SENATE

Wednesday, August 24, 2005

The Senate met at 10.00 a.m.

PRAYERS

[MR. VICE-PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. Vice-President: Hon. Senators, I wish to advise that the President of the Senate, Sen. The Hon. Dr. Linda Savitri Baboolal, is out of the country. During the absence of the President, the Vice-President will preside over the sittings of the Senate and Sen. Magna Williams-Smith will act temporarily.

I have also granted leave of absence to Sen. The Hon. Dr. Lenny Saith, Sen. The Hon. Howard Chin Lee and Sen. Carolyn Seepersad-Bachan, who are all out of the country; and to Sen. The Hon. Satish Ramroop, who is ill.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Prof. GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. MAGNA WILLIAMS-SMITH

WHEREAS Senator Dr. Linda Savitri Baboolal is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, MAGNA WILLIAMS-SMITH, to be temporarily a member of the Senate with effect from 24th August, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Linda Savitri Baboolal.

[MR VICE-PRESIDENT]

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 22nd day of August, 2005."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Prof. GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MS. ROSE JANNEIRE

WHEREAS Senator Dr. Lenny Saith is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ROSE JANNEIRE, to be temporarily a member of the Senate with effect from 24th August, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Lenny Saith.

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 22nd day of August, 2005."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Prof. GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: DR. TIM D. GOPEESINGH

WHEREAS Senator Carolyn Seepersad-Bachan is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, 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, TIM D. GOPEESINGH, to be temporarily a member of the Senate with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Carolyn Seepersad-Bachan.

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 23rd day of August, 2005."

OATH OF ALLEGIANCE

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

Magna Williams-Smith, Rose Janneire, Dr. Tim D. Gopeesingh

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, further to the appointment of these three temporary Senators, there are two others who must be appointed for Sen. Satish Ramroop and Sen. Howard Chin Lee. I have not yet received the instruments, but when they come in, that will be done at a later stage of the proceedings.

REFURBISHMENT OF LIBRARY

Mr. Vice-President: Hon. Senators, I must also announce, before we go into the matters on the Order Paper, that the Parliament library is undergoing much needed refurbishment and you are kindly requested to bear with us as we seek to make everything A-okay for the use of the library and its accessibility to parliamentarians. We apologize for any inconvenience caused.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the National Settlements Programme, Second Stage, Phase I, as per Loan Contract No. 1402/OC-TT for the financial year ended September 30, 2004. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Government Employees' Provident Fund for the financial year ended September 30, 2004. [*Sen. The Hon. C. Enill*]

3. Annual audited financial statements of Telecommunications Services of Trinidad and Tobago Limited for the financial year ended March 31, 2005. [*Sen. The Hon. C. Enill*]

4. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Chairman's Fund of the Mayaro/Rio Claro Regional Corporation for the year ended September 30, 2001. [*Sen. The Hon. C. Enill*]

5. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Chairman's Fund of the Mayaro/Rio Claro Regional Corporation for the year ended September 30, 2005. [*Sen. The Hon. C. Enill*]

6. Audited annual financial statements of National Quarries Company Limited for the year ended September 30, 2002. [*Sen. The Hon. C. Enill*]

7. Audited annual financial statements of National Quarries Company Limited for the year ended September 30, 2003. [*Sen. The Hon. C. Enill*]

8. Audited annual financial statements of Business Development Company Limited for the year ended September 30, 2004. [*Sen. The Hon. C. Enill*]

9. Audited annual financial statements of SBDC Leasing Limited for the year ended September 30, 2004. [*Sen. The Hon. C. Enill*]

10. Annual Report of the Ministry of Public Administration and Information for fiscal year 2004. [*The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams)*]

11. Administrative Report of the Ministry of Public Utilities and the Environment for the period January 2002 to September 2003. [*Sen. The Hon. J. Yuille-Williams*]

12. Administrative Report of the Ministry of Public Utilities and the Environment for the fiscal year 2004. [*Sen. The Hon. J. Yuille-Williams*]

13. Annual Administrative Report of the Siparia Regional Corporation for the period January 2001 to September 2002. [*Sen. The Hon. J. Yuille-Williams*]

14. Annual Administrative Report of the Siparia Regional Corporation for the period January 2002 to September 2003. [*Sen. The Hon. J. Yuille-Williams*]

15. Administrative Report of the San Fernando City Corporation for the period 2003 to 2004. [*Sen. The Hon. J. Yuille-Williams*]

16. Administrative Report of the Couva/Tabaquite/Talparo Regional Corporation for the period 2003 to 2004. [*Sen. The Hon. J. Yuille-Williams*]

17. Administrative Report of the Mayaro/Rio Claro Regional Corporation for the period October 01, 2002 to September 30, 2003. [*Sen. The Hon. J. Yuille-Williams*]

CHILD WELFARE LEAGUE (INC'N.) BILL
Special Select Committee Report
(Presentation)

The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo): Mr. Vice-President, I beg to present the following report:

Report of the Special Select Committee of the Senate appointed to consider and report on a Private Bill for the Incorporation of the Child Welfare League of Trinidad and Tobago and matters incidental thereto.

PRIVILEGES COMMITTEE REPORT
(Presentation)

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. Vice-President, I beg to present the report of the Committee of Privileges of the Senate on a matter of privilege raised by Sen. Prof. Deosaran.

ORAL ANSWERS TO QUESTIONS
Port Authority
(Displacement/Retrenchment of Workers)

91. **Sen. Robin Montano** asked the hon. Minister of Works and Transport:

Would the Minister state how many workers at the Port Authority would be displaced and/or retrenched by the proposed privatization/dismantling or re-organization of the Port Authority of Trinidad and Tobago (PATT)?

The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo): Mr. Vice-President, the Authority is currently in the process of determining the number of workers who may be affected by the proposed reorganization of the Port Authority of Trinidad and Tobago. A final figure is therefore not available at this time.

Sen. R. Montano: Could the Minister state when this final figure would be available?

Sen. The Hon. C. Sahadeo: Mr. Vice-President, I do not have a date at this time.

Port Authority Pension Plan
(Details of)

92. **Sen. Robin Montano** asked the hon. Minister of Works and Transport:

A. Would the Minister inform the Senate:

(i) How much money is currently in the pension plan for the workers of the Port Authority of Trinidad and Tobago; and

(ii) How much surplus is in the said pension plan?

B. Would the Minister also disclose the plans, if any, to distribute the surplus in the pension plan to the workers who will be retrenched and/or displaced by the Port Authority of Trinidad and Tobago?

The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo): Mr. Vice-President, the actuaries have advised that the aggregate value of the pension plan as at December 31, 2004 is approximately $270 million. As at December 31, 2004, preliminary estimates indicate a surplus of approximately $10 million.

A detailed valuation with accurate member data needs to be conducted prior to the winding up of the plan. Any proposals for surplus distribution will be in accordance with the terms of the trust deed and rules and subject to the advice of the actuary.

Sen. R. Montano: Which means what, Mr. Vice-President? Would the Minister not agree that that was “bureaucratese” gobbledegook? The bottom line is: Are moneys going to be made available to a displaced worker and if so, how much? That is a simple question requiring what one would have thought would be a simple answer.

Sen. The Hon. C. Sahadeo: Mr. Vice-President, I really do not understand. I explicitly stated that at December 31, 2004, the value is approximately $270

million and at December 2004, there is a surplus. I think my explanation answers the Senator’s question.

Sen. R. Montano: Mr. Vice-President, seeing that this Minister clearly cannot answer the question, can we wait until the Minister of Works and Transport comes to have the question answered? That answer and nothing is the same thing. I understood nothing and any worker who is listening to this—this is people's lives we are playing with and their pension moneys—will have great difficulty in finding out what is their entitlement.

Sen. The Hon. C. Sahadeo: Mr. Vice-President, most of us who understand pension plans would know that most pension plans’ value today is certainly in excess of what it was valued a year ago, based on the price of its shares and investments. The mere fact that I indicated that there was a surplus of $10 million certainly says something about the plan.

Furthermore, this Government has acted responsibly at all times regarding displaced workers, so I think that the comments made by that Senator are certainly unacceptable.

Sen. R. Montano: Mr. Vice-President, whether my comments are—

Mr. Vice-President: I would like to request that you ask a supplemental question rather than make a speech.

Sen. R. Montano: Would the Minister not agree that her statement that my comments are unacceptable is in fact unacceptable? Would the Minister kindly state who is the person or which is the organization that is administering the pension plan?

Sen. The Hon. C. Sahadeo: That is another question. When it is posed, I will answer it.

Sen. R. Montano: How arrogant!

Mr. Vice-President: Please!

Port Authority and Seamen and Waterfront Workers’ Trade Union (Details of Discussion)

93. **Sen. Robin Montano** asked the hon. Minister of Works and Transport:

A. With specific reference to the takeover of the supply of labour and/or to carry out any of the functions and/or services currently being provided by the Port Authority of Trinidad and Tobago, would the Minister inform this Senate whether any discussions or

negotiations have been, are being, or are intended to be held between:

(i) the Port Authority of Trinidad and Tobago (PATT) and the Seamen and Waterfront Workers' Trade Union (SWWTU) and/or any of the unions' officers; and

(ii) the PATT and/or any private company or any of its representatives in which the SWWTU and/or any of its officers have a direct or indirect interest?

B. If the answer to (i) or (ii) above is in the affirmative, would the Minister state:

(i) the names of the SWWTU Officer(s) and/or affiliated company and/or its representatives with whom the PATT held discussions;

(ii) the dates of the discussions; and

(iii) the names and value of the contracts under consideration?

The Minister in the Ministry of Finance (Sen. The Hon. Christine Sahadeo): Mr. Vice-President, with specific reference to the takeover of the supply of labour and/or to carry out the functions and/or services currently being provided by the Port Authority of Trinidad and Tobago, the Port Authority of Trinidad and Tobago has advised that no negotiations have been or are being held between the Port Authority of Trinidad and Tobago and the Seamen and Waterfront Workers Trade Union and/or any of its officers.

No negotiations have been or are being held between the Port Authority of Trinidad and Tobago and/or any private company or any of its representatives in which SWWTU and/or any of its officers have a direct or indirect interest.

Given those responses, a response to B is not applicable.

Sen. R. Montano: Would the Minister give an undertaking that if and when any negotiations take place with a company, any private company or its representatives, in which the SWWTU and/or any of its officers have a direct or indirect interest, it will be brought immediately to the attention of this honourable Senate?

Sen. The Hon. C. Sahadeo: Mr. Vice-President, this Government continues to demonstrate transparency in all our actions and therefore, I will commit to this Senate that we will continue to demonstrate transparency in all our transactions.

Sen. R. Montano: Mr. Vice-President, with the greatest of respect, that means what? I asked for an undertaking. She said they are committed to transparency. Does that mean that the Government will bring the matter to our attention or they would not? Is it a yes or no?

Sen. The Hon. C. Sahadeo: Mr. Vice-President, I was really optimistic that my colleagues on the other side understood what transparency means. That is another question, but be that as it may, whenever decisions of this nature are taken, it is brought to bear in the Parliament. That is a given—

Sen. R. Montano: What does that mean?

Sen. The Hon. C. Sahadeo:—that information will be shared with the Parliament at the appropriate time.

The following questions stood on the Order Paper in the name of Sen. Wade Mark:

Substance in Water Tank
(Identification of)

96. With respect to the forensic analysis report which stated that a total weight of 433.6 grammes of cocaine was identified within the contents of the six black plastic parcels found in the water tank of Sadiq Baksh, could the hon. Minister of National Security inform the Senate of:

(i) the name(s) of any other substance(s) identified in each of the six black plastic parcel;

(ii) the weight of each substance other than cocaine found in the parcels; and

(iii) the status of the investigation in relation to this incident?

Substance in Water Tank
(Foreign Expert Assistance)

97. A. With respect to the investigation into the discovery of mortar bombs and cocaine in the water tank of Sen. Sadiq Baksh, could the hon. Minister of National Security inform the Senate whether his Ministry has sought the assistance of any foreign investigative agency in an attempt to bring the investigation to a closure?

B. If the answer to (A) is in the affirmative, could the Minister provide the name(s) of the foreign agency/agencies; and

C. If the answer to (A) is in the negative, could the Minister advise the Senate why no foreign expert help has been sought?

The Minister of National Security (Sen. The Hon. Martin Joseph): Mr. Vice-President, unfortunately, I am not in a position to answer questions 96 and 97, only because of an administrative mix-up. I have promised Sen. Mark that either tomorrow or Friday the answer will be provided. It is ready, but there is an administrative mix-up and I do not have the answer with me. I hope that that is acceptable to him.

Sen. Mark: Accepted.

Questions, by leave, deferred.

WRITTEN ANSWER TO QUESTION

Sen. Wade Mark: Mr. Vice-President, may I seek your indulgence very early by seeking guidance to the number of written questions which were due since June. There are five or six questions on the Order Paper that the Senate President and you directed be answered in the month of June. We are now approaching the end of August and none of these questions have been answered. We ask that you direct the acting Leading of Government Business to take immediate steps to have these written responses made available to my good self and the other Senators to whom they are outstanding.

This is very scandalous and outrageous and is disrespect to you and to this honourable Senate, when no responses are given, no explanations are offered and the time continues to drift. We would like you to advise on this issue and rule accordingly.

Mr. Vice-President: Sen. Mark, I have listened to your comment. I definitely would like to look at these questions and to satisfy myself exactly what the situation is and I will make a comment during the course of this sitting.

Mr. Clive Phelps
(List of Cases as Retained Counsel)

14. **Sen. Wade Mark** asked the hon. Attorney General:

(a) Could the Attorney General provide the Senate with a list of all cases involving state enterprises, statutory authorities and any other state institutions/agencies in which Mr. Clive Phelps, Attorney at Law has been retained as counsel; and

(b) Could the Attorney General also indicate the amount of moneys paid to him for services rendered to the State during the period January 2002 to April 30, 2005?

Vide end of sitting for written answer

ARRANGEMENT OF BUSINESS

Sen. Wade Mark: Mr. Vice-President, before anyone rises to speak, may I seek your guidance? I am the Leader of Opposition Business in this honourable Senate and if there are changes to the Order Paper, [*Interruption*] I am making a suggestion to the hon. Vice-President, I am not addressing your good self.

I have indicated to the hon. Acting Leader of Government Business in the Senate that the Order Paper before us indicates the order of business. I see my good friend, Hon. Dr. Rowley is here.

Hon. Dr. Rowley: What are you calling my name for?

Sen. W. Mark: I am very happy to see you and you are not elsewhere. Mr. Vice-President, I was just indicating to you. [*Interruption*] Do you want to guide us on the order?

Sen. Yuille-Williams: Mr. Vice-President, there is an Order Paper before us. I do not know why he is seeing things in the cupboards. There is an Order Paper before us. We follow the Order Paper. Why is he getting so jumpy on the first day?

Sen. W. Mark: Mr. Vice-President: I wish to humbly apologize.

Sen. Yuille-Williams: May I say that we welcome Dr. Keith Rowley to the Senate.

Sen. R. Montano: On what basis is he here because the Constitution says that he can only come if he is debating a matter in which his Ministry has something. If you are following the Order Paper, it says, "A Bill entitled, 'An Act to amend the Indictable Offences (Preliminary Enquiry) Act'". What is he doing here?

Sen. Yuille-Williams: If you would read your Order Paper, you would understand why he is here. It is on the Order Paper, you are not reading the Order Paper. You are just getting excited. We thought you were fully rested.

10:30 a.m.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Order for second reading read.

The Minister of Legal Affairs (Sen. The Hon. Christine Kangaloo): Mr. Vice-President, I beg to move,

That the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill be now read a second time.

The introduction of the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill demonstrates the Government's intention to continue to pursue the goal of modern governance or Vision 2020. While government recognizes, and is committed to the separation of powers, government has the responsibility to provide a legislative framework that will support the effective delivery of justice to the citizens of Trinidad and Tobago.

One of the noted problems plaguing the administration of justice in this country is judicial delay. We all know that justice delayed is justice denied. Justice is such a critical aspect of any civilized society that it will be most unfortunate if a government does nothing about the problems affecting the justice system. It is Government's intention, in the discharge of its responsibilities in relation to the administration of justice, to reform the law governing preliminary enquires. The reform is intended to speed up indictable matters before our Magistrates' Courts. Viewed in a wider context, this Bill will help to tackle the escalating crime problem, by reducing delays in the criminal justice system.

