potentially beneficial effects appear to have been either ignored or understated.

Subsequently, the report recommended inter alia that the practical and feasible target date for the complete phase was June 30, 2000. The major recommendations of that report have not been implemented to date; however, the Ministry remains committed to the phasing out of leaded gasoline from the domestic petroleum retail market.

By Cabinet Minute No. 2073 dated October 10, 2000 Cabinet agreed to the appointment by the Ministry of Energy and Energy Industries of a committee to explore and make recommendations with respect to the subsidy arrangements in relation to petroleum products supplied by Petrotrin to National Petroleum Company and to Unipet.

Furthermore, it was agreed that the committee comprise representatives of the Ministry of Energy and Energy Industries, the Ministry of Finance, Planning and Development, the Technical Advisory group on energy, Petrotrin and National Petroleum.

In addressing the matter of subsidy arrangements the committee examined other policy matters pertaining to the domestic retail market among which was the removal of leaded gasoline from the petroleum retail market. In this regard, I have received the proposal from the committee in August of 2001 which is currently engaging my attention. Accordingly, I wish to assure this honourable Senate that the phasing out of leaded gasoline continues to be on the agenda of the Ministry of Energy and Energy Industries and I shall report on further developments on this matter at an appropriate time.

Sen. Prof. Kenny: Mr. President, a supplementary question which is really for clarification: The amount of tetraethyl lead—was the figure 48,000 kilograms?

Hon. L. Gillette: You speak of super gasoline 95 octane, right?

Sen. Prof. Kenny: Yes.

Hon. L. Gillette: It was 48,132 kilograms.

Sen. Prof. Kenny: In the budget presentation there was an indication that a new grade of unleaded gasoline of lower octane would be introduced to replace the unleaded gasoline. Will this unleaded gasoline which is being introduced have any additives? It would not be lead?

Hon. L. Gillette: I do not know the answer to that question in terms of additives. I can find out and answer you on a later date, but I know that it is part of the report that was given to me in August of this year and it is engaging our attention right now with the intention, of course, to move to unleaded gasoline at the earliest possible time.

The following question stood on the Order Paper in the name of Sen. Prof. Julian Kenny.

Halcrow Group Limited

12. (a) Could the hon. Minister of Integrated Planning and Development inform the Senate of the broad terms of the contract between the Ministry of Integrated Planning and Development and the United Kingdom firm of Halcrow Group Limited and the local group Halcrow Fox of 133 Sixth Street, Barataria, in particular the terms of reference, duration of contract, numbers of expatriate staff involved and total cost of the contract?
- (b) Could the hon. Minister inform the Senate of the tendering procedures employed in selecting Halcrow?
- (c) Could the hon. Minister inform the Senate of the connections of Halcrow Group Limited and Halcrow Fox, if any, with the local firms PCA Limited, Development Planning Associates, Development Planning Associates (2000) Limited and Interplan Group Limited, all of 133 Sixth Street, Barataria and whether any of these firms made inputs to the National Conceptual Development Plan?
- (d) Could the hon. Minister also inform the Senate of the status of the National Conceptual Development Plan submitted to the Senate under the corporate names of Halcrow Group Limited, UDeCOTT and PCA Limited.

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, I beg to move that the answer to question No. 12 be deferred for a period of two weeks.

Question, by leave, deferred.

ARRANGEMENT OF BUSINESS

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, as agreed between the Leader of the Opposition in the Senate and Leader of the Independent Senators, I now beg to move that the Senate now deal with the second reading of the Bailiffs (Amdt.) Bill, 2001.

Agreed to.

BAILIFFS (AMDT.) BILL

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 Bailiffs Act, 2000, be now read a second time.

Permit me in my presentation this afternoon, to give a synopsis of the Bailiffs Act, 2000 and then to indicate the need for the passage of the Bailiffs (Amdt.) Bill, 2001 which is presently before us.

Mr. President, this Government passed the Bailiffs Act, 2000, that is, Act No. 58 of 2000, which came into force by proclamation on June 30, 2001. The intent of the Bailiffs Act, 2000 was to rationalize the operations of bailiffs by establishing a regulatory framework to govern the licensing of bailiffs in this country. The Act outlines their functions and duties in an effort to settle, once and for all, what functions may be carried out by bailiffs. This Bill now puts the law with respect to Bailiffs on par with the law in other jurisdictions that have reformed their respective laws to standardize the licensing and operations of bailiffs.