This Bill seeks to reform the system of paper committal, by reducing the delays associated with preliminary enquiries and the method of recording evidence in such enquiries. The Government recognizes this is only but one of the measures that can reduce delays in the system. Reforming the means of giving, taking and recording evidence in preliminary enquiries would go a long way in promoting an efficient system of criminal justice. Other legislation that has been introduced in the Parliament to promote the more effective delivery of justice includes amendments to the conduct of summary trials, trial procedures in the High Court, the issue of bail, police reform and the implementation of sentences of corporal punishment. Together, these measures are intended to secure the reduction of crime by ensuring that criminals are prosecuted expeditiously and punished according to the law.

Mr. Vice-President, I am going to go into the history of the Bill so that it will assist Senators with understanding the provisions of the Bill which is before us today. It would be very remiss of me if I were to continue without indicating that this Bill, I stress, with the exception of clauses 3, 5, 6, 8 and 9 had been

previously introduced in the other place by my friends on the opposite side. This Bill was passed in the other place with amendments on June 08, 2001. It was then passed in this Senate, with amendments on October 02, 2001 but Parliament was prorogued in 2001 before the other place could approve the amendments of this Senate to the Bill and, therefore, the Bill lapsed.

The main purpose of this Bill, as its short title indicates, is to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, which I shall call the parent Act.

The Bill comprises 16 clauses and will not have retrospective effect. Essentially, the Bill seeks to achieve three purposes: first, to form the system of paper committal; second, to empower the Director of Public Prosecutions to prefer a voluntary bill of indictment; and, third, to provide for the electronic recording of evidence at a preliminary enquiry.

The Bill seeks to provide for evidence to be recorded by electronic, audio recording, video recording or Computer-Aided Transcription. This reform would align the recording of evidence in a preliminary enquiry with the Recording of Court Proceedings Act, 1991 or Act No.1 of 1991. This 1991 Act provides that any judicial proceedings may be recorded by any means. It also provides for the verification of notes taken from the new forms of recording evidence.

The Bill would also provide the conditions upon which a written statement by either party to a preliminary enquiry may be tendered into evidence. It also 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 a paper committal.

The first method is to make an order of committal without consideration of the statement. However, the magistrate cannot follow this method where the accused is not represented by counsel or 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.

Finally, the Bill would confer on the Director of Public Prosecutions the power to prefer a voluntary bill of indictment without reference to a judge of the High Court and whether or not a preliminary enquiry has been held, but in limited, specified circumstances.

The Government has circulated a short list of amendments. The amendments to the proposed section 16C(4), as seen in clause 4 of the Bill are intended to achieve consistency in the language as followed from equivalent English precedent. This is necessary, particularly when our Court of Appeal said, in the case of the Director of Public Prosecutions and Magistrate Thomas-Felix, that there was no reason to change the language as seen in the 1994 amendments to the parent Act from the language of the United Kingdom legislation on which the amendments were modelled. A reconsideration of the power being given to the Director of Public Prosecutions, under clause 9, has also resulted in an amendment of that clause, which would restrict the power to five specified categories, rather than conferring an open-ended power.

The amendments to the proposed section 23B (4) and (5), as seen in clause 10 of the Bill, are also intended to achieve consistency in the language.

Finally, the amendment to proposed section 23G, also in clause 10, is to ensure clarity, that is to specify that the appeal being created is against the decision of a judge of the High Court made under section 23(6) of the parent Act and not against every decision made under section 23.

The Indictable Offences (Preliminary Enquiry) Act was amended in 1994 by Act No. 20 of 1994. That amendment was to provide for preliminary enquiries to be conducted on the basis of written statements tendered in evidence by the prosecution. The intention was, by using the paper committal procedure to reduce the time spent at the preliminary enquiry level, while, at the same time preserving the rights of the accused to fair procedure.

This system exists in the United Kingdom and some other commonwealth jurisdictions, including some in the Caribbean, for example, the Criminal Procedure (Preliminary Enquiry) Act, 1995 of Dominica or the Magistrates (Jurisdiction and Procedure) (Amdt.) Act 1984 of Barbados. Increasing delays in the courts led the government of the day to introduce the paper committal system in 1994. However, it soon became apparent to the magistrates, lawyers and the police that the 1994 amendment, which was intended to speed up preliminary enquiries was actually contributing to the delays. The new system, clearly, was not working. The new 1994 amendment 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.

It is the fundamental right of a person placed in penal jeopardy to cross-examine his accuser or witnesses supporting his accuser. Thus, the 1994

amendment was inherently contradictory. It 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 amendment, the government of the day, in 1996, established a committee under the chairmanship of retired Justice Lennox Deyalsingh to consider the matter and make recommendations. The *Deyalsingh Report* pointed out that the ineffectiveness of the 1994 amendment was due mainly to three procedural factors. The first was that the accused, who is given the right to cross-examine the maker of the statement, exercised this right and would normally call prosecution witnesses and so create great delays.

The second was that the accused is entitled to give oral evidence which has to be written down, contributing to more delay and the third was that 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 then to be cross-examined. This is in spite of the fact that written statements were available.

The report pointed out that the 1994 amendment made the situation worse and as a result there arose a tacit understanding between the magistrates and the prosecution that no proceedings would be brought under the 1994 amendment and it died a natural death. I was quoting from the report itself.

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, which is the time when he is placed in penal jeopardy.

This Bill will solve two of the problems identified in the *Deyalsingh Report*: first, evidence can now be recorded electronically and second, once the defence accepts the written statements from the prosecution, the defence cannot object to a paper committal style preliminary enquiry. Hence, these reforms will go a very long way in helping to eliminate the delay associated with a preliminary enquiry.

The amendments proposed in the Bill also arose as a result of the decision of our Court of Appeal and concerns by the Director of Public Prosecutions that certain existing deficiencies in the parent Act should be addressed.

The Court of Appeal, in July 2000, in the case of the Director of Public Prosecutions and Magistrate Thomas-Felix, indicated that the deficiencies in the parent Act should be corrected by amending the Act. The court pointed out that the subsections of section 24A, 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 parent Act.

I would ask Senators present here today 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 Trinidad and Tobago, that is the *Mackay Report,* the commission found that the present system of preliminary enquiry is seriously deficient and recommended that paper committal be used generally.

The Bill also seeks to give effect to the recommendations of the committee established on October 15, 2002, by the Chief Justice, under the chairmanship of Mr. Justice Mark Mohammed, to address the issue of delay in the criminal justice system, in particular the Magistrates' Court. The recommendations of the committee were accepted by the honourable Chief Justice who then made a request to the Attorney General to amend the parent Act. There is, therefore, every imperative from the Deyalsingh Committee, the Court of Appeal, the Mackay Enquiry and the Mohammed Committee for the amendments proposed by this Bill. It is necessary and it is unarguable that the system is at present being hindered by the existing system of taking notes in court by longhand.

I now propose to go into a clause-by-clause analysis of the Bill. Clauses 1 and 2 would provide for preliminary matters, and, of course are the short title and interpretation provisions respectively.

The amendments proposed in clauses 3, 5, 6 and 8 seek to bring the recording of evidence in preliminary enquiries in conformity with what is contemplated by the Recording of Court Proceedings Act, 1991. This is an Act that provides for the recording of all court proceedings. It provides that any judicial proceedings may be recorded by any means, and it speaks to the verification of notes taken from the new forms of recording evidence.

Section 3 of the Recording of Court Proceedings Act, 1991 provides that where a written law provides that proceedings in a court shall be recorded, those

proceedings may be recorded by any means. The relevant sections to be amended are sections 16, 17, 17A and 18. Section 16 describes the procedure for the taking of evidence for the prosecution. Section 17 describes the procedure where the accused gives evidence on oath. Section 17A deals with the record of the accused person's response when asked by the magistrate whether he wishes to give evidence or call witnesses.

Finally, section 18 describes the taking of evidence for the defence. In effect, the existing legislation requires evidence to be taken down in writing and to be read over to the witness and to which he must affix his signature. The signature of the magistrate then authenticates the evidence. Thus, the existing sections deal with the recording of the evidence of the prosecution and the defence only in the form of handwritten depositions. The parent Act requires the evidence of a witness to be handwritten by the court, read over to the witness and signed by him. This signed, written evidence of each witness then becomes a deposition for the purpose of the Act. The parent Act requires evidence to be handwritten, not recorded. It is therefore very important that the parent Act be amended to bring the procedure of recording evidence in line with the procedure set out under the Recording of Court Proceedings Act, 1991. Although the 1991 Act provides for the recording of evidence by any means, it refers to the verification of recording evidence by a certificate of the person responsible for preparing the record and not by the signature of the witness.

The system of recording of evidence by longhand is archaic and contributes to the delay, cost and complexity of cases in the court. The proposed amendments are now designed to speed up the process, which ensures the accuracy of the evidence given, using modern technology to achieve this. Already, the audio digital method of recording of evidence has been implemented to facilitate this process in other magisterial matters. Its full implementation, however, awaits the enactment of the proposed amendments to accommodate a wider range of methods of recording evidence in a preliminary enquiry.

I must emphasize that the proposed amendments to sections 16, 17, 17A and 18 of the parent Act to bring the Act in conformity with the Recording of Court Proceedings Act, 1991, will not abolish the use of taking evidence by longhand. We are merely seeking to provide an alternative method to record the proceedings in a preliminary enquiry. It is intended to reduce the delay inherent in taking evidence by longhand. Hence, both methods, longhand and electronic, will be available to the enquiring magistrate.

Clause 3 seeks to repeal and replace section 16 of the parent Act. The new section 16 seeks to provide that evidence given at a preliminary enquiry by the prosecution can be either handwritten or recorded electronically. Thus, the existing method of handwritten evidence is maintained. But added to this, as I have said, is the means to record the evidence electronically.

I wish to draw the attention of Senators to subsection (4) of the new section 16, which outlines some of the new means of recording of evidence, that is by electronic recording, video recording or Computer-Aided Transcription. This subsection also directs that a transcript of the recorded evidence shall be prepared and verified by the certificate of those responsible for the accuracy of the recording of the proceedings and of the transcripts in accordance with the Recording of Court Proceedings Act, 1991.

Clause 4 would insert two new sections after section 16B of the parent Act, section 16C and section 16D. The combined effect of these two new sections is to provide the conditions upon which a written statement by either party may be admitted into evidence and to set out the procedure a party must follow in order to have such a statement admitted into evidence. Among the conditions specified in section 16C are that the statement is signed by the witness, sworn before a Clerk of the Peace or a Justice of the Peace and contained a declaration that it is true.

Section 16C also proposed that the magistrate may also call the maker of a written statement to attend the enquiry to give oral evidence. Special provision is also made for statements by minors, persons who cannot read or write and for exhibits referred to in this statement.

Finally, once the defence accepts the service of the written statement they are precluded from requesting a preliminary enquiry by way of oral evidence.

I wish to point out three important changes that the proposed section 16C seeks to introduce. The first two changes, as seen in subsection (9), provide 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 will be no room to question the giving and receiving of these statements. Once the statements have 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 receiving, by way of an old style preliminary enquiry; that is to call the witnesses to give oral evidence. He must proceed to hold the enquiry as a paper committal. The police had indicated to the DPP that an accused would normally accept the written statements from the prosecution and being aware of

the case against him, opt to have the preliminary enquiry conducted by way of oral evidence. That manoeuvre will no longer be available.

The third change is to provide a new schedule to the parent 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, defeat the purpose of the written statements. Hence, the need for documentary proof that the statements had been served by the prosecution and accepted by the defence.

The proposed section 16D provides the procedure that a party must follow in order to tender a written statement in evidence in such an enquiry. For example, a copy of the written statement must be filed with the Clerk of the Peace, 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.

Subsection (8) seeks to remedy a possible lacuna in the Bill by expressly providing that the written statement of each witness would be deemed to be their evidence in chief.

Subsection (9) also seeks to remedy a possible lacuna in the Bill by expressly providing that an accused person is entitled to challenge any part of a written statement. The intent is to prevent it from being admissible in evidence against him. Such an important right should not be left to be implied.

Clause 5 seeks to repeal section 17 of the parent Act and replace it with a new section 17. This new section 17 would also incorporate the prevailing section 17A. The prevailing section 17A would be repealed by clause 6. Sections 17 and 17A of the parent Act have been amalgamated because they simply provide the procedure to be adopted, where the accused person gives evidence on oath, where he remains silent, where he reserves his defence and where he refuses to sign the record of his statement. Most importantly, in the case where the accused is informed of his right to give evidence upon oath, he ought to remain silent. The statement addressed to the accused by the magistrate shall include the information that his statement will be taken down in writing or recorded and may be given in evidence at his trial, notwithstanding any promise or threat made to him to induce him to make any admission or confession of his guilt.

The proposed section 17 includes another means of recording the answer. It can be taken down in writing or recorded in the same manner as described in section 16. In addition, if recorded, the magistrate shall cause a copy of the recording and the verified transcript to be kept with the depositions and any transcripts of the recorded evidence.

Subsection (3) includes the provision for the recording of the accused person's response, whether he remains silent or whether he replies, that he reserves his defence or uses words to that effect after being addressed about his rights by the magistrate.

The subsequent subsection retains the duty of the magistrate to record in writing the refusal of the accused to sign the record of his response and this record will be kept with the depositions.

Clause 6 seeks to repeal section 17A of the Act. As I indicated earlier, the existing section 17A will be incorporated in the new section 17. Clause 7 seeks to insert a new section 17A after the new section 17. This proposed section 17A would provide for the tendering into evidence of a written statement of an accused person and his witnesses and for the admission of those written statements as evidence in the trial. A copy of any such statement must be given to the prosecution and each original must be given to the magistrate. Every such statement will be admissible as evidence at the trial, unless the accused or his witness, as the case may be, can prove that he did not sign the statement.

Clause 8 seeks to repeal and replace the prevailing section 18 of the parent Act. The new section 18 simply provides for the taking of the evidence of witnesses for the defence in the same manner as the evidence of a witness for the prosecution taken under section 16 of the parent Act. It will also provide for the procedure to be followed by the magistrate where he asks the accused whether he wishes to call any witness and the response of the accused to this request.

Clause 9 seeks to amend section 23 of the parent Act, to extend the powers of the DPP to enable him to prefer an indictment whether or not a preliminary enquiry has been conducted and without reference to the High Court. I have already indicated that the amendments, which should have been circulated by now, will restrict this power to five specific categories.

The parent Act provides for an accused to be committed for trial in the High Court in one of three ways. After a preliminary enquiry the magistrate makes the committal order because he is satisfied that a prima facie case has been established by the prosecution. A judge of the High Court makes the committal

order after an application by the Director of Public Prosecutions, who considers that the accused should stand trial in cases where the enquiring magistrate does not make a committal order after a preliminary enquiry, or the Director of Public Prosecutions makes the committal on the consent of a judge, after the preliminary enquiry is squashed because of a procedural defect.

It is to be noted that in some of our neighbouring Caribbean countries the prosecution has statutory power to proceed by way of a voluntary bill of indictment. There is the Bahamas Criminal Procedure Code, the Barbados Criminal Procedure Act, the Jamaica Criminal Administration Act and the St. Vincent Criminal Procedure Code.

According to the decision of the Privy Council in the cases of Grant and Others against the Director of Public Prosecutions and Brooks and the DPP and another, a special majority is not required to enact clause 9. In these two cases from Jamaica, the DPP had the power to prefer an indictment without reference to a judge and in the absence of a preliminary enquiry. In other words, the DPP has the exclusive power to indict a person for an indictable offence. The relevant part of section 2(2) of the Criminal Justice (Administration) Act, Chap. 83 of Jamaica is as follows:

> "No indictment for any offence shall be preferred unless…such indictment…for such offence be preferred by the direction of, or with the consent in writing of a Judge of any of the Courts of this Island, or by the direction or with the consent of the Director of Public Prosecutions, or of the Deputy Director of Public Prosecutions, or of any person authorized in that behalf by the Director of Public Prosecutions."

In the Grant case, a coroner's inquest had failed to determine the person responsible for certain deaths and the DPP preferred indictments against the appellants in the circuit court. The Privy Council held, inter alia, that based on section 2(2) of the Criminal Justice (Administration) Act of Jamaica, the DPP was empowered to prefer an indictment at a circuit court without the necessity for a preliminary enquiry and that this did not result in a breach of natural justice.