The Act was a direct result of the working paper entitled “The Law Governing the Conduct of Bailiffs: A Case for Reform”. This document was prepared by the Law Reform Commission.

2.00 p.m.

The need for this reform arose because of the volume of complaints that were made by members of the public concerning the conduct of bailiffs. The analysis undertaken by the Law Commission revealed that the problems in this area stemmed directly from the failure of law to provide proper regulation and control over the activities of bailiffs. Moreover, the law existing before the Act became law was disjointed, complex and created an environment which allowed bailiffs,

in particular, private bailiffs, to carry out their functions in an uncontrolled and unregulated manner. The paper therefore recommended the enactment of comprehensive legislation to govern all bailiffs, private and court bailiffs alike. The Government accepted the recommendations of the Law Commission and the result was the drafting, eventual passage and proclamation of the Bailiffs Act, 2000.

In this jurisdiction, bailiffs operate within two separate pieces of legislation. One is the Landlord and Tenant Ordinance, Chap. 27, No. 16 and the other is the Petty Civil Courts Act, Chap. 4, No. 21. Those bailiffs who are certified under the Landlord and Tenant Ordinance are referred to as certified or private bailiffs. They are charged with the responsibility of assisting landlords in levying distress for arrears of rent. They are issued annual licences by a magistrate.

On the other hand, those bailiffs who find the authority in the Petty Civil Courts Act, operate as functionaries of the court, serving documents and assisting in the execution of judgments. These bailiffs are referred to as court bailiffs and are in fact members of the public service. They are governed by the Public Service Commission Regulations.

While there are guidelines to define the conduct of court bailiffs who are subject to the authority of the court, there was no similar provision with respect to the private bailiffs. Thus, the new Act that was passed sought to regulate the activities of private bailiffs by providing a system of licensing and registration. For example, sections 4 to 8 of the Act address the registration and licensing of bailiffs.

Section 4 imposes upon the Registrar of the Supreme Court, the responsibility of keeping a register of bailiffs that would be accessible to members of the public during working hours. There is no cost attached to the inspection of the register which would provide separate listings for public service bailiffs and private bailiffs. All persons operating as bailiffs would be required to register with the of the Supreme Court. This requirement can be found in section 5 of the Act. In order to qualify for registration, a person would have to show that he or she is of good character, employed as a bailiff or has been offered a contract to operate as a bailiff.

Sections 6 and 7 deal with the issuance of a licence, subsequent to registration and with a suspension or cancellation of a licence, respectively. Section 6 provides for the issuance of a licence to persons whose names are entered in the register of bailiffs, upon the payment of a prescribed fee and the provision of the

necessary security. This requirement does not apply to public service bailiffs. The licence allows members of the public to determine who is, or who is not a properly licensed bailiff. Licences issued by the registrar would be valid for two years, unless, of course, for some reason, they have been suspended or cancelled.

Additionally, in an effort to bring the names of licensed bailiffs to the notice of members of the public, section 6 imposes an obligation on the registrar to publish twice a year, a list of persons holding valid licences. This list would be published not only in the *Gazette*, but also in two daily newspapers.

The power to suspend or cancel a licence issued under the Act is also conferred upon the registrar by section 7. In respect of public service bailiffs, the would exercise that power on the advice of the Public Service Commission. The registrar would exercise that power after conducting an enquiry into allegations of misconduct including incompetence or irresponsibility. Where necessary, the registrar may suspend the licence of a bailiff pending the outcome of an enquiry. Should a person purport to carry out the functions of a bailiff without benefit of a valid licence, that person would find that he or she has committed an offence under section 8 of the Act. That is an offence which is punishable on summary conviction by a fine and imprisonment.

Section 9 sets out definitively the functions and duties of bailiffs for the benefit of both bailiffs and members of the public. A bailiff may carry out those functions and only those stated functions. A bailiff may levy execution in accordance with a judgment of a judge of the Petty Civil Court; serve documents from a court of summary jurisdiction; levy tenants' goods for arrears of rent as provided for, under the Landlord and Tenant Ordinance and repossess goods on hire purchase in accordance with the Hire Purchase Act.

In addition, this section also imposes several responsibilities on bailiffs. For example, bailiffs are required to maintain financial records and to have them audited annually. The registrar may require a bailiff to furnish him with a financial statement. These provisions are designed to impose upon bailiffs, a degree of financial propriety. It is inevitable that bailiffs gain access to premises, whether private dwellings or business premises to carry out their functions. There have been complaints that citizens cannot be sure that the person seeking to enter their premises, are in fact, who they claim to be. Hence, section 10 requires a bailiff to identify himself by showing his licence to the owner or occupier of the premises. The bailiff is also required to furnish the owner or occupier with a form which is provided for, in a schedule of the Act. It gives information about the bailiff and the name of the owner or occupier of the premises which the bailiff is

visiting. This requirement would be useful, as sometimes the bailiff may be at the wrong premises and once that has been pointed out, much antagonism and even legal action may be prevented. The Act also makes provision for lost and stolen licences; a mechanism for dealing with complaints against bailiffs and the right of judicial review.

One of the complaints levelled at bailiffs is that they are unaware of their functions and of the manner in which those functions should be performed. That issue is addressed by section 14 which requires bailiffs to attend a training programme, organized by the ministry, within the first year of being licensed and thereafter, at least once every five years. Failure to comply with this could result in the suspension of licences.

Section 15 empowers the President to make regulations prescribing, *inter alia*, a code of conduct for bailiffs; the maximum fee chargeable and the security to be required from bailiffs. I must point out that these regulations have not been made. I also wish to point out that although section 16 repeals sections 37 and 38(a) and (b) of the Landlord and Tenant Ordinance, such a repeal would not become effective until the regulations are made under section 15 of the parent Act. Hence, a magistrate can issue a licence to a person who wishes to be a bailiff under the Ordinance.

In order to ensure that the necessary mechanisms were put in place for the registration and licensing of bailiffs, the Office of the Attorney General and Ministry of Legal Affairs appointed a committee in late June, 2001. This committee is comprised of a representative from the Supreme Court, the Law Reform Commission, the Office of the Chief Parliamentary Counsel and an administrative officer from the ministry. They have to put in place those mechanisms. However, the committee was, unfortunately, unable to put in place all the necessary machinery to implement the Act within the prescribed time period. A draft handbook has been prepared and the regulations under section 15 are also being prepared.

The preparation of the examination and training which are required to facilitate the registration process within the three months of the proclamation of the Act have not been put in place. Thus, the registrar is unable to register any private sector bailiffs because he or she is unable to present the required documentation. That is, the examination results and the training certificate. Since the three month period, starting from June 30, 2001, expired on September 30, 2001, without any registration being possible, there is an urgent need that this period be extended to a reasonable time to facilitate the necessary machinery

Bailiffs (Amdt.) Bill
[SEN. THE HON. G. LUCKY]

Tuesday, October 09, 2001

being put in place. Therefore, the Bailiffs (Amdt.) Bill, 2001, proposes to extend that period which is presently three months to nine months. I also wish to indicate, that since we have passed the date, that is the three month period, it means that any amendment to section 5(2) of the Act, in relation to time, would have to be given retrospective effect. It is proposed by the list of amendments to insert a clause 5 to the Bill before this Senate, to achieve this objective. I also wish to indicate that during the period after September 30, 2001, to the date of commencement of this amended Act, there is need to validate any action taken by a bailiff. For the avoidance of doubt, this is a necessary provision, where a person may have brought action against a bailiff on the basis that he was not registered under section 5 of the Bailiffs Act, 2000.

However, as I pointed out earlier, all the licences issued by the magistrates under sections 37 and 38(a) and (b) respectively, of the Landlord and Tenant Ordinance, are valid and continue to be valid under the Bailiffs Act, 2000, by virtue of section 16 of that Act. Those licences are issued annually and would expire on December 31, each year. The proposed validation clause 5, which is reflected in the list of amendments, seeks to remedy any perceived illegality during a specified period because of the non-registration only and not actions which may be deemed illegal by bailiffs or for any other reason. I also wish to explain that the honourable Chief Justice has pointed out that reference in section 3(2) of the Act to a Marshal of the Supreme Court is in fact inaccurate. There is only one marshal of Trinidad and Tobago. That person is the Registrar of the Supreme Court. Hence, the Bill before us seeks to amend that section to provide that the Act will not apply to the marshal, deputy marshals and marshals' assistants.