Sen. Mark: Mr. Vice-President, through you, the hon. Minister is referring to Grant and others versus the DPP in Jamaica. I want to know whether she can share with this honourable Senate whether in the Jamaican Constitution, after gaining independence, that provision that she is referring to—in the context of the Director of Public Prosecutions of Trinidad and Tobago—subsisted and was housed in the Jamaican Constitution that would give the Director of Public Prosecutions the power to do what she is proposing in this legislation? What I am

trying to get from the hon. Minister is whether she recognizes a distinction between the principles of law and the language of law in the context of both Constitutions? She seems to be making a comparison and indicating what took place in Jamaica is relevant in Trinidad and Tobago. I would like her to elaborate and articulate for us that particular line or argument.

Sen. Jeremie: Thank you, Mr. Vice-President. Would you permit me to answer the question? The Grant case deals with the equivalent of the Jamaican statute, not the equivalent of the Jamaican Constitution. The answer to your question is that there was no power contained in the Jamaican Constitution, which allowed the DPP to act in that fashion. What happened in the Grant case is that the Privy Council held that the statute, which allowed the Director of Public Prosecutions that power to go directly for an indictment was not unconstitutional. It was contained in a statute. It violated the constitutional principles, especially the right to a fair hearing and due process right.

Sen. Mark: I have been doing extensive research on this matter and I would like the hon. Attorney General to indicate to this Parliament whether, in the instance of the English law, the Jamaican Court of Appeal instructed the government to reword—in the context of their legislation—and whether he would agree that in the case of the English law there is a provision for judicial scrutiny before the Director of Public Prosecutions can take it upon himself to indict and also take a matter, move it from the Magistrates' Court, and send it directly to the High Court in the case of what he is proposing in this Bill?

I would like him to share with this Senate whether, in the case of the English legislation, which I think Judge Carberry reminded the Jamaican authorities to reword, indicating that that they should seek to follow the English law, which called for judicial scrutiny, rather than giving the Director of Public Prosecutions direct powers to go to the High Court of Trinidad and Tobago, which is a complete abrogation of people's personal liberties, rights and freedoms in this country. I would like him to educate us on this matter, because both he and the Minister of Legal Affairs are misleading this Senate on the Grant and Others vs. the DPP of Jamaica. I would like to suggest to him that they make available to every Senator in this Chamber, copies of the Grant and Others vs. the DPP report so that they can study it comprehensively. You can see the distinction that has occurred in that matter and what they are proposing here. Do not come here to mislead this honourable Senate, please.

Mr. Vice-President: Senator Mark.

Sen. Mark: I am sorry about taking up his time but I need clarification.

Sen. Jeremie: The remarks of Justice of Appeal Carberry in the Grant case were remarks of a single judge, which the Jamaican Parliament has not seen fit to take on board up to today. That is in relation to Justice of Appeal Carberry's point. The Jamaican Parliament has ignored—if you sit in the Court of Appeal and you have three judges, the majority is obviously two. Justice Carberry's suggestion that the law should be amended to reflect the English provision which, at the time, provided not for judicial scrutiny but leave of a judge in order to present the Bill, that suggestion was never taken on board.

To answer his second question, as it relates to the English. The English themselves have now, moved beyond that position. As my colleague will go on to say, if Sen. Mark allows her, there are provisions in the United Kingdom now which allow for the equivalent of the Director of Public Prosecutions to go straight for a bill of indictment. This has changed.

Sen. The Hon. C. Kangaloo: The Privy Council had also reached the same conclusion in the Brooks case and in that case the board confirmed that the preferring of a voluntary bill is just a preliminary step in the initiation of proceedings for trial at the High Court and accordingly, prior notice to the defendant that the DPP was considering a voluntary bill was not necessary. There is therefore the highest judicial warrant but the proposed clause 9 does not require a special majority. I alluded to the amendments that have been circulated whereby the powers given by this proposed amendment, the powers to the DPP, will only be exercised on five specific instances.

The first one has to do with at the close of an inquest, a coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act. The reason for this is that inquests are never heard as expeditiously as criminal proceedings and it is not unknown for inquest proceedings to take five or more years to be completed. When a coroner issues a warrant under section 28 of the Coroners Act, the delay and the duplication of taking the same evidence from the same witnesses in a preliminary enquiry really would be deemed unnecessary and of no value. This is one of the circumstances in which the DPP can issue the voluntary bill.

The second instance is where a co-accused is arrested before the date fixed for the trial of a co-offender who has already been indicted and it is the desire to join them both in the same indictment. It happens not infrequently that a co-accused either cannot be found at the start of the preliminary enquiry or absconds during the hearing. When that occurs, and when he is arrested before the trial of the co-offender, a joint trial is deemed to be in the public interest as it saves cost and it

allows for the presentation of the full evidence for the jury's consideration. Without this remedy, a second preliminary enquiry must be completed. It has been stated as well that oftentimes the prosecution cannot persuade the High Court to adjourn the pending trial of a co-accused to await the completion of the second preliminary enquiry. This is why this is also an instance in which the DPP can proceed.

The third one is where a magistrate has heard evidence and the depositions taken before him disclose a prima facie case and he is unable to complete the preliminary enquiry because of his physical or mental infirmity, resignation, retirement or death. That speaks for itself. To avoid having to retake the deposition of many witnesses in these circumstances, the voluntary bill is appropriate.

The fourth circumstance is where a person is charged with serious or complex fraud. In these cases, a lot of documentary evidence has to be relied on and therefore the fraud proceedings can sometimes be subject to—sometimes orchestrated attempts are made to frustrate and delay proceedings. That is why it is recommended in this circumstance as well.

Finally, in exceptional circumstances, to deal with offences of a violent or sexual nature and where there is a child witness or an adult witness who has been assessed as one subject to threats, intimidation or elimination. Again, these are cases where vulnerable witnesses could be intimidated over time, so an expeditious trial would be in the interest of justice. That is why these five circumstances have been set out as circumstances where the Director of Public Prosecutions can issue the voluntary bill.

Clause 10 seeks to insert seven new sections after section 23, that means sections 23A, 23B, 23C, 23D, 23E, 23F and 23G. The major reform to the paper committal system is seen in clause 10. A magistrate may adopt one of two methods to commit an accused person on the basis of a paper committal.

The first method, as seen in the proposed section 23A, is to give the magistrate the power to make a committal order without consideration of the statements tendered under section 16C, but he cannot follow this method where the accused is not represented by counsel or counsel for the accused wished to make a no-case submission. A no-case submission is an attempt by the defence to have the prosecution stopped. Two no-case submissions may be made by the defence. After the close of the prosecution's case, the defence may submit to the magistrate that the prosecution has failed to prove a prima facie case. For example, there was a failure to prove one or more essential elements of the charge or the prosecution's

evidence is conflicting or contradictory and therefore the charge should be dismissed, or the defence—after the close of its case may also make a no-case submission on the basis of the evidence led by the defence—had so contradicted the case of the prosecution, that the magistrate cannot hold that there is a prima facie case for the defence to answer.

However, often in practice, only one no-case submission is made, that is after the close of the defence case.

Hon. Senators may wish to note that in a preliminary enquiry which is conducted by a magistrate, only in relation to indictable offences, the magistrate does not have to determine the guilt or innocence of the accused. If the accused is committed for trial, the High Court will decide the guilt or innocence of the accused. The magistrate merely has to decide whether the prosecution has established a prima facie case and commit the accused for trial to the High Court. The standard of proof required to establish a prima facie case is the civil standard. On the other hand, to convict the accused before the High Court requires the criminal standard of proof, which is proof beyond reasonable doubt.

The second method, as seen in the proposed section 23B, is to provide the magistrate to consider the statements and allow both the prosecution and the defence to make submissions to the court before he considers whether or not to make a committal order.

I wish to stress two major changes that are stated in section 23B. The first is seen in subsection (2), which seeks to clarify that the magistrate's direction, under this subsection, would not be to the clerk of the court or any other person, but to the prosecutor.

The second amendment is seen in subsection (4), which seeks to provide for greater procedural clarity. This subsection 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 the written statement.

Subsection (4) also preserves the right of the accused to cross-examine any of the prosecution witnesses after the making of the no-case submission. Section 23D by itself is not sufficient. Such a right must be a part of section 23B(4), hence the reference to the right of the accused person to cross- examine is expressly mentioned in section 23B(4).

The proposed section 23C would deem a statement admitted into evidence under section 16C, to be a deposition. A deposition is the written evidence of a

witness given in a preliminary enquiry. After the evidence is written by the court, it is read over to the witness and he signs it as a true record of the evidence he has given on oath. The depositions of the witnesses form part of the record which the enquiring magistrate must forward to the High Court for the trial, if the accused is committed to stand trial.

The proposed section 23D would retain the accused person's right of cross-examination in a preliminary enquiry. There is a general rule of criminal law that a defendant has the right to cross-examine in person or by counsel, any witness who is actually called by the prosecution.

The proposed section 23E would make it a summary offence for the maker of a written statement, which is tendered in evidence wilfully to make a false statement or a statement that he believes is not true.

The proposed section 23F would provide section 55 and Part IV of the Summary Courts Act, Chap. 4:20, shall not apply to proceedings under the amendment proposed by the Bill.

Section 55 of the Summary Courts Act provides as follows:

> "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."

Part IV of the Summary Courts Act, sections 94 to 100, provides for the summary trial of indictable offences. Under Part IV, the magistrate can reduce a charge from an indictable offence to a charge for a summary offence. Hence, if a magistrate does this, this 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, but only to the Court of Appeal against the decision of the High Court, made under section 23(6) of the parent Act.

Section 23(6) provides that where an enquiring magistrate does not commit an accused person for trial, the Director of Public Prosecutions can apply to the High Court to have the accused committed for trial but if the judge refuses, the DPP has no right of appeal.

Clauses 11 to 15 are merely consequential changes, arising out of the earlier amendments. Clause 11 seeks to repeal section 24A of the parent Act and to renumber the prevailing sections 24B to 24D as sections 24A to 24C.

Clause 12 seeks to amend the renumbered 24A by deleting the references to section 24A and to insert the reference to 23A(1) or 23B(9).

Clause 13 seeks to amend the renumbered 24B by removing the reference to section 24A and inserting the reference to section 23A or section 23B.

Clause 14 seeks to amend the renumbered section 24C by removing the reference to section 24A and inserting the reference to section 23A or section 23B.

Clause 15 merely provides for the Third Schedule, the nature and reason of which I have already explained.

Clause 16 provides that this amending Act shall not apply retrospectively, that is, it will not apply to a preliminary enquiry that began before the amending Act came into force.

Sen. Mark: Before you do, may I? I was wondering if the hon. Minister and maybe the hon. Attorney General could probably help us again? I want to know whether she is aware of an Act called the Administration of Justice (Miscellaneous Provisions) Act of 1996 and whether she is conscious of section 65E of that Act and further, whether she is aware of a matter involving *Brad Boyce vs. the Director of Public Prosecutions/Attorney General* and the ruling of the Court of Appeal on this provision that she is now making reference to? Is the Attorney General aware of this matter?

Sen. Jeremie: I am aware of the matter. The matter is listed to be heard in the Privy Council and it has no bearing on what the Senator is saying.

Sen. Mark: That is your view. You are misleading the country, my brother.

Sen. The Hon. C. Kangaloo: In conclusion, the reform to only the law governing preliminary enquiries will not by itself solve the major problems of delay in the criminal justice system. Without saying more at this stage, I wish to indicate that reform is currently being undertaken in relation to the battle of warrants, the entire Bail Act, the Summary Courts Act and the Summary Offences Act.

This Bill is part of a wide package of measures intended to help reduce the backlog of magisterial matters and thus reduce delays in the Magistracy and in the High Court.

The Government is aware that infrastructural and administrative changes are also required. It is the Government's view that what is before the Senate this morning will assist in reducing the backlog and it will assist in the efficient administration of justice.

Therefore, I would ask all Senators to support the Bill that is currently before this Senate.

I beg to move.

Question Proposed

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, earlier in the proceedings I informed the Senate that I was awaiting the instruments of appointment for two temporary Senators. I have since received those instruments and I seek the leave of the Senate to proceed with administering the oath to these Senators at this time. What is the will of the Senate?

Assent indicated.

Mr. Vice-President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Prof. GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MRS. JOAN HACKSHAW-MARSLIN

WHEREAS Senator Howard Chin Lee is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Howard Chin Lee.

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 24th day of August, 2005."

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Prof. GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards
President.

TO: MS. BONNIE-LOW DE SILVA

WHEREAS Senator Satish Ramroop is incapable of performing his duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, BONNIE-LOU DE SILVA, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Satish Ramroop.

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 24th day of August, 2005."

OATH OF ALLEGIANCE

Senators Joan Hackshaw-Marslin and Bonnie-Lou De Silva took and subscribed the Oath of Allegiance as required by law.

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Sen. Robin Montano: Thank you, Mr. Vice-President. When I read this Bill for the first time I read it with mixed feelings and a sinking heart. I understand the objectives that the Minister has so clearly stated, that is to say, everybody in the country wants to speed up the judicial process. I understand that. I understand and

sympathize with anybody who says that the judicial process takes too long, especially in criminal matters.

11.30 a.m.

I would be alluding to it later, but when the Minister said that some inquests take five years; my cousin who was murdered by a policeman, his inquest took five years. So understand this, that I have personal reasons why I would love to be able to support this Bill. I have seen personally how the delays can obfuscate issues and cause miscarriage of justice, such as the son of a witch who murdered my cousin. [*Interruption*]Witch! Witch!

Mr. Vice-President, given that I have always felt—both as an officer of the court and as a lawmaker—that we must be very jealous of the rights of the citizenry, the State has awesome powers when it comes to crushing an individual, and we must be very careful when we wish to streamline a situation, that we do not create a situation whereby we inadvertently strengthen the hand of the State against an individual who may be charged unjustly with a crime. Remember that it is a basic tenet of our democracy, that it is better for ten guilty men to go free than one innocent man to hang. We are not—and I stand subject to correction—but I believe in France an accused is guilty until he proves his innocence. Here, you are innocent until guilt is proved. As a result, a lot of people whose guilt is suspected strongly by the populace have walked and will continue to walk free.

I was very young when the infamous murderer, Boysie Singh was finally convicted, but I remember my father telling me at the time, that he believed that Boysie Singh was guilty of every single murder except the last one for which he was convicted. Assuming, but not accepting, that was true, that was a travesty of justice. I believe that Boysie Singh was guilty of all the murders that he got off. I believe also that was right if you could not prove it, not that I had any sympathy for that wretch. But if he did not commit the last murder and he was hanged for that, while the average person might say well, he got his just dessert, the truth of the matter is the State committed judicial murder, and that is my point.

We must be very jealous of a citizen's rights and not put the State in a position where it can railroad through, because it wants to get at a particular person, for example, a Boysie Singh. I am deliberately going back some 50 years rather than deal with any other accused person of more recent vintage. I leave it to the imagination of this Senate and the country as a whole to think of whom I might be referring. But I am deliberately going back, so hopefully we can have a debate without passions being stirred. We need to debate this Bill very carefully; we need to look at this.

I am reading a book right now about Napoleon Bonaparte, and one of the things, whether you are for him or against him, is that there is no denying his genius. When he was meeting with his people to formulate the Code Napoleon, every time a matter came up he would ask two questions: Is it just? Is it necessary? So, borrowing from Napoleon, I ask the questions: Is it just? Is this Bill just, and is it necessary? I know that I would be met with the answer; it is necessary because of the delays that are experienced. So I would answer that question by saying, well, if the delays are making it necessary, is there another way that we can go forward? Can we go forward, for example, by increasing the number of judges and the number of magistrates? Instead of spending US $100 million on the Caribbean Court of Justice, could we not have spent that money on the Magistracy in the first instance, by doubling the number of magistrates; by doubling the number of Magistrates' Courts; by doubling the number of staff that we have in the Magistracy; by doubling the Judiciary? So, can we in fact speed up the process by doing this, instead of spending $850 million on a most controversial sports complex in Tarouba? If we spend that money on our judicial system, would the delays still exist, or would the delays be shortened considerably? So, is it necessary to do this? The answer is, maybe not. And once you get a "maybe" now you have to start wondering, well, then why are we doing this? Because this is the easy way? Because what we are doing is that we can turn to the population and say, look, we are fighting crime.

Now let me tell you something, Mr. Vice-President, I have said it before and I will say it again, the only deterrent to crime is when the criminals are caught and prosecuted expeditiously. So, I agree with the argument, and nobody on this side is going against the argument, that it is critically important that, one, we catch the criminals and two, we prosecute them expeditiously. In fact, let me make a proposal to the Government—without prejudice to my objections, which I do have, which I would go through in the Bill later on—in that line.