Bailiffs play a fundamental role in the financial life of our country. It is very important that they, like any other citizen, can operate within a legal framework that is fair, certain and without impediments. At the moment, this is not the case. I hope that Senators will support this Bill to correct the problems which I have outlined and the issues that I have also indicated. Other concerns have been sent to the Office of the Attorney General and Ministry of Legal Affairs. A committee has been formed to deal with other problems which have been highlighted. I just wish to reiterate that there is a present problem that needs immediate attention. That is what the amendment Bill before us seeks to do.

Thank you.

Question proposed.

Sen. Glenda Morean: Mr. President, I have heard all that the honourable Minister has said. In principle, I have no quarrel with what she has said. I agree with her, that in order to understand the amendments being sought to be passed, we have to look at the parent Act. When we look at it, we note that it was assented to on October 13, 2000, and proclaimed on June 30, 2001. Why was it proclaimed on June 30, if the necessary machinery was not in place to have the Act function effectively? The answer to that is that this is in keeping with how this Government governs.

2.15 p.m.

The fact is, you know that you have to put certain machinery in place and that was not done. The Act was proclaimed so there would be bailiffs acting contrary to the law because the necessary regulations are not in place. What would happen in a case where a bailiff has carried out a levy unlawfully and an action was filed prior to the passing of this amendment, to the person's claim for redress? There is a section in the proposed amendments for retroactive effect. It means retroactively that person's right would have been dealt with. In other words, that person would not have that right anymore to claim for damages. I would like the Minister to address that little problem.

It is necessary to have training in place for bailiffs. While it is true that we are not too concerned with sections 9(1) (a) and (b), that is, those bailiffs who are attached to the court system, I do not think there is where we get most of our problems. Most of the problems stem from the private bailiffs who distrain on people's goods on account of landlords. What generally happens is that the bailiffs really do not know what their true legal position is, and while they are not supposed to go into people's premises before sunrise or after sunset, they go in at anytime and they levy contrary to the law, and sometimes they do what should not be done. That is, they really in effect, eject the tenant from the premises. They are not supposed to go in if the premises are locked but they break open doors and go in. The courts are replete with cases where bailiffs have acted contrary to the law.

While I am in favour of the provision in section 14 of the parent Act, whereby bailiffs are to be given training—and I heard what the Minister has said with respect to the setting up of the system for giving bailiffs the necessary training, my question is: Why was this not done before the Act was proclaimed?

We are told that the regulations are not yet in place and we ask: When would the regulations be made? We see that sections 38 and 38A of the Landlord and Tenant Ordinance will be repealed according to the Act, but it cannot be until

these regulations are enforced. Is it that we would have to wait another long period before we see action on this, or are we going to see these regulations in place immediately? These are the things that ought to have been gone into before the Act was proclaimed and that we do not act after the fact. The amendments are quite necessary and harmless. My only question to the Minister is in respect of clause 3, which is amending section 3 of the Act by deleting subsection (2) and substituting the following new subsection. That is:

“This Act does not apply to the Marshal of Trinidad and Tobago, Deputy Marshals, Second Deputy Marshals, Marshal Assistants.”

I was of the impression that the word “Marshal” covered all those things and it is unnecessary to recite all the deputies and assistants. I would like the Minister to address her attention to that aspect and also to the spelling of the word “marshal” which has one “l” and not two. Thank you, Mr. President.

Sen. Prof. Ramesh Deosaran: Mr. President, I wish to take the opportunity to make a few comments, some of which have been drawn from my own observations with respect to how bailiffs, especially private bailiffs, in this country operate. Before doing so, I want to associate myself with Sen. Morean’s remarks about the implications of the delay, and especially on the point of seeking redress from the courts for any irregularities committed by the bailiffs in the exercise of their duty. I know it is not the Minister’s fault, and I hope she forgives me, but I must say that this kind of laxity in refining the obligations for good public administration that rests on legislation is a matter of great disappointment. I understand the need for having the nine-month extension, but at the same time, this really should have been made a much simpler matter to deal with.

Be that as it may, I want to make a few comments on behalf of the poor people of this country, many of whom try to hang their hats higher than they could reach by taking out furniture and appliances on instalment and are seduced by what appear to be very low down-payments, only to have a few months after the bailiff come knocking at their doors. It is, perhaps, nobody’s fault but it is really a miserable sight to see a bailiff coming three months after the appliances and furniture have been purchased—I am saying so from my own observations, and not of course personal experience. But it is a miserable sight to see the thuggery really, a sort of misguided vigilance that some of these bailiffs take upon themselves to knock down poor people’s home and snatch their furniture and appliances with such insensitivity. In a sense, you can say that poor people invite

such calamity upon themselves by hanging their hats higher than they can reach. But this is the age in which we live, mass consumerism, seduction and advertising.

Mr. President, through you, I want to use this opportunity to warn the public that getting in debt with this new cadre of bailiffs supported by the relevant legislation could put them in deep horrors. The thuggery by bailiffs must stop. There have been too many stories of misery and people being taken advantage of. I would suggest, through the vigilance of the relevant Ministry, that the Registrar undertakes very close scrutiny of the list of bailiffs under his or her own jurisdiction. There are too many such registration lists where people have been licensed but the scrutiny stops at that point. I think in this particular case, and on behalf of the poor people I repeat, some quality control and a greater amount of vigilance could serve us well over these private bailiffs in particular.

The other comment I want to make is on the question of proper identification in entering people's premises. This matter of a lack of identify or the refusal to produce a proper identification as it were, is committed not only by bailiffs but even by some misguided police officers when they enter people's premises with search warrants and the like. The question of a proper identification is very critical if only because there are many perpetrators who disguise themselves as one or another kind of public officer. This really aggravates the advantage on poor unsuspecting people. I would, therefore, suggest to the relevant Ministry that vigilance over this matter should also be undertaken with particular respect to the police service. This I have had a personal experience with. A police officer coming to my home at 11.00 p.m. with correspondence and I am upstairs asking him to please drop the correspondence in my mailbox. He refused and insisted that I come downstairs without seeing clearly who it was, and much less having any chance to see his identification.

In these days of high fear of crime, that is a dangerous situation. I think both bailiffs and police officers should be quite willing to expose their identification and understand the gravity or the potential danger that exists.

The other aspect is the code of conduct. This country has several professional bodies and there are also, through legislation, statutory codes of conduct. Mr. President, these codes of conduct are observed much more in the breach than anything else, and I mean doctors and even present company excluding, of course, lawyers. I think there is another room here for some vigilance to ensure—although I know it is not yet, which is another disappointment—I think the code of conduct should be as equal as the statute itself. The code of conduct should be

quickly developed because this would be the parameters within which bailiffs would operate proficiently, and not only efficiently—I want to encourage the relevant Ministry, with respect, that the code of conduct be established very quickly.

Mr. President, I take this opportunity to make these comments because there are many voices from the poor people who cannot find expression and cannot always seek redress when they are taken advantage upon by these private bailiffs. I hope this opportunity would bring some sort of salvation to their plight. Thank you, very much.

Sen. Prof. Kenneth Ramchand: Mr. President, when the Bill came to the Senate in 2000 we were very glad to support it because we were all aware that there was a need to deal with a situation in which private bailiffs acted in an uncontrollable and unregulated manner. At that time, one pointed out that in the literature of Trinidad of the 1930s and 1940s, the bailiff was a figure inflecting terror upon poor people, breaking down doors, carrying out searches, evicting tenants, seizing property, demanding favours from females and in all kinds of ways abusing the power that that they had but which they had never been licensed to practise.

I want to associate with the Senators before me who regret that the proper regulations have not been put in place to ensure a full and proper implementation of the Act. While I understand the need for the present attempt to make sure that bailiffs can perform, I do so with great reluctance and with the understanding that by March 30, 2002, the proper regulations would be in place and this present temporary licence to behave as they have been behaving in the past would be revoked.