Let us say that we offer you our support on the critical measures, on the paper committal, which I say, now that I am against for reasons that I will go into later, but let us be proactive; let us say that we agree with this, all right fine, but here is the condition. The condition is, that within one month, that is to say 28 days of a paper committal the accused’s trial starts, and if it does not commence and continue on the 29th day, the accused walks and cannot be recharged; he cannot be hauled back upon the same charge. What would that do? Now, if you are really serious about it, you know what that would do? That would mean, from the time a person is committed, he is going to know that within one month he is going

to be facing a trial, and his trial would commence, continue and within a week or a month as the case may be, if he is found guilty he is going to jail.

So, you do not have the situation, and one of my objections to this paper committal that I would be talking about is, I would be saying that I object to it because under the system that pertains at present, an accused person can spend six months to three years in jail, and finally face trial and be found innocent. I would be coming back to that. Let me put forward a proposal, and I put it forward seriously, not tongue-in-cheek, not facetiously, but I put it forward very seriously, and to strengthen the argument, I say, can you imagine—because I agree with the proposal and I agree with the statement that says: It is critical that people be charged and be tried as quickly as possible. Well all right, let us do it as quickly as possible. But if you are coming up with a paper committal, then a person must have his trial commenced within one month, not three months; not six months; not ten months; not 36 months, but within 28 days, and if the State is not ready then that is the State's problem, you should never have charged him in the first place. An individual should not have to rot in jail while he awaits his trial.

It is a positive proposal to deal with a problem that I recognize. It is not to say that we on this side are immune to the problems or do not understand the problems of the society, we are suffering from them. Just the other night I went out with some friends and my wife to a popular restaurant on Ariapita Avenue, which overlooks the avenue, and while we were there we noticed a man hanging around our car, and he hung around our car for at least an hour. When we had to go, my friend and I went, got the car, drove the car to the restaurant, the girls got in quickly and we drove off. We were frightened. To be fair, the man did nothing, but we were frightened. My experience is not an unusual experience; this is the experience that people are having because of the crime situation. I want to stress that nothing happened, the man made no move to threaten us or anything, but he was hanging around, and this was 9.00, 9.30 at night, and no, he was not there to watch the car, because we asked the people who owned the restaurant who is he and they did not know.

The point of the matter is, it is not that we are immune—it is not that we do not understand— but at the same time, repressive and harsh legislation does not fix the problem. What fixes the problem is intelligence, proper policing and efficiency all round. This legislation, with the greatest of respect, does not promote efficiency. All this legislation is doing is making it easier for the State to get a committal, while ignoring the rights of the citizenry, and that is the problem.

If I might go through and turn to the second part of my submissions—for want of a better word—this morning. Clause 3 of the Bill, which replaces section 16(1) to (5), is more or less the existing law, slightly changed, section 16C(4), which is on page 7, is new, which is the evidence of the CAT recording and CAT transcripts, but that is acceptable, there is nothing unusual about that. Where this Bill begins to bite is when you get to clause 4. Clause 4 is basically when we start dealing with the question of a paper committal. Now, the issue here is this; can you really trust the police? The answer to that from at least 50 per cent of our population is going to be no.

Sen. Mark: Ninety per cent.

Sen. R. Montano: Probably 90 per cent my friend is saying, and I believe that, but I want to be ultra conservative. I want to be ultra conservative and I want to say it because I know I cannot be contradicted on this, that at least 50 per cent of the population does not trust the police. With regret, I have to be counted among that 50 per cent, I do not trust them. Let me give you an example.

Less than three weeks ago there was a dreadful story in the print media concerning a senior police officer and making dreadful accusations against him, basically that he was involved in kidnapping. Now, that story was met immediately—it was a serious allegation. The story was met with serious denials and there the story rests. I am not in a position to say whether that story is true or false, let me make that clear. What I am in a position to say is that that story disturbed the living daylights out of me. Because the accusation has been made, the denial has been made, but if it was true and if the authorities knew about it and were condoning it, you would expect the serious denial.

The fact of the matter is, the serious denial takes us nowhere, that is the truth. The serious denial takes us nowhere. The editors and the reporters of the two newspapers which published it have not resigned. They have not come and said "Okay, okay, okay, we misled the general population." The newspapers have basically stood by their story. So here is the population and the Senate of Trinidad and Tobago left with a story. At least half the population of Trinidad and Tobago believes the story to be true despite the denials. At least half believe the story. What a dreadful situation, because it means that at least 50 per cent, which is an unacceptable number, does not have faith in the police or in the Government. An unacceptable number! You cannot have that. Government must govern with the consensus of all. You would always find a minority who would be opposed for one question or another, but the truth of the matter is, right-thinking people would say yes, this is a good thing, I agree with this or that is a good thing. But when

you have an unacceptable number of people not trusting the police who are supposed to protect and serve, you are in serious trouble. You are in serious, serious trouble.

There are accusations on the street, that the policeman who was killed, who was a member of the Anti-Kidnapping Squad, that was not an accidental killing but a murder, because he was anti the cop who was found out. [*Desk thumping*] This is what the street is saying. Is that not terrible? Is that not absolutely terrible? I would expect the Attorney General and the Minister of National Security to stand and say it is not true, it was an accident. Fine, But that is not the point. I am not on whether the story is true or false. I am on the perception that is in the public, and the perception is that a terrible—

Sen. Jeremie: Senator, would you give way?

Sen. R. Montano: Of course.

Sen. Jeremie: As I understand it, there is an investigation under way into that matter. So, if you expect the Minister of National Security or the Attorney General to jump up and give a view in advance of the results of that investigation, that is not and cannot be the case of any responsible person.

Sen. R. Montano: You interrupted me to tell me that?

Sen. Jeremie: No, I am just telling you.

Sen. R. Montano: Mr. Vice-President, with respect, the Attorney General is missing my point. I do not expect him to say anything on it, other than what he just said. Speaking for myself, I have a little private bet on and I would let everybody guess what my bet is with myself. I am betting myself one dollar to one donut that the investigation would come out in a certain way. I am sure that my bet with myself is the same bet that the general population has as well. In any event, that is not the point. The point is lack of trust.

This is where I turn back to this Bill, because here we have where a magistrate can commit a person to the assizes for trial which means that that person is going to spend six months, a year, three years in jail awaiting his trial on the statement of a police officer who says, “Well, I saw Robin Montano doing whatever, whatever, whatever”, and the poor wretch rots in jail. When a person goes to jail he is not capable of earning his salary. If he is paying rent, his family goes into the road. If he is paying a mortgage, the mortgage company would forfeit. He would lose his home; his family would break up. When a person is jailed without a trial, it is a serious, serious problem for him, or her, as the case may be. Do a lot

of the people who are charged deserve to be charged? Yes. But you are missing the point if you say that.

The point is that every single person who is charged is presumed innocent until they are found guilty, and that is the issue. We are playing with fire here. We are going to give the police—whom the population generally does not trust—even more power; you are going to make it easier for them to lock up people without giving them a corresponding back-up, which is why I made my proposal of a one-month trial, and that the guy walks if you are not ready. You cannot do that.

Sen. Jeremie: Thank you very much for giving way. The paper committal procedure has been tried in England; it was the subject of your government's intervention in September 2001. I have been reading the speaking notes from the contribution of Senator, as she then was, Gillian Lucky, in this Senate, and they are almost word for word with what my colleague Sen. Kangaloo put forward. The point is that the paper committal procedure is one means, not the whole thing, but it is one means of getting a hold on the chaos that is going on in the Magistrates' Courts. If you think that the trial is going to be speeded up, then there would be no question of applying the old court process of spending three months in jail before a trial on indictment. As a matter of fact, as you go further on into the Bill, you see that the Director of Public Prosecutions (DPP) has certain powers to refer matters directly to a high court.

Sen. R. Montano: With the greatest of respect, the Attorney General is misunderstanding my point. Let me deal with his points first. First of all, in England, when a person gets indicted, his trial is swift. His trial is not in one year’s time or three years’ time, his trial is swift, that is the first point. The second point is that speaking for myself, I have never thought a good argument saying well, yesterday you supported this and therefore you have no choice but to support it today. My answer to that is, be that as it may, there is always the possibility that yesterday I might have been wrong, or yesterday I might not have noticed certain things. As things have developed and as I get an opportunity to look at a problem anew, and I see certain dangers, then I must have the freedom to be able to say you know what, I know I proposed that yesterday, but I think I should amend it slightly or I think that I should resign from that position for any one of a number of reasons. But it is not good enough to come and tell me that I supported this at one time. History is replete, both in this country and in the world at large, with people taking a stand on certain issues. Take for example at one time America supported Osama Bin Laden when he was opposed to the Russians. Then America turned around now and Osama Bin Laden is the number one

terrorist as far as the United States is concerned. Can you come with the argument and say that you supported Osama yesterday?

Sen. Mark: They supported Saddam Hussein yesterday.

Sen. R. Montano: They supported Saddam Hussein yesterday. They supported an awful lot of people yesterday, and for one reason or another, good, bad or indifferent, they have fallen out. So that the argument is not what was done yesterday, the argument is: Is this just and is it necessary? [*Desk thumping*] Is it just and is it necessary? That is the argument, and that is what I would urge hon. Senators to bend their minds to, because I have already dealt with the question of necessity and which I would return to. But in dealing with this paper committal and asking the question, is it just, let me put it in a sentence. Do you trust the police in giving them this power? Simple question, because if the answer is yes, you trust the police, then go ahead. You want to interrupt again? Of course John, go ahead.

Sen. Jeremie: It is not the police; the paper committal has to be signed off by the Director of Public Prosecutions so that you are not asking the police to do—I am not saying that the police ought not to be trusted, but I am simply saying that you have an intervening person who is akin to a judicial officer involved in the administration of justice. [*Crosstalk*] This is the position in every developed country which has faith in its independent institutions—the DPP is an independent institution. Unless we use these things, we would be in a morass forever. The last point I would like to make is that this is not an English problem alone, our colleagues in the Caribbean: Barbados, the Bahamas and so on, we are virtually the last to go for this paper committal.

12 00 noon

Sen. R. Montano: Thank you, Mr. Attorney General. Mr. Vice-President, in reply to the Attorney General I would say this: The DPP does not have its own independent investigating force, therefore at the end of the day the DPP is dependent upon the information that is being fed to him by the police.

Sen. Mark: Precisely.

Sen. R. Montano: "All roads lead back to Rome." The truth of the matter is that there are too many accusations. Mr. Vice-President, I can tell you that an Assistant Commissioner of Police—that is how high I am going—I know, and I accused publicly, outside of Parliament, I accused Assistant Commissioner of Police, John Grant of covering up my cousin's murder and I said that he was an accessory after the fact to murder. And that went all the way up, that is how rotten

the police service is. Now, let us assume that this dreadful story of three weeks ago is referring to an Assistant Commissioner of Police; do you understand where I am coming from?

Sen. Dumas: You feeding it man.

Sen. R. Montano: There is no faith in the hierarchy of the police service of this country; there is no faith in it, and this creates a terrible problem. This is the point! So, when you are coming to deal with this thing—let me try and make myself clear; I agree that this backlog has to be broken; I agree that things have to move. I have offered one solution; it is not as if to say I am coming without a solution. I have offered one solution and the solution I have offered to this, which I think is not right; it is not just and it is not necessary. But I am saying, okay. If I accept that it is necessary and I accept that it is just; then make it just so that the accused does not rot in jail forever and forever amen.

Sen. Mark: Strike a balance.

Sen. R. Montano: Strike a balance with the power of the State against the individual. That is the point. Mr. Vice-President, you are looking at, for example on page 10 of the Bill, new section 16 C(5),

> "Where any party objects to the admissibility of a written statement under subsection (3)(e), the Magistrate shall make a ruling on the objection and where he overrules the objection, the statement shall be admitted in evidence in accordance with subsection (1)."

So what you have here is a magistrate having a discretion, a total and complete discretion. Why are you giving the magistrate the discretion? A policeman goes and he makes a statement that is issued and he says, yes, I found 10 rounds of ammunition in John Doe's house and so on and so forth. I personally found it there, and I was present on August 10, 2005, and the magistrate looks at that.

Mr. Vice-President, about 10 years ago I did a case whereby—I think I had mentioned this case before—my client lived next to a minor drug lord in central Trinidad. The client made the mistake of going to the police and complaining about drug deals going down next door. Next thing my client knew a party of policemen raided her house and found a gun and several rounds of ammunition and she was charged. I got her off at the preliminary enquiry (PI). Do you know how I got her off? I got her off because I was able to cross-examine the police and the cross-examination of the police showed huge discrepancies that did not show

up in their statement. So my no-case submission was able to succeed, but in that particular case she would have gone down. Now she was out on bail, admittedly.

Sen. Dumas: Are you advertising work?

Sen. R. Montano: No, I am not.

Sen. Mark: No, he is not advertising, he is just giving an example, man. [*Crosstalk*] Robin, address the Chair, forget him, you are going good.

Mr. Vice-President: Please, Members!

Sen. R. Montano: She got off. She was out on bail, which was a good thing. But let us pretend that the charge was more serious, not that it was not serious, but I mean more serious so that she was unable to get bail for whatever reason, in about nine months, a year's time, she was going to rot in jail and go to the assizes. Perfectly true, she would have gotten off, eventually. Because what is good at the preliminary enquiry is also good at the assizes, but she would have been in jail; that is the point! Now in that particular case, as I said the lies of the police officers came out in cross-examination. That came out. If you had heard the evidence in chief, you would never have known, because let me tell you something, the police are very, very good at giving evidence. The police stand and they have learned well how to keep their story tight and stay in there, so that you have to have a lot of extraneous evidence to be able to catch them. But if you just rely on their statements, you are going to go down 99 times out of 100 or better still 999 time out of 1,000. That is the problem.

So here you have a paper committal coming through. Is it just? With the greatest of respect, Mr. Vice-President, in a thousand years that cannot be just; it cannot be right. Do you know who is going to suffer the most? The poor, the indigent, the ones who cannot afford good lawyers, they are the ones who will really suffer. We cannot do this to our population.

Sen. Jeremie: Thank you again, Sen. Montano. The Bill which is before you preserves the right of the magistrate, even in cases where there are written statements, at the end of the day, to review the statements and to decide that the evidence is insufficient and that is the end of it. I just thought that I would share that with you, so that your example would be taken care of.

Sen. R. Montano: Mr. Vice-President, with the greatest of respect, my example would not be taken care of. I am aware; I have read the Bill; trust me when I say I have read it. My example would not be taken care of, because there

would have been no opportunity at cross-examination, and it was the cross-examination that showed up the flaws. That was the point!

To show you how unfair the Bill is, let me find it—on page 14 of the Bill, section 17(5) which will be replacing section 17(1), the magistrate tells the accused: "Having heard the evidence do you wish to say anything in answer to the charge? Do you wish to give evidence? You are not obliged to say anything, but if you do, you must do so under oath", and this is my point, "you will be subject to cross-examination. So, you can get the accused up in the box, you can get him under cross-examination, but you cannot get the other person—the one on whose paper statement—you cannot get him on cross-examination.

An imbalance, in favour of the State, and that is the point. The point is that what we must be doing at all times—I cannot remember the exact wording of our oath and I do not have the Constitution in front of me, but our oath as Senators and as Members of Parliament is to do justice for the people of Trinidad and Tobago. Our oath is to make sure that whatever we do it comes out right for the people, and I ask the simple questions that I got from Napoleon: "Is it just and is it necessary?" It cannot be just, whereby you speed up a process where an accused does not have the opportunity, basically, to face his accuser in a preliminary enquiry and you can lock this person up for upwards of a year, two years or three years, and then say, "Well, that is all right, you will be taken care of when the trail comes." That is perfectly true.

Let us go with that 50 per cent of the population for the sake of argument for the moment, but not accepting that the 50 per cent of the population is right not to trust the police. Now, let us say that there is a policeman who wants to get John Doe out of the way, for whatever reason, he could use this process. In the 1930s Chicago was rampant with crime. There were all kinds of crime lords, I cannot even remember their names now, but the television and American movies are full of them.

Sen. Dumas: Al Capone.

Sen. R. Montano: Al Capone, thank you. Al Capone and the rest—a senior moment. In Chicago, during the 1930s there was an expression, "drop a dime". You dropped a dime on somebody by going to the police and making up an accusation against him and the police would pick up the person who would spend

the next two to three years having to defend himself. The person would effectively be taken out of circulation by having the dime dropped on him. Are you going to look at me on this day in August 2005 in the 21st Century and tell me that there is absolutely no possibility of a dime being dropped on somebody via this? Mr. Vice-President, it cannot be, and we the lawmakers must be very careful. If we are not, we are just going to make it easier for the State and easier for corrupt police officers to do their work. That is to say, deal with people who are not corrupt, necessarily.

I say all of this against the background of rising crime in the country, against the seeming inefficiency of the police to deal with it. The seeming inefficiency of the Government—but this is not the place for that debate. There will be another time and another place, but it certainly is the background under which we are all labouring and it is something which the general population is becoming increasingly disturbed about. Do you know what some people in the streets are saying? Some people in the streets are saying that the Government is deliberately allowing the crime situation to get out of hand so that they can bring in repressive laws, so that they can lock up people who are opposed to it fairly easily.

Sen. Dumas: That is your story.

Sen. Mark: No, that is what the street is saying.

Sen. R. Montano: That is what the street is saying.

Sen. Dumas: Not in Tobago.

Sen. Mark: Anyway, we are not in Tobago. We are in Trinidad. [*Crosstalk*]

Sen. R. Montano: Actually, I got that from a Tobagonian.

Sen. Mark: Forget my friend, he is trying to divert you.

Sen. R. Montano: Of course he is. Mr. Vice-President, he is not dealing with the real and substantial concerns—

Sen. Mark: He is a trade unionist, you know.

Sen. R. Montano:—that reasonable people have.

Sen. Mark: He is protecting workers' rights you know!

Sen. R. Montano: Well, no trade unionist can look at this—I looked at the amendments in clause 9 of the Bill and when I had seen clause 9(b) in the first instance about the Director of Public Prosecutions having to prefer an indictment whether or not a preliminary inquiry has been conducted, I have a big red "no"

against it. But when I saw the first amendment, I agreed, reading new subsection (8) (a):

> "…where at the close of an inquest, a Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act;"

I agree. That is reasonable, because in an inquest a coroner can and will look at the whole issue. A coroner in any case is a magistrate, and a magistrate will have a good idea. But then, when I turned the page, and I saw where a co-accused was arrested before the date fixed for the trial of a co-offender, who was already being indicted and desired to join them both in the same indictment—I heard what the Minister had to say. I understand the logic. However, I come back to the question of the justice, because if I am a co-accused with you, Mr. Vice-President, it may very well be that for one reason or another, you had no idea of what was going on, and therefore, you had no opportunity whatsoever to be heard at a preliminary enquiry and it is not necessarily just to have you come with me straight to the assizes. It is not necessarily just! It might be, but also it might not be.

So what are we going to do? Are we going to say well because it might be just in certain instances, we are going to make it just in all of the instances? It cannot be right! That cannot be right. I cannot support that. I understand the logic of what the Minister is saying, but she is not dealing with the justice to the co-accused who did not go through the preliminary enquiry, and that is the point.

Mr. Vice-President, through you, I address the Senators. Senators, we have to do what is right for the people of Trinidad and Tobago.

Sen. Bro. Khan: True, true.

Sen. R. Montano: We have to protect the individual against the power of the State. [*Desk thumping*] The convenience of the State is secondary to the liberty of the citizen. [*Desk thumping*]

Hon. Senators: Definitely, definitely!

Sen. R. Montano: That is the point!

> "where a magistrate has heard evidence and the depositions taken before him disclose a prima facie case and he is unable to complete the preliminary enquiry because of his:
>
> (i) physical or mental infirmity;

(ii) resignation;

(iii) retirement; or

(iv) death;”

Again, I understand what the Minister said. But who decides? Who decides that there has been a prima facie case? Who? Is it the lawyers for the accused?

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. R. Montano: Thank you, Mr. Vice-President, and I am sorry for being so long. [*Interruption*] I had intended to talk for a brief time this morning. Yes, as I was saying, Mr. Vice-President, in new subsection (8)(c), who is to determine whether a prima facie case has been done? The DPP? But, the DPP is the prosecutor. That is the prosecution. For the instance of a trial, that is not an independent person. I understand the Constitution and I understand that the DPP is independent and all the rest of it, but for the purposes of a trial, a DPP is not independent; he is the guy on the other side. As far as the accused is concerned he is the bad guy. It cannot be just! Who determines that? The inference here is that the person who determines the prima facie case is in fact the DPP. That cannot be right! Then again:

"where a person is charged with a serious or complex fraud…”

Hon. Senator: What is that?

Sen. R. Montano: What are you saying here? Are you saying here that the magistrates and the Magistracy do not have the competence to deal with serious or complex fraud? [*Interruption*] Is this what you are saying here, that you want to take this out of the hands of a judicial officer because you are saying this is a vote of no confidence in the Magistracy?

Sen. Mark: Imagine this!

Sen. R. Montano: It cannot be right. It cannot be right! Again, all my arguments come back to this: That, is it just and is it necessary? If it is just, show me why it is just; if this is necessary, show me why it is necessary. Is it necessary, because we all know that there are certain fraud cases going on in the country right now? We all know that they have gotten bogged-down at the preliminary

enquiry. We all know that. They are sub-judice so I cannot comment, but we know that that is going on. Questions can arise as to why, but most certainly the lawyers for the accused are exercising their rights of the accused to be innocent until proven guilty. Because you are having a hard time in a particular fraud case; is that an excuse? [*Interruption*]

It cannot be right, just because you are having a hard time. If you are having a hard time, then could it be that you were incompetent in the first place—I ask the question open ended—and that the charges should never have been brought in the first place? Could it be that?

Sen. Mark: Political charges.

Sen. R. Montano: Could it be that the charges were political, as some people say, me included? Let me withdraw the last remark about me included, because I am trying to be as neutral as possible—

Sen. Dumas: You cannot withdraw that. [*Crosstalk*]

Sen. R. Montano: Then look at new subsection (8)(e)"

> "…in exceptional circumstances to deal with offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination."

Sen. Mark: It is just like the Government, you have open season.

Sen. R. Montano: I understand this. In a highly publicized trial recently, where the jury could not agree, the street was saying that the jury was intimidated. Whether that is true or not, is not the point. There is a perception in the public that the story is true. I am not saying that is true. I am talking about the perception, so I understand that. I understand the question of a child needing to be protected or a woman needing to be protected from a rapist, but at the same time I know of cases through criminal lawyer friends where individuals have been accused of rape, when in fact, no rape had taken place. What had happened is, for example, a husband came home and found his wife with a boyfriend and the wife cried rape in order to maintain her marriage, and that has happened. That insidious, nasty and horrible rapes take place is true. That women are at a disadvantage is also true. That we need to protect women, I speak as the proud husband of one wife and three girls—

Hon. Senator: Three wives you have.

Sen. R. Montano: One wife. [*Laughter*] I have three daughters all of them in their 20s. So let me tell you something, I understand full well the dangers that women face and I am extremely sympathetic to them. But is this just? Is this necessary to protect them? I would respectfully say, "no".

Mr. Vice-President, time forces me to wind up, so I will wind up by saying this: Hon. Senators, this Bill in its present form is unacceptable. I am personally of the view that this Bill requires a special majority in order to pass. I understand the Government's desire and I am accepting at face value the statements by the Government that something needs to be done. However, not this; if anything, let us go to a select committee, and let us see how we can fix it.

I ask the Government to consider my proposal seriously. That if they want this Bill, to make it so that on a paper committal the person goes to the assizes within 28 days, and if the trial does not commence, the person walks, for all of the reasons that I have articulated earlier. And I say to hon. Senators, in these times, more than any other, the eyes of our children, grandchildren and great grandchildren would be upon us.

If we pass oppressive legislation, unjust legislation and unnecessary legislation, because we are frightened, we will be going down a slope of dictatorship where evil men can and will do wrong. Evil men can and will use just what we are debating here today against us.

Thank you very much. [*Desk thumping*]

Mr. Vice-President: Hon. Senators, it is almost 12.30 p.m. and we shall now take the lunch break and return at 1.15 p.m. The Senate will now be suspended for lunch.

12.28 p.m.: *Sitting suspended.*

1.15 p.m.: *Sitting resumed.*

Sen. Dana Seetahal: Mr. Vice-President, the current law as we all know by now on preliminary enquiry is contained in the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01 and because I like to do it this way, I want to start off by saying what is a preliminary enquiry.

Before we should seek to amend the law, I think it is important for us to understand what it is and its purpose. Insofar as indictable trials are concerned, there is a two-tiered stage: a preliminary enquiry which happens at the Magistrates' Court, and the trial before the judge and jury. The law we are dealing with deals with the preliminary stage at the Magistrates' Court which is where the

magistrate would consider the evidence and decide whether it is enough to have a person stand trial.

What is happening currently is that many matters are being delayed in the Magistrates' Court because the real backlog is there, as everyone knows, and Sen. Prof. Deosaran has mentioned it in the Senate previously. The purpose of the preliminary enquiry—we have to balance the time as against the purpose—is to make all the evidence known to the defence; it is to disclose to the defence that this is the evidence for the prosecution and also to have a tribunal, and it is the magistrate who assesses whether or not we should have this person go before a judge and jury for this serious offence.

In relation to minor matters, the magistrate can determine that and decide whether or not the person should be convicted for shoplifting or whatever. But when you are talking about murder, rape, or arson, these are for a jury and when you are dealing with trial by your peers, at least there should be an interposition of a judicial body, a magistrate to determine whether there is a prima facie case.

Having regard to the fact that the preliminary enquiry is merely to permit disclosure to the defence, one has to look at how it operates. At present what we have in Trinidad and Tobago is what is called "old style preliminary enquiry". We tried in 1994 to pass legislation to come to terms with the problem and that was really based on the 1967 English Criminal Justice Act.

Unfortunately, when the legislation was drafted and came to Parliament, it was interfered with so that it read that if the magistrate was satisfied that "all the evidence" required by the court was in written statements, then there should be a committal. The matter went to the Court of Appeal and the President of the Court of Appeal, Chief Justice de la Bastide asked: How can any magistrate decide that this is all the evidence that is required? All a magistrate has to do is to decide whether there is a prima facie case made on the evidence.

The Chief Justice said that the legislation was bad, there was interpretation and interference with the previous English law which we sought to copy, and that interference made it bad and, therefore, the legislation was useless, and as a result, there have only been three paper committals that I know of from my research in the last 10 years. Therefore, it was touted that the legislation which took days to come to this Parliament is of no use. In the life of the last administration, there was in fact an effort to pass legislation to correct the 1994 defect but I think it lapsed.

Several other Caribbean jurisdictions; Barbados notably, Antigua, Dominica, Grenada, and now St. Lucia have gone ahead and carried their law

forward. It is no longer based on the 1967 English law; they have actually tried to base it on the 1996 Criminal Investigations and Proceedings Act in which there is no choice by the defence to cross-examine and make a no-case submission. In other words, in most cases, under the 1996 English legislation, all the information is disclosed because remember the purpose of a preliminary enquiry is to disclose all the evidence.

You look at it and unless it is clear that the evidence is insufficient so that it would justify a no-case submission, there is an automatic committal to trial. That is the law as it now stands. In Barbados there is that option, and in St. Lucia, in its 2004 legislation it is included. Most of the other jurisdictions have based their legislation on the 1967 criminal justice legislation of England and the 1980 Act which talks about written statements.

The 1967 Act allows the magistrate to commit without consideration of the evidence if you have all your statements served on the defence and the defence does not say that it wishes to cross-examine or make a no-case submission. That means that they agree there is a prima facie case, the magistrate says, okay, you all agree, well committal.

The 1980 Act was designed to allow written statements to go in whether or not there was a committal. So in other words, all of your evidence could be in written statements. In contrast to the above, if the defence wishes to cross-examine, it cross-examines on this written statement, it does not cross-examine on this, and cross-examines on that, so what you have is a committal with consideration of the evidence. In one case, everything is written and both sides agree more or less that the evidence is enough and you go straight upstairs—as we call it—to the jury.

In the other case, you have the written statement; the other side also has it and they say okay, we will cross-examine this witness and not this one. The point is that in this system the entire process is much speedier than it is now. For instance, I have a preliminary enquiry that I am doing which started in October last year. It is an ordinary trafficking, it is not like 700 million worth or 1½ tonnes, it is just 2 kilogrammes of cocaine, and up to now the matter is going on.

Most times it is the defence calling an adjournment, because of all kinds of strategic reasons they will give. At some the defence may want to speed up things because they might see it is inevitable that committal is coming.

If the system was in place where you can tender a written statement of formal witnesses such as the photographer's evidence and other things—right now you

have some of it—the scientific evidence can go in as a document. It helps the process so you do not have to have the scientific officer come and testify that I took a sample of the cocaine, weigh it, and all that. So that helps.

The photographer's evidence scenario could help but if you consider the main complainant's evidence where he must go through and say that he marked the exhibit with his initials, he marked the bag in which he put it, he took it to the chemist, the chemist marked it and he came back and checked it again—do you know how long that evidence takes? It is like half day for one witness just for examination in chief; then there is cross-examination and if there is more than one accused, you can have multiple cross-examinations and, therefore, the preliminary enquiry would go on and on. That is why it should be clear to everyone that this piece of legislation would go a long way towards reducing that terrible backlog in the Magistrates' Court.

People think because we have a court dealing with trafficking of drugs that it makes things simpler. It does not. It just means that you have shoved all these matters there and the same magistrate may also have to deal with inquests, and gambling and betting so you will have many matters and the more active our police are in detecting the drugs—and actually, that is increasing now—it appears that you have much more trafficking and much more drug usage, but what it means is that you are merely detecting more. That is the point.

We have always had it, so if you look 20 years ago you may see 10 cases of trafficking but it means that nobody was detecting it, and people say we have 300 cases now and there is an increase in trafficking, but not really, it means that there is actually more work being done. It is like rape or incest, five, 15, or 20 years ago when I worked in the Director of Public Prosecutions (DPP) Office there might have been two per year and now there are 25. So we suddenly have more incest? No. People actually have the guts to talk about it.

Getting back to the point here which is committal, it is clear that the current law is a problem, that is, the law which we tried to introduce in 1994 cannot work. In the existing Act you have the provision for old style preliminary enquiry and we are saving that provision as I see it; it is being saved in section 16 of the proposed law. It is not to do away with it entirely, because you can still have it but you will have the alternative procedure which is just as it is in England.

My view is that you should do away entirely with the old style, but not necessarily in this piece of legislation. Why have it if we are going to have "Paper Committals" where you have a choice where you say you want to cross-examine, a witness or do not want to? It seems to me, from what I have been hearing, the

concern is really with the powers which are to be given to the DPP to file a voluntary bill, that is what I am getting. There is no real concern with the institution of paper committal.

The voluntary bill procedure is one that is used in five jurisdictions already in the Commonwealth Caribbean; among them Jamaica, Barbados, St. Vincent, Bahamas, and so far Trinidad and Tobago has it for specific circumstances where, during the course of a preliminary enquiry there is a technical error, so instead of sending the matter back you would just correct it and have a voluntary bill which means that you would have had a preliminary enquiry, you would have had the evidence, but there was some technical flaw so you do not need to redo the work.

Before I get too technical and cause some people to fall asleep, let me say that a voluntary bill is desirable in some jurisdictions where there is no power when a magistrate has discharged an accused to go to a judge for a warrant. In Barbados you do not have that, so when this happens the DPP would just go for a voluntary bill.

In Trinidad and Tobago, we have the Judge's Warrant of Committal, so why would we need a voluntary bill? We need it for the same reason that some jurisdictions outside the Commonwealth, in particular England, use them for cases such as complex fraud matters. It is said that if you go through a full preliminary enquiry in these matters it would take years. Because of the documentation and the number of witnesses you are dealing with at the preliminary enquiry stage—remember that you have to disclose all your evidence pre- trial—you may choose to do without it. In England it has been felt so and legislation has been passed to do away with the need for any preliminary enquiry and to go straight to trial because of the length of time it takes.

I have heard what Sen. Robin Montano has said on that. I came in late, but I grasped some of it, and I understand that the concern is that you would have no preliminary enquiry or any opportunity to be heard at that stage. My feeling is that the preliminary enquiry being for disclosure, when you have a trial all the material would have been disclosed to the defence especially in serious fraud matters like what is happening now. All the boxes of documents have been disclosed to the defence and this is mandatory so they would have everything whether or not you have a matter go straight to the jury or not. So that is one point.

The second point is that there is a provision in the law or at least an opportunity for the defence when a matter comes up for the first time at trial to ask the court to quash an indictment. So the lost opportunity to make a no-case submission in the Magistrates' Court would be offset by a motion to quash the

indictment. In other words, if I were a defendant charged with a serious complex fraud, and it is a matter where the preliminary enquiry is likely to take three years if there are a number of defendants, I would prefer to get all the documents, look at them, have the indictment, and I would not have to attend court every week for three years. At my leisure, I would be able to have my lawyer review that and at the trial, the first day the matter is set at a preliminary motion, make a motion to quash the indictment because you are saying that the evidence is such that it does not disclose a case.

The argument against that might be that in the preliminary enquiry, you could have made that decision because you would have had opportunity to cross-examine, but at the trial you will have that same opportunity and you will have 12 persons who would be saying not guilty rather than a magistrate saying discharge and then the DPP may re-indict.

In other words, I am saying that the procedure for serious fraud matters where you do not have a preliminary enquiry, but there is full disclosure before and you have the opportunity to make a motion to quash, is fairer to an accused person in this particular matter. He does not have to return over three or four years to attend court every week to have his bail renewed on time, to not go out of the jurisdiction. All of these things we have, whereas, if you have full disclosure you may be able to have trial within a year and then make your motion and I do not think that is something to take lightly.

So even though people may say that the DPP has all this power, he still has the power if the magistrate discharges any of those serious fraud matters. The DPP can say let us look at it and apply to a judge for a warrant and according to the statute we have, a judge merely looks over the DPP's affidavit and I only know of two cases where a judge ever refused a warrant, there may be more. It is 90-something per cent likely, so retrial is very rare. So the point is that the power of the DPP exists in the current statute to bypass the magistrate. So I am saying also that for the serious court matters, the defendant is at an advantage in going straight to the High Court and he has not lost his opportunity to make the motion.

In respect of other matters such as where there is an inquest, I do not think that anybody can doubt that repeating a preliminary enquiry would be useless because you need all the same evidence for an inquest anyway.

On the point about the co-accused being arrested: if you have two accused, the evidence is led for one and you have 38 witnesses as happened in one case, and the other accused is finally picked up, ought you to go through the 38 witnesses again? It would seem to me to be an abuse. You have to weigh the convenience

as against the opportunity that is lost to the accused to cross-examine but what has he been given? He had been given all the evidence at the first preliminary enquiry and he has full opportunity to cross-examine at trial and before that, he has the opportunity to make a motion to dismiss at the trial. So I think one has to look at that.

There are cases of child witnesses, victims of rapes and so in keeping with international trends in this regard, it is preferable not to have these witnesses give their evidence again and again. I want us to bear in mind that in any event, a magistrate does not determine the reliability of these witnesses; he will just hear the evidence and say it is enough trial. If these witnesses can stand up before the jury, we can rely on them, contrary to what Sen. Robin Montano said.

With reference to a comment made, it is very rare when a husband comes home and sees his wife having sex with a man and she cries rape. It is a very rare incident and if that were to happen, I am sure by the time it reaches to trial something would have come out of it. And in any event it is no excuse not to pass legislation because you can have fabricated evidence. There can be fabricated evidence right now with all the laws we have. In any case, I am sure you will have had this in life, and you can point to some kind of anecdote where there was fabricated evidence.

Mr. Vice-President, my view is that the amendment as proposed corrects subsection (8), before this proposed amendment, of the original Bill. In the original Bill, there was a wide provision to give the DPP the power to indict whenever. The proposed amendment limits that power to indict without a preliminary enquiry only to specified instances—I do not know if you are following me?

We have the preliminary enquiry which is usually a two-tiered system, but in this case, we are giving the power to the DPP in exceptional circumstances to bypass the preliminary enquiry and I think that it is a good thing. It is justified in all the circumstances and as somebody who practices in the field, I can see no objection from the defence counsel who is concerned about moving matters along to this piece of legislation, and I dare say the prosecution would not disagree because there is nothing for them to worry about. In my view since the rights of the accused to cross-examination is preserved, it is not unconstitutional.

Thank you, Mr. Vice-President.

Sen. Wade Mark: Mr. Vice-President, the legislation before this honourable Senate seeks to address a number of issues, but before I get into the meat of this matter, may I just clear the air of a few misleading statements on it.

The United National Congress when it first introduced the Indictable Offences (Preliminary Enquiry) (Amdt.) Bill on September 18, 2001 in the Senate, may I inform you that having regard to a number of contributions coming from the Independent Benches at that time, as well as the Opposition Benches, we took the decision to examine the various concerns that were expressed and we deferred the committee stage to a later period.

As you know, Mr. Vice-President, in October, the Parliament was dissolved and we had to go to the polls because of matters with which all of us are familiar. So one gets the impression from the Minister who moved this Bill that the legislation is passed and they are still doing some research on it, but my information is that events overtook that particular debate.

The second point I would like to make reference to, I have the Hansard doing some research on it, maybe I will correct it at the appropriate time, but that is my preliminary submission. The second area, is that the initial bill which the former Attorney General, Keith Sobion, piloted in this Parliament in which some of the very provisions were introduced—I was in this Parliament in 1994, and I have a copy of the Act that was piloted by the then Attorney General. Some of the very provisions that we are now addressing, and even what I want to suggest, some more sweeping measures that are attempted in this legislation were not then contained in Act No. 20 of 1994.

Act No. 20 of 1994 required a special majority in this Parliament. It involved the same paper committals and written statements. Because this Act was violating personal liberties of accused and defendants—and the Constitution of this Republic is very clear on infringement, abrogation, and violation of people's personal rights, liberties and freedom—I find it strange that the Minister of Legal Affairs with the Attorney General supporting her argument that the parent Act required a specified majority because it was inconsistent with sections 4 and 5 of the Constitution. Here we are going to be giving a power to the DPP which was not contained in this piece of legislation, it is in the current piece of legislation we are debating and we have been told that this does not require a specified majority.

Mr. Vice-President, I want to share with you another piece of information because this is going to end up in the courts if we proceed to pass this Bill in it is current form. I can tell you that in 1996, the United National Congress, through its then Attorney General, Ramesh Lawrence Maharaj, piloted successfully in both

Houses of Parliament the Administration of Justice (Miscellaneous Provisions) Bill, 1996. We too, like the Attorney General and the Minister of Legal Affairs felt that this bill required a simple majority and we proceeded.

1.45 p.m.

One of the provisions of this particular Bill, Part IIIB is entitled: "APPEALS BY THE DIRECTOR OF PUBLIC PROSECUTIONS". I want to read for the record what this says. Section 65E says:

> "Section 63 notwithstanding, the Director of Public Prosecutions may appeal to the Court of Appeal—
>
> (a) against a judgment or verdict of acquittal of a trial Court in proceedings by indictment when the judgment or verdict is the result of a decision by the trial judge to uphold a no case submission or withdraw the case from the jury on any ground of appeal that the decision of the trial judge is erroneous in point of law,
>
> (b) with the leave of the Court of Appeal or a judge thereof, against the sentence…"

Mr. Vice-President, I want to refer to the case of *Brad Boyce vs the Attorney General/Director of Public Prosecutions*. This case, from my recollection, went through the Preliminary Enquiry at the Magistrates' Court; Brad Boyce was committed to stand trial in the High Court and through his attorney, he was successfully able to argue the case. I think a no-case submission may have been submitted and Mr. Brad Boyce walked out of the court a free man. The Director of Public Prosecutions invoked section 65(a) of this law and it went to the Court of Appeal of Trinidad and Tobago. The hon. Attorney General has advised us that this matter is now pending before the Privy Council in London for a final judgment.

I want to indicate to you, in the law that is before us, the Director of Public Prosecutions is being given a similar power of appeal. So if you go to section 23G of the Bill before us, it says:

> "An appeal by the State from a decision of the High Court under section 23 shall lie as of right to the Court of Appeal."

Here it is, the Director of Public Prosecutions invoked the provisions under the Administration of Justice (Miscellaneous Provisions) Act in 1998. It went to the Court of Appeal and the Court of Appeal at that time was made up of the

following Justices of the Appeal Court: Justices Sharma, Jones and Nelson. I wish to quote for the honourable Senate from page 20 of their report in this criminal appeal which is now pending before the Privy Council, what the three learned judges had to say on this power that was granted to the DPP, a similar power that is now contemplated in the current legislation.

I think the time has come, if I may, to appeal to the Attorney General to have in our library appropriate law reports and law books. I am trying to get cases, and we do not have these things here. We do not have the *West Indian Law Reports* in the library. If I want to get a copy of the *West Indian Law Report*, I cannot get it; I have to go to the other library across the road. I believe that, for instance, we are lawmakers and we ought to be given these texts.

I quote from page 20 of this report:

> "Any law, the effect of which is likely to place its citizens in further jeopardy, is a law which offends the due process clause of the Constitution."

I want to repeat this:

> "Any law, the effect of which is likely to place a citizen in further jeopardy, is a law which offends the due process clause of the Constitution. It deprives the individual of the procedural provisions which were available to him and to be effective it must conform with the provisions of section 13 which it must expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and be passed by the votes of three-fifths of all the Members of Parliament."

This is what three learned judges said in a matter involving an appeal by the Director of Public Prosecutions in the Brad Boyce matter.

Sen. Jeremie: Sen. Mark, can I assist you?

Sen. W. Mark: No, I do not want you to assist me. The Government has since appealed the matter and it is now before the Privy Council. It goes on:

> "The legislation creating a right of appeal and providing for a new trial must be read against the background in order to determine whether there is a constitutional infringement of the right to liberty. Once it is shown in our view that right to personal liberty has been affected, a special majority is necessary to give such laws efficacy. We might add, we cannot deny the desirability of legislation which is plainly intended to enhance the administration of justice in seeking to correct miscarriages of justice

which have taken place in the court below. This, however, must be weighted against the obligation to comply strictly with the provisions of the Constitution which is the supreme law of the land."

Mr. Vice-President, the Attorney General would have his say. I am on my legs and I am not prepared to give any time away at this stage. I am not convinced. This Government is trying to hoodwink this Parliament and, by extension, the population. A matter is pending at the moment at the level of the Privy Council on this decision taken by the Appeal Court of Trinidad and Tobago. The Government is not prepared to await the final decision of the Privy Council on this particular judgment. It has proceeded to parachute, virtually, into this piece of legislation a similar provision which does not now exist in law as it relates to the DPP. I am talking specifically about giving the DPP the right to bypass the Magistrates' Courts and take a matter directly to the High Court of Trinidad and Tobago without judicial scrutiny. That is the point I am making.

What exists right now in law is that after six months he can so proceed to seek to have a matter addressed at the level of the High Court but he must first obtain leave from the judges of the High Court. This particular provision that we are now addressing, he does not have to go to a High Court judge to get permission to proceed in this particular respect. This is why the Minister has circulated some amendments in an effort to quell the outrage that this society has had as it relates to the provisions in the original Act. So I am arguing, it is very disingenuous for the Government to bring legislation to this Parliament when it is fully aware that the original legislation that gave effect—

Sen. Jeremie: Mr. Vice-President, on a point of order. The Member is misleading the House. The assertion is that the Government is bringing legislation to deal in some way with the Brad Boyce case—

Sen. W. Mark: Mr. Vice-President, that is not a point of order. I am not talking about Government bringing any legislation to deal with Brad Boyce; I am making reference to something for judgment.

Sen. Jeremie: He is misleading the House—

Sen. W. Mark: How? How? Tell me!

Sen. Jeremie: The suggestion is being made that the legislation which is before us—

Sen. W. Mark: That is not true!

Sen. Jeremie:—is an attempt to deal with the decision of the court in Brad Boyce—

Sen. W. Mark: That is not true! You are misleading the House, not me! That is nonsense!

Sen. Jeremie: Mr. Vice-President, would you rule on the point of order?

Sen. W. Mark: Mr. Vice-President, I said no such thing.

Mr. Vice-President: Could you please confine your debate to the Bill and if you refer to any matter at all, could you please let us know exactly why you are doing it? You have to justify it, please.

Sen. W. Mark: I am past that particular point. It was not in the context that my colleague—he is so jittery and nervous. I do not know; he is nervous; he is jittery. Why are you nervous? You are bringing oppressive legislation to this House that is going to infringe on the rights of ordinary people and I make reference to a judgment in 1998 which I have quoted extensively for your benefit, and he says I am trying to revive the Brad Boyce issue. What nonsense! I do not understand where he is at, on a point of order; taking my time! [*Interruption*] No, you are nervous, not me; I am very clear.

Mr. Vice-President, the legislation that is before this honourable Senate is very oppressive. Is this political legislation?

Sen. Dumas: All legislation is political.

Sen. W. Mark: Is this legislation that is designed to target certain political personalities in the country? Why is the Government seeking to give a DPP in whom the country has lost confidence; why are we seeking to provide the DPP with so much power?

Sen. Jeremie: Mr. Vice-President, on a point of order. Standing Order 35(8) refers to:

> "The conduct of the President of the Republic…Members of the Senate…House of Representatives…Judges or other persons engaged in the administration of justice..."

The DPP is an officer engaged in the administration of justice.

Mr. Vice-President: Please desist from making such references.

Sen. W. Mark: Mr. Vice-President, I am saying that the public of Trinidad and Tobago has lost confidence in the Director of Public Prosecutions. I am not

imputing improper motives; I am saying what the people are saying. I am not saying so, Mr. Vice-President.

Mr. Vice-President: Sen. Mark, please desist from referring to the matter in that way. This morning I allowed Sen. Montano to go on. He referred to the fact that the public has diminishing confidence in the police. I allowed it to go on. Could you please leave the office of the DPP out of this?

Sen. W. Mark: Mr. Vice-President, if I—

Mr. Vice-President: Sen. Mark!

Sen. W. Mark: I am being guided by you. Mr. Vice-President, in this legislation, reference is made to the DPP. Are you telling me that in my contribution in this Parliament I cannot make reference to the DPP? That is his house in the legislation and if they are going to give power to the DPP that he does not currently have, are you telling me as a Member of this law-making body I cannot make reference to the DPP?

Sen. Dr. Gopeesingh: These are the subjects of discussion.

Sen. W. Mark: These are the subjects here! I am not referring to the man; I am referring to the office.

Mr. Vice-President: Sen. Mark, what I am saying to you is that you desist from suggesting that the DPP's office is under scrutiny or has been diminished in confidence.

Sen. W. Mark: I did not say so, that he is under scrutiny. Mr. Vice-President, the reality is—[*Crosstalk*]

Mr. Vice-President: Members, we need not try to get to the point where we shift around words, replace them with the same meaning. Let us do this in a mature way, please.

Sen. W. Mark: Mr. Vice-President, I know that you would protect me because under the law you know I have unqualified freedom in this country once I am in this Parliament and I need you to protect me when I am speaking as an Opposition Senator. I know under the May's Parliamentary Practice, the minority must always be protected even at the expense of the majority and the role of the Chair in this context is absolutely clear. Anyway, I am guided by you.

The Government is seeking to give draconian powers to the office of the Director of Public Prosecutions which threaten persons' liberty, rights and freedoms. I was just informed by my colleague who was on Frederick Street that

police are clearing people off that street. I do not know if it is another bomb that they have planted in a garbage bin, but I was just informed by my colleague here that people are being moved away and run off the streets by the police. I do not know the reason. Maybe the Minister of National Security would alert the Parliament whether we have to vacate the building because of a bomb threat, because under the PNM, anything could happen in this country. Mr. Vice-President, I advise you because your safety is paramount. We cannot sit here and expect a bomb to blow up outside.

My view is that this piece of legislation requires a special majority and if the Government proceeds with this legislation in its present form, I am certain that the High Courts of Trinidad and Tobago would do their duty at the appropriate time. May I also say that, like anyone else, we, the alternative government, are disturbed about the crime situation in our nation. We are disturbed also about the backlog at the level of the Magistrates' Courts; we are also concerned about the delay in the administration of justice.

Therefore, the process of expediting and speeding up trials is something that we would always support, but we cannot support the speeding up of trials at the expense of the civil rights and personal freedoms of the citizens of this country as the Government seeks to engage in a quick-fix arrangement. All right-thinking and rational citizens and organizations have strongly recorded their opposition and reservation to the Bill. I know that these cosmetic changes that the Minister has brought here today is an attempt to water down the positions that have been advanced by a number of prominent citizens and organizations.

The Criminal Bar Association has objected strongly to the present measure that we are debating, minus the cosmetic changes that we have before us. It said in a statement dated July 09, 2005, in the *Trinidad Express,* that this particular measure is going to bring about an abuse of power and the Association is gravely concerned that the Bill to amend the Act gives the Director of Public Prosecutions the power to indict anyone, whether or not a preliminary enquiry had been conducted. We know that some cosmetic changes have been circulated, but the essence of it remains in force. The DPP has now been given power that he never had before in the laws of Trinidad and Tobago. He is bypassing the Magistrates' Courts; he is not going to the judge in the High Court to justify why he wants to do so; he is being given authority by this legislation to do whatever he wishes in the context of the amendments that we have before us today.

I also read extensively a statement made by Sen. Dana Seetahal. Well, I saw that she has changed today, but I had noted—

Sen. Seetahal: I made it quite clear during my contribution—and I know the Senator was going to say that—I had concerns about the original (8). I said that clearly. I said why and I went through the changes in which there were only five instances where the DPP has that power and I said why that was so, and I said the original (8) was too wide. So before you say that, could the Senator make it clear?

Sen. W. Mark: No, I was just referring to what was in the *Trinidad Express* on Monday, July 11, 2005, the headline: "Fast Track Enquiry, Act worries Seetahal". She was very concerned at the time, before these cosmetic changes were brought. I was just making reference to what was said in the newspaper and I do not want to misquote the hon. Sen. Dana Seetahal. Even one Mr. Martin George, a writer from the *Trinidad Guardian,* also expressed reservations about the legislation. Of course, there were a number of views being expressed by editorials in the *Newsday* and the *Guardian* on this particular measure that is before this honourable Senate.

It is clear that we understand what a preliminary enquiry is all about and paper committals. Whilst in our initial thrust in 2001 we had piloted and got the support of both Houses of Parliament, Senator Daly in particular was very strong on certain areas of the law, particularly as it relates to the question of written statements. I recall in this contribution he made specific reference, and I quote from the contribution of Sen. Daly back in 2001.

> "The problem is that if we are going to curtail the rights of defendants at the—"

Mr. Vice-President, that was the time when we had introduced the original Bill and this Bill never contained any provision to give the DPP the power that is now envisaged in this piece of legislation. At that time listen to what Sen. Martin Daly, SC and an outstanding citizen of this Republic, who has served this Senate long and well had to say. I quote:

> "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."

Mr. Vice-President, that was when we had brought some very limited amendments to the Indictable Offences (Preliminary Enquiry) Act, and here the Government, the Attorney General and his Minister of Legal Affairs have gone a step further. We are saying that the Bill in its essence alters the arrangement that currently exists to the detriment of the accused by assigning the Director of Public Prosecutions a right which does not currently exist in the Constitution of the Republic of Trinidad and Tobago. That is the right to send matters straight to the High Court, as outlined in these amendments. It also provides the DPP with the right of appeal which he does not currently enjoy.

This is unconstitutional! This requires a specified majority. He does not currently have the power to send you and to take your matter—imagine the DPP is both the prosecutor and the persecutor. He indicts you, as he did Dhanraj Singh; Basdeo Panday, Carlos John, Ishwar Galbaransingh. The DPP indicted these people. He is now being given the power, after he indicts you, to determine whether your matter should be subject to a preliminary enquiry at the level of the Magistrates' Courts. Who gave the DPP that kind of power to interfere with the personal liberties, civil rights and fundamental freedoms of the citizens of this country under sections 4 and 5 that we have?

Mr. Vice-President, you told me not to mention the DPP. I want to tell you something. I want to quote from the Constitution, if you would permit me, I am quoting from the Constitution and not imputing improper motives.

Mr. Vice-President: Sen. Mark, let me just clarify this. I said very clearly, do not suggest that anything is wrong with the DPP and the conduct of his office. You notice you just spoke about the DPP and I did not stop you. You are not going badly right now. Please continue.

Sen. W. Mark: Mr. Vice-President, I am always guided by you. You are a man I have the greatest respect for in the Chair.

I want to refer you to section 111(2) of the Constitution. It says:

> "Before the Judicial and Legal Service Commission makes any appointment to the offices of Solicitor General, Chief Parliamentary Counsel, Director of Public Prosecutions, Registrar General or Chief State Solicitor it shall consult with the Prime Minister."

It goes on at (3):

> "A person…"

including the Director of Public Prosecutions:

> "shall not be appointed to any such office if the Prime Minister signifies to the Judicial and Legal Service Commission his objection to the appointment of that person to that office."

It is clear he is a creature of the Prime Minister. Anyway, let me proceed. The reason the Attorney General is so jittery and nervous whenever you talk about the DPP is because he and the DPP are in cohorts. [*Interruption*] I did not say you are involved in a conspiracy; I said "cohorts".

Hon. Senator: Withdraw that.

Sen. W. Mark: Okay, let me withdraw it. He has said "cohorts" is bad, let me withdraw it. He is nervous. I want to ease his mind. He is not in cohorts; he is just in a nice kind of, you know—

The powers are not only dangerous and draconian in nature but constitute a fundamental curtailment of the rights and freedoms of persons who are accused and, as such, I agree with the three judges in the Court of Appeal that such a measure must have a three-fifths majority in the Parliament. What the Attorney General and the Minister of Legal Affairs are attempting to do in this Bill is to curtail the rights of defendants at the level of the Magistrates' Courts and this is bound to lead to a compromising of the accused's civil liberties. This is why we argue that this Bill is very dangerous in its current form.

I want to tell you something. Unless we do not have sweeping, revolutionary, large-scale Constitution reform in our country, this Bill in the hands of a cruel, vindictive, wicked PNM administration can be used against its political opponents in order to perpetuate itself in office. Let us assume, but not admit, that this Bill was law a year ago, Dr. Vijay Narinesingh would have been rotting in jail at this time, as we speak. Do you know why? That matter has been dismissed and he is a free man today because of the preliminary enquiry process. These people are so wicked in the office of the DPP that after this gentleman was freed, there were releases in the newspapers coming from sources quoted from the office of the DPP saying that they are going to have him rearrested. They never denied it.

I want to just share with you, if this Attorney General was an honest person; if he was genuine, he would have come to this Parliament today and told us how many cases are outstanding at the level of the High Court involving persons in this particular process in which we are engaged. In other words, how many people are awaiting a trial date for their case to be heard right now in the High Court? Would this measure that is being introduced to give the DPP the power to bypass

the Magistrates' Courts and send your matter to the High Court for trial by jury and judge, change the price of cocoa in Trinidad and Tobago?

Dhanraj Singh was incarcerated; he spent four years in jail waiting for his trial. Tell me, for instance, if this Bill was law one year ago, do you think Vijay Narinesingh would have been a free man today? Look at the amendments here; it is here. He talks about "in exceptional circumstances to deal with offences of a violent or sexual nature". So murder is a violent thing; exceptional thing! So you are framed by the police and your fate is in the hands of one man who cannot be trusted.

Mr. Vice-President: Sen. Mark, again, please.

Sen. W. Mark: Mr. Vice-President, I want to tell you something. In Jamaica, do you know that the DPP has to have the qualifications of a High Court judge to be the DPP under the laws of Jamaica? And right now in Jamaica it is even higher. You need to have the equivalent qualification of an Appeal Court judge, because this office is so critical; so important.

All I am saying to you is that as far as we are concerned on this matter, we are saying that Dhanraj Singh, Vijay Narinesingh; if this law was in existence one year or two years ago under this vicious, vindictive and wicked PNM administration, those two gentlemen would have been languishing in jail today. Awaiting what? Their turn; waiting on their call to trial.

The problem in Trinidad and Tobago is not giving to the DPP the kind of power that we are now going to give him; the problem is that Government has its priorities all wrong. This Government is prepared to spend close to $1 billion in building a sporting stadium or complex in Tarouba with no Environmental Management Authority (EMA) permission so far. But do you know what? The San Fernando Magistrates' Court has been condemned by the city corporation and you have human beings going into that court every day, and this Attorney General and this Government, after a year and a half of that court being condemned by the city corporation of San Fernando, have not lifted a single finger to help provide the Judiciary with the kind of support and resources that are required to bring their system up to a level that is acceptable to you and me, but they bring legislation, supposedly, to mamaguy the population, to make us feel that they are doing something about crime. But they can use this legislation to do whatever they want in Trinidad and Tobago.

This is why I tell you, the preliminary enquiry as it currently exists, if you are going to amend this arrangement and you are going to paper committals, that is

tampering with my personal liberties; it is tampering with certain procedures that I have grown accustomed to in this country. If you are tampering with my personal liberties, civil rights and freedoms that I have grown accustomed to for the last 40 years, you have to get a specified majority in the Parliament. You cannot just take away people's rights! You cannot put into the hands of a DPP the power to determine, for instance, when a case should go to the High Court without a preliminary enquiry. How can you do that? And you are telling me that this Bill does not require a specified majority?

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. W. Mark: Mr. Vice-President, the real problem is the lack of resources for the Judiciary in Trinidad and Tobago. The PNM is starving the Judiciary of much needed resources and funds in Trinidad and Tobago. It is denying the Magistracy and the Judiciary of much needed funds. Therefore, if we want to tackle crime in this country; if we want to reduce the backlog of cases at the level of the High Court—we are suggesting that the Attorney General is simply attempting to tackle the symptoms and not deal with the root of the disease.

Today we have a malfunctioning criminal justice system. We have a magistrate system today which is extremely primitive. Do you know how they call witnesses and persons who have to be in court today? There is a policeman inside the court; there is one in the corridor; there is another one further down the corridor: "Wade Mark!" The next one says: "Wade Mark!" In 2005, is that the kind of thing you have in Trinidad, as primitive as that? A policeman calling your name: "Wade Mark!; John Harry!" This is what the Attorney General of this country has been presiding over. He brings a Bill, not to give more money to the Judiciary; not to give them more resources; not to give the magistrates and the Magistracy more power; provide those courts with proper toilet facilities and amenities; make ordinary people feel that when they go to a Magistrates' Court they are human beings and not as dogs, but to give his partner a set of power. To do what?

The Attorney General said in his contribution—I have it here—that you have friends. [*Interruption*] That is what I am saying; that is your partner. You made it your business because that is your friend.

So if the Government wishes to solve crime, we call on the Government to establish a proper and efficient justice system first in the country. Why does the Attorney General wish to bypass the Magistrates' Courts? Why? Many clauses of this Bill are objectionable; many are unacceptable and they should be excised completely from the legislation. We have given to the office of the DPP certain powers, but I want to ask you, Mr. Vice-President, there is something called the Labidco scandal which has been with the DPP for the last three years, what has happened to that particular matter? I hope the Attorney General would inform the Parliament that the DPP, this efficient, competent, impartial and fair person or office holder, what has he done so far with the Labidco matter. Is it because it involves the Prime Minister that nothing has been done about it? The report says that Ken Julien, Malcolm Jones and Patrick Manning were all involved in that particular matter. That is a fact; it is in the report. You have it! The Anti-Corruption Bureau has it.

Mr. Vice-President: Sen. Mark, that is not a matter that has been finalized. As a matter of fact, you know you should not refer to it. Okay? Could you please desist?

Sen. W. Mark: Okay. Mr. Vice-President, I ask the question: Richard Bickram, the voter-padder, what has happened to this matter? Jerry Narace— [*Interruption*] He said in the newspapers that the PNM takes care of its own. What is the DPP doing about that? Two Bajan fishermen were released on whose instructions? What is the DPP doing about that? We want to give him more power, but things that the DPP is supposed to be doing, he is not doing. Does he deserve that power? I do not think so.

I would like the Attorney General to tell this Parliament today—and I want an enquiry—I have evidence that a particular attorney who has no experience in criminal matters—is a civil lawyer—has been given a contract by the DPP valued at over $4 million to be part of the Piarco enquiry that is now taking place at the level of the court. I would like the Attorney General to investigate that. If you push me, I would give you the name of the woman right now. [*Interruption*] Not now; you would have a chance to respond.

I call on the Attorney General to conduct an investigation into this development involving a young attorney whose name I have with me, who has been given a contract by the DPP valued at $4 million even though the person does not have any experience in criminal matters. She is a civil lawyer. I would like the Attorney General to deal with that when he is speaking. I also want the Attorney General to tell this country what action or steps he is taking to ensure that the

population of this country receives value for its money in the Scarborough regional hospital project. I read in the newspapers where Emile Elias from NH International is demobilizing at the level of the Scarborough Hospital after we have spent hundreds of millions of dollars and the hospital does not have a foundation block properly established. We want the Attorney General to tell us whether Emile Elias is going to be criminally investigated for this matter. [*Desk thumping*] We want answers from the Attorney General on this matter.

We are talking about an Act to give power to the DPP. I want the DPP and the Attorney General together to deal with these matters. But do you know what? A pattern has developed in this Government. This Government introduces measures all the time to take away and erode the rights and freedoms of the people. That is what this Government does. It did it with the Judicial Review Act which is before us; Exemption on the Freedom of Information Act; it brought an Anti-Terrorism Bill here; it brought the Regional Health Authorities (Amdt.) Bill to undermine freedoms of trade unions in this country.

The other area I would like to raise before I wind up, and maybe again the hon. Attorney General could advise, we need a law—and if I am incorrect I would like Sen. Dana Seetahal to correct me. Do we have a law in Trinidad and Tobago that allows, compels and mandates the prosecution to provide full disclosure of information to the accused's lawyers? Do we have a law in Trinidad and Tobago that would compel the prosecution, including the DPP's office, to full disclosure of information to the accused, the defendants and their lawyers? I understand they are still hiding information. How can you talk about paper committal when you do not have in law—and my understanding, in many countries where, for instance, paper committals have been introduced, you have had a law which compels the State to provide full disclosure of information to the accused, the defendant and their lawyers. Do we have such a law in this country? If we do not have that law, then let us have that law so it becomes compulsory—full disclosure.

Sen. Seetahal: We do not have a statute but we have common law and the Ferguson/Audley Privy Council cases which say that there should be full disclosure to the defence prior to trial in all serious criminal matters. In relation to summary matters, you have a halfway house. But there could be legislation. In England, for instance, there is now legislation for disclosure. We do not have it in legislation; we have it in common law.

Sen. W. Mark: Mr. Vice-President, I would just like to indicate that the voluntary bill of indictment which the Government seeks to pass on to the DPP, it is our view that that should and must be subject to judicial scrutiny. We do not

believe that the DPP as an individual, and his deputy, must have the power. You and I know that persons in high office could be subject to political manipulation.

The Attorney General will not be here forever; the current holder of the DPP will not be here forever. We must pass legislation for the future and if we believe that this particular measure is going to give too much power to the DPP, we are advancing and submitting that this particular measure be subject to judicial scrutiny as it is done in England today. Even though England has gone ahead of us, our culture is so backward, the lack of confidence in the Government, the police, the DPP and all those institutions demand that we have protection from the High Court and Judges of the High Court before the DPP is able to issue this Bill of voluntary indictment.

We are very clear. We are not prepared to support the Bill in its current form. We suggest two ways that we can get out of this quagmire. We are first suggesting to the Government, withdraw the Bill, redraft it or bring the Bill with the relevant specified majority as was enshrined in the 1994 legislation. That is the first way out.

The second area that we would like to suggest for the Government's consideration to resolve this matter is to have this matter referred to a special select committee for proper reworking and refining, because at the end of the day we would want to see Trinidad and Tobago become a peaceful, harmonious and united nation. We would do our part but we are not prepared to compromise on the altar of expediency, the rights, freedoms and liberties of the citizens of this Republic. Therefore, I call on the Attorney General to give consideration to the proposal, that this measure that is now before this honourable Senate, be referred to a special select committee of the Senate so that we can seek to rework it and have it refined so that we can all have legislation that we are all in favour of and there is consensus on.

I want to thank you very much, Mr. Vice-President.

Sen. Prof. Ramesh Deosaran: Mr. Vice-President, this is another instance where the Government of the day and the Parliament have a serious responsibility to strike a balance between the traditional way of doing business and the new challenges facing the safety and security of citizens of this country.

There are three major items I wish to refer to. One is the role of the DPP in the procedures enunciated in the Bill; and, secondly, whether the shift or the amendments made with respect to a preliminary enquiry are justified in the

prevailing circumstances; and three, whether any part of sections 4 and 5 in the Constitution have been violated significantly at all.

I want to touch on the first point because I think it is a matter of great urgency in hearing accusations against a very senior public officer of the country functioning under section 90 of the Constitution and who is not here to respond to some very serious allegations, and the allegations are, perhaps, permissible under the rules of Parliament. But with some reluctance I want to engage my colleagues for a minute or so on those accusations against the Director of Public Prosecutions and suggest if perhaps there might be another way to invoke such censure, rather than having his reputation, presumably tarnished in the way that it has been, and if I might say so, reluctantly again, repeatedly in this honourable Senate.

I say so, of course, from the Independent Benches. Some of us have our responsibilities which are different from either the Government side sometimes, and also sometimes from the Opposition Benches, but I seize upon the issue of the DPP for several good reasons. Just as the Minister of National Security, Minister Joseph, speaks about his tutelage of the Leader of Government Business in the Senate who was a student of his—Sen. Mark being a student of Mr. Joseph at one time—Mr. Henderson, the DPP, has been a student of mine at the university when I just arrived. So I have some basis.

Because of the continued relationship I have had with him professionally—and when I say, professionally, I really mean professionally—I am disappointed at the accusations made against the goodly gentleman. I think it is overdone; I think it is unfair—[*Desk thumping*] and I really hope—and I am saying so with great regret because the Members of the Opposition Benches have been my very good friends for a long time, in different ways, but certainly our role is to speak fairly and also fearlessly. It is in that context that I make these comments with respect to the Director of Public Prosecutions.

2.45 p.m.

I have seen nothing so far that convinces me that he is very incompetent or corrupt. If such an occasion does arise I would be among those in the front line calling for censure or removal because of the serious responsibilities that office carries with respect to criminal matters. I do not think I will sit here comfortably and listen to all those accusations which so far have not been properly proven and especially given under the guise of privilege. Given the example cited by the last Senator, perhaps, the time has come when the Director of Public Prosecutions (DPP) must engage the public in clarifying some reasons that those important matters on his desk are not being handled with the expeditiousness that some

sections of the national community expect. Let us hear the reasons or the status of those enquiries so public disenchantment wherever it exists may subside.

One of the derivatives from this scenario of the DPP that is bothersome in terms of the administration of justice is the unwillingness of people to take public office. It appears to me, increasingly so, that people are shying away from taking public office because of the risks involved, not only physical risks, but also having their reputations unduly tarnished and with little or no room for recourse. By the time you give a rebuttal especially through the media, perhaps it would be stale news. There are many conditionalities that we have to revisit. If we are sure and we have evidence, make the accusation, but if you do not I think that you should be a little reticent on the point.

Hon. Senator: The small pay.

Sen. Prof. R. Deosaran: I am sure that Mr. Henderson, knowing him as I do, did not take that office for purely financial reasons. Many of us here including those on the Independent Benches did not come here for the salary. If it were so I do not think that we would have assumed that office; neither the Attorney General and some of them on the Government's side.

I make these remarks very reluctantly because I know that in some quarters it may not be digested smoothly, but a man must do what a man "gotta" do. It seems to me as well that I have been hearing and learning, as my colleague Sen. Dr. Mc Kenzie always tells me, every time you come to a sitting you learn something good and sometimes something bad. I learnt something from Sen. R. Montano and quite a few things from my colleague, Sen. Seetahal. I think it was a well controlled and balanced contribution and on this occasion I commend her. I did not see the fiery politics in it and the need for overstatement, but a quest for finding the proper balance given the precedence and complexities that legislation related to the one before us has. I am grateful to the Minister who presented this Bill and who is fast becoming quite confident and proficient in her own right. I see her blushing in her inimitable style. Sometimes we ought to see the virtue when it does exist.

In learning what we have learnt in the discourse so far, I have heard nothing about what is a trial. From what we have been hearing it seems as if a trial involves only the accused person. It is as if it is a one-man show with the accused having all these rights transgressed and no recourse to due process. It is as if the accused and the accused and the accused alone is facing the judicial process. That is a misguided inference and impression to convey to the national community. A trial is crucible. It is an artificial mechanism used to recover memories and

documents of the past where many things have to reside on people's memories and legal strategies as Sen. Seetahal alluded. That is a euphemism for something that is a little sinister.

What about the victim? Is there not a victim in this whole process that also loses patience and confidence in the system because of having to return time and time again to see justice done? Is justice not also part of a victim's expectations or are victims a monopoly only of an accused person in our system of the administration of justice? Certainly the equation must be balanced. A trial is an equation. That is why the laws must be balanced as they attempted to be in the Constitution and the consequent legislation which follows those parts of sections 4 and 5. I find it disappointing but very revealing that nothing, not even something small so far in this discourse has been said about the victim who is part in an active way in terms of defending his or her rights. The victim does have rights whether it emerges through the statements or evidence subsequently. At the stage of the preliminary enquiry the victims do suffer as well because of the length of time and the repetition of hearings that we now experience at present.

My second point has to do with whether the amendments to the Bill are justifiable or not in the present circumstances. There are hundreds of people who feel as victims of the administration of justice because their cases take so long, sometimes years at the preliminary enquiry stage with very serious consequences. One is the big word "confidence" that we have been speaking about in the administration of justice. Therefore, people stop going to court. They get fed up and fall out as witnesses. The accused does not only lose his pay and stays away from his job or even ends up in prison for some time, but the victim also loses his pay and is terribly inconvenienced having to come time and time again after having filed in many cases a grievance complaint, either through personal loss or physical injury. Sometimes they come to court with broken hands or bandaged legs after suffering from a vehicular accident or a cutlass attack only to see the cases being postponed time and time again and they limp in and out. As my colleague says, "strategic manoeuvrings" in the court. In my view the time has come not only to review the parent Act in terms of the preliminary enquiry but also to have similar amendments with a better and fairer balance within the trial and maintaining the rights of the victim as well as a judicious amount of rights to the accused.

My third point is due process being violated. I do not think that there is any need for repetition because she did it quite eloquently and precisely. When I look at section 4(a) of the Constitution with the right of an individual to life, liberty and so on and he should not be deprived except by due process of law, and more

so, when I re-read the transcript of Mr. Ramesh Maharaj during the time of the UNC government, I saw his justification for bringing a similar Bill. He felt the need to bring forward such a piece of legislation even though it might be slightly different. He based his initiative on two reports which were activated under the regime of the UNC. Drawing from that as published in the *Daily Express* dated June 11, 2001, on page 3, Mr. Maharaj said that there had been only three paper committals to date because the original legislation was flawed and allowed accused persons loopholes. It is not accused persons who saw the loopholes. It is the lawyers for very strategic reasons. We try to put the accused person in a place where he or she does not belong. That is part of the legal profession. It is the sacred responsibility because of an oath that he has taken to ensure that those loopholes are minimized if not completely eradicated because he is now a minister of justice. That is the equivalent post he has as Attorney General seeking after the wider public interest come what may, from his peers in the legal profession. I commend you for bringing this initiative and I hope that you continue in that particular part where justification is required.

I do not need to go into what the UNC did or did not do. With my sensibilities intact they were trying to do the same thing because they were fed up with the situation and were moving to bring something similar to what we have today. As long as it gives the lawyer of the accused the right to cross-examine as happened the last time in such a broad way, certainly, the lawyer will want to work the system. After all, they are not doing it *pro bono*. I need to say no more. I do not want to touch bread and butter issues. That tendency has kept the system congested. The Attorney General made the point in a previous debate that that is motivation for stalling the kind of remedies that we need on the part of the victim as well as the public.

I do not see due process being violated under sections 4 and 5 as seriously as being made. This thing about holding people is not arbitrarily done. From the time an arrest is made it means that something has happened to that accused person. There is information or observation or some report that has led the police to put their hands on that person. I will look at the picture on the other side of the coin. What does that responsibility entail? I would have liked the Minister of National Security to be here when I am making pronouncement with respect to the police. The Director of Public Prosecutions has a role. By some sensible amendment in this particular Bill with respect to determining whether the matter should go forward or not, his role has now fallen under five specific conditions. He is now faced with criteria which are arguable in court or could be contended with later in a higher court.

The DPP is an independent office under the Constitution and he is appointed. I wish to make this clear; it may not be necessary, but it is important to reiterate what the Constitution says. He is appointed by the Judicial and Legal Service Commission after due process, enquiry, interview, oversight of his or her integrity, capability and experience. The Prime Minister however, must not object to the appointment. If we need to change that role of the Prime Minister we can do so. We have lived with this for a long time. This did not materialize yesterday. If it were bothersome it would have been changed some time ago. It could still be changed and maybe, it should. If you want to make the Director of Public Prosecutions a more seemingly independent post, I submit that in the light of prevailing circumstances we revisit the role of the Prime Minister in this decision by the Judicial and Legal Service Commission. I will not say the same thing in terms of the appointment of chief technical officers and permanent secretaries. Given the quasi judicial role now by the DPP through this Bill, I would have been happier if in this Bill or another one an amendment was made to this particular role of the Prime Minister.

Having said all that, we are not punishing officers in the police service for breaching the public trust placed in them. It is not unusual for people with public trust to break it in corrupt ways and neglect of duty. It happens all over the world. I know and I am sure that Sen. Seetahal knows. We have visited a number of police stations and judicial institutions in the United States. I have visited the National Institute of Justice and several courts. In the Los Angeles Police Department Commissioner Bratton who helped clean New York, if only temporarily, ran me through all the procedures in bringing the police to justice. Quickly! Sen. R. Montano, I guess you will appreciate this. You do not put them on pay for two years where they drive taxi; open a roti shop; or go to Miami or Bermuda to get another post; or go to study at UWI. They can study in prison too. I know the names of some of them who have been suspended for dereliction of duty and they are studying at UWI. I can call their names. They might even be studying law and how to fight their cases at public expense—public officers, generally.

Some of the things the Opposition has said ring true. The system is not perfect so as to refute all that they have said. This helps break public confidence in the implementation of such legislation. This bothers the public imagination. The Government has a difficult choice because it must act. It cannot stand still in perpetual paralysis and say because the police is corrupt, allegedly so, it cannot do this or that. It will suffer dire consequences and charges of ineptitude and incompetence will flow from the Opposition. In the context of this discussion I

expect the Government to give the public the assurance that discipline in the police service will be seriously looked at.

We have several joint select parliamentary committees. This mechanism, especially one, can bring the different service commissions to order and let them be more expeditious. What we find in our enquiries when we examine the Police Service Commission; the police service and the Police Complaints Authority, these revelations would be packaged into a report and brought to Parliament for serious consideration and authority to bring solutions that this Senate and Parliament as a whole are capable of providing. I urge the Government, Mr. Valley. Leader of Government Business in the other place, the Attorney General, Sen. The Hon. Yuille Williams and Sen. Dr. Saith to support these committees. When they have difficulties with a quorum of four, do not make it a quorum of seven to kill the committee. We are seeking solutions to the very problems that Sen. The Hon. Conrad Enill articulates so very much with respect to the service commissions. [*Desk thumping*] We are seeking solutions to the problems raised by the Attorney General; the Minister of National Security; sometimes, Sen. The Hon. Danny Montano and my Independent colleagues from Sen. Dr. Mc Kenzie right down the Bench.

We are not lazy; we are willing to work. The Government must seize the opportunity and give us the support where it is required. Do not kill the very goose that can lay the golden egg. For what reasons? The reasons are too narrowly prescribed. If it is in your self interest you must rise above that. We need to see some support for these committees that have a responsibility to look after the agencies that are supposed to deliver services—in the particular case of the Police Service Commission through the joint parliamentary committee that is empowered to enquire into and report on the Police Service Commission.

We will call a meeting next month and I want to see how many Government and Opposition Members would turn up at that meeting. It would be a signal as to how serious this Parliament is about the business of the people with respect to correcting the many wrongs that are imposed on the people and to close the gaps that are so glaring in terms of inefficiency and insufficient delivery of services. You have the mechanisms. Do not always tell me it is not working. Why is it not working? Make it work because you have the mechanisms now to do it and the people are willing at no extra pay, if that is the issue.

I want to return to the role of the lawyers. That is why I find the contribution by my colleague so inspiring and edifying. Each profession in this country, the pharmacists; the doctors and especially lawyers have a very powerful lobby. I do

not know how you make in the face of your peers with such legislation. Stand your ground. History will speak well of you. It is about courageous leadership. That is what is lacking. Every interest group wants to kill the rest of the country for its peculiar narrow interest. When you talk about a third party and you want a new party, it might be the same thing. Everybody in the new configuration that is perhaps imminent is coming from an interest, their motivation being to preserve that interest which is part of the current problem. That is why leadership and the ingenuity to build consensus is what the joint parliamentary system is all about and it should be seized upon.

This Bill should have come through that system. When Sen. Mark asked for a special select committee it would not be necessary. It would have gone through the process of appropriate deliberation where members of the public and the agencies concerned would have given their knowledge and experience, then we would bring this package to the Attorney General in the Senate for a more conclusive discourse, rather than making it seem as though we have to start all over again by a select committee. Sen. Mark should make a very passionate plea of which he is very capable of doing for support for these joint select parliamentary committees. It is the UNC government that initiated them. Let us be sensible; find common ground and join. The criminals are not waiting on us to tidy our legislation; to dot the i's and cross the t's. They are busy; so too, we must be busy.

In 1989 standing on this very spot I moved a motion asking the Judiciary to tell us how many cases are to be heard in the Magistrates' Courts; the case backlog in the High Court and the Appeal Court. The figures revealed were frightening then. Sen. Allan Alexander and Sen. Gerald Furness Smith were here. When we got the answer from the then Attorney General, Mr. Anthony Smart, it prompted them. Everybody was scared about the headline. The Magistracy is in a mess. Why? Mainly because of case backlog and adjournments. For those of us who speak about the theory of the law and due process, visit the Magistrates' Courts where the evidence is. You need to strike a better balance of all these rights we already have and to ensure that the interest of the victims and the public are also served. That is the challenge that we are dealing with.

We are not blind to the interests and rights of the accused. Sen. Seetahal is right. England has changed its laws time and time again. These rights that we are now hovering over arose donkey's years ago under a very peculiar condition; the feudal system; the struggle between the monarchy and the church and murder in the cathedral. We are doing as if we passed through the same experiences, so we cannot touch it because it would burn us. England did its work because of its

circumstances. The law must have a social foundation.

We have to seek our foundation which is the clogged situation in the Magistrates' Courts. If this Bill were law the trials of the Piarco airport would have gone through swiftly and so too, many other trials. You would not have had these honourable distinguished gentlemen running to court every Monday morning under preliminary enquiry. I do not know if anybody enjoys this. I say no more.

I remember when we brought the mediation proposal to the government where there would be a lesser direct role for lawyers and we wanted the mediation system to be put in place, it came from the university. Sen. Seetahal, a few others and I were authors of that mediation proposal. It came from us and went to Cabinet and the prime minister accepted it. In 1994, Dr. Rowley supported it. The UNC government continued it and put it in the legislation. There were protests from the lawyers because of strategic reasons. We have to understand the role of interest groups in this kind of matter and others too. That is why sometimes it is a healthy inclusion for the Constitution. I will not say all the time. I will not be so immodest. That is why it is so important that you have an Independent Bench. I say no more again because self praise is no praise.

It is said that there are no permanent allies, merely changing interests. Somebody made the point about change of interests and the UNC and the PNM. You have to keep the principle straight for public interest. That is why the Attorney General must have a firm hand on this particular matter.

3.15 p.m.

While we are talking about having the preliminary trial extended because it is due process and it is useful to give the accused—never mind the victim sitting there and coming every time; do not mind that; he does not matter in the system. Why must he matter? That is the question I have to ask myself as I am following the debate this afternoon. But the other question is: Who pays for all of this? You want 12 more judges and 12 more magistrates. Who is paying for this? Our taxpayers are paying for this? It is not only at this point, although we know justice must have no cost—there are all kinds of justice. There is procedural justice, distributive justice and that is another issue. But who pays for it?

The question we have to put and the question that Government must put before itself and the Minister of Finance, Sen. Enill must put this always before his table is that: Is this project worth it? That is the question because that is

what we do with our own money. We do not run and buy things because they are looking nice or we want them. Do we need them? Are they affordable? And that is the question that Sen. R. Montano put about Tarouba. So the same way you can make the analogy with Tarouba, it is the same way you have to make it with the Judiciary in terms of the economics of the situation. Having said all of that, because I think those are the embracing concerns expressed so far in the debate—and I will not repeat what Sen. Seetahal has said—in my view, there are sufficient safeguards in the legislation, there are sufficient checks in the legislation.

If you read the number of checks and safeguards. For example, there is one here, at page 12, No. 3. Just one example. There are several others but there are enough checks in the system. In