2.30 p.m.

Mr. President, I think that Government has a responsibility to ensure that laws and regulations that are designed to offer safety and protection to citizens are put in place expeditiously. In this connection, I want to express concern about what seems to me to be the disappearance of the ticket system. If there is a problem with the ticket system, it seems to have been in existence for more than three years. Why are police officers no longer giving tickets? This is especially the case with traffic offences.

Coming here this morning, Mr. President, I saw a number of traffic offences, where, if the ticket system had been operating, citizens—Mr. President, you are unsettling me by your kindness.

Mr. President: Senator, looking at you, I know you are aware that you are breaching the Standing Orders, so please.

Sen. Prof. K. Ramchand: Mr. President, that is all I have to say on the Bailiffs (Amdt.) Bill.

I thank you.

The Minister in the Ministry of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Gillian Lucky): Mr. President, let me begin by thanking the hon. Senators for their contributions and comments on the amendment Bill before us; more specifically, Sen. Morean, Sen. Prof. Deosaran and Sen. Prof. Ramchand.

I must indicate to those Senators that the golden thread that ran through the various contributions was the concern that we have had to come back to this honourable Senate and ask to extend the time frame which, unfortunately, was too short to implement what was no doubt very commendable action, in terms of trying to regularize the bailiffs and their operations.

All I can say is that we have to deal with the situation at hand. We recognize now that the time frame was too short and we need to regularize what is now a situation that cannot be allowed to continue. I hasten to add that, in this honourable Senate, on several occasions I have made the point and I take the point that is made that we must not be so ambitious or so quick to pass legislation that we do not look down the line to make sure that we can deliver what we say. That is why, in many instances, when time frames have been reflected in legislation and concerns as to whether we can fulfil that time frame have been pointed out to us by hon. Senators on the other side, we have been open-minded and open-hearted in taking the good advice and ensuring that we give the necessary extensions.

That is why we had initially asked, in the parent Act, for three months. That is why the extension is now going to be a period of nine months, which gives us a further six months to put things in order. I can assure you that with our new Attorney General and with the level of work that has been done so far in this regard, I would be very surprised if we were to come back to ask for a further extension. I would not say any more on that point to attract further comments by way of aside.

Mr. President, Sen. Morean raised the concern about what happens to those actions, if there are any in the courts, of persons claiming redress for the actions

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of bailiffs. In drafting this amendment, we were guided by the law as it exists. I make reference to the book *Legislative Drafting* by G. Thornton, the third edition, chapter 11. The first paragraph deals with validation. I will not quote the whole paragraph, but I want to be given the opportunity to reiterate that what is being done in the amendment before us is not validation of the actions of bailiffs that could or should be the subject of judicial interpretation or determination, but merely the validation of their operation as bailiffs because within that time frame they have been unable to register.

I am quoting from the second paragraph. It says:

“It is important that validating legislation should do no more than remedy the defect or irregularity which is sought to be remedied and the consequences of that defect or irregularity.”

That paragraph ends by reiterating the point by saying:

“In other words, validation should not be effected absolutely without due thought as to the consequences, but should be restricted to remedying the acts or omissions which have caused the illegality.”

I remind Sen. Morean that that is why, in making my presentation, it was made clear by me—and I quote now what I said in my presentation of this Bill:

“The proposed validation clause seeks to remedy any perceived illegality during a specified period because of non-registration only and not actions which may be illegal by bailiffs for any other reason.”

Within that time frame of June 30, 2001 to September 30, 2001, no such actions brought are affected. The time period that we are really dealing with, with respect to the validation, is action during the period October 01 to commencement of this particular Bill. Further, it is only with respect to actions that may be brought on the grounds that the bailiffs were not properly registered but not with respect to any illegal action that may have been taken. So, no citizen is deprived of that action if they seek to bring such an action. In other words, it is in conformity with what Thornton is saying in *Legislative Drafting*, which is, that it is not an absolute validation. It is a limited validation.

I have listened very carefully to the contribution of Sen. Prof. Deosaran—

Sen. Morean: I am looking at the scenario where the bailiff has carried out a levy following all the proper procedures and lawfully. However, I was aware that he was not licensed at the time he carried out the levy. I immediately filed an

action claiming damages for illegal levy and what have you. What then is my position? The position seems to me to be—and you can tell me if I am wrong—that because of the retroactivity of the legislation, his action will then be legal, so my court action then falls by the wayside. I may even have to pay costs to somebody. This is the situation I am looking at.

Sen. The Hon. G. Lucky: I understand Sen. Morean's concern, but if the action is, in terms of the execution of his duties, that although he has performed his duties legally, it was invalid, that is a protection that he is going to get. It is not that this is the first time this has been done. One envisages, for example, situations where, in the courts, there have been actions filed on whether a person has acted validly because of a technical point. In the circumstances, when the necessary legislation is passed, those actions, on that limited ground, will fall by the wayside. That is why we seek to remedy the situation now and that it why it has become so urgent.

We do not want protracted legislation and several actions because then, of course, not only is the court inundated with several of these actions, but there are costs and other circumstances the court will have to take into account merely because of a validation problem.

Just before I conclude, I take the points raised by Sen. Prof. Deosaran and Sen. Prof. Ramchand with respect to how some of the bailiffs may still be operating. Sen. Prof. Deosaran did not limit himself only to the operation of bailiffs, but also to police officers and all other persons under our law, who are allowed to go with search warrants and the need for them to provide proper identification.

In answer to that concern, I know that in our office we get complaints about this and that is why there is ongoing training and investigation when these reports are brought to our attention. With respect to the police service, there is always that constant communication by the ministry, through the office of the DPP, to police officers to ensure that they operate within the law and do not take the law into their own hands and literally hold citizens to ransom.

I take the point raised by hon. Senators that sometimes it is only when it affects us or when we feel that we will be the subject of this type of treatment that we seem to take it seriously. I want to give the assurance that I myself, the Attorney General, the ministry and the Government do not operate on the basis of, "Well, when it happens to me, I will take it seriously." We try to make sure that when the complaints are raised, we deal with the situation.

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I think that Sen. Prof. Ramchand recognized this when he said this was one of the greatest reasons that prompted us to pass the Bailiffs Act. We recognized that some bailiffs were taking matters into their own hands. That is why, in the Act, we talked about, not just one training session, but training sessions on an ongoing basis.

This is another point. It is not supposed to just be a one-and-done thing. It is a situation where, as all professionals, we need constantly to be given refresher courses and to be monitoring the situation.

This is my response to the various contributions that were made. Thanks very much to hon. Senators. I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

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

Clause 3.

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

Sen. Morean: Mr. Chairman, I have some observations with respect to subsection (2). One was the spelling of the word “marshal” and whether it was necessary to use the definitions “deputy marshal”, “second deputy” and so on, since “marshal” means all that.

Sen. Lucky: The reason it was not defined is that it was already defined in the Supreme Court of Judicature Act.

Sen. Morean: That is why I am saying it was not necessary to put “deputy marshal”, “second deputy” and “marshal assistant”, because the word “marshal” includes all that.

Sen. Lucky: These are the four expressed posts it will not include. That is why we have had to say it does not apply to the Marshal of Trinidad and Tobago and list out the four it would not include.

Sen. Morean: No, it just says “marshal” and that includes all. The Supreme Court of Judicature Act defines “marshal”. You can check it.

Sen. Lucky: We are looking at the Act now and we are seeing a definition for “registrar”. We can take your point. It does define it also. We take your point in

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terms of validity, Senator, but what is being pointed out is that we would have to go back again. We would leave it as is.

Question put and agreed to.

Clause 3 ordered to stand part of the Bill.

2.45 p.m.

Clauses 4 to 6 ordered to stand part of the Bill.

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

Senate resumed.

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

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Lindsay Gillette): Mr. President, before moving the adjournment of the Senate, let me place on record my thanks and appreciation to you, Mr. President, and to all Senators, for your kind words of sympathy and condolences on the recent passing of my mother. It made our hurt much easier to bear over the past two weeks.

Mr. President, I beg to move that this Senate do now adjourn to Tuesday, October 16, 2001 at 1.30 p.m.

On that day we will do Bill No. 6 on the Order Paper and Motions Nos. 1, 2, 3 and 4 of the Finance Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 2.49 p.m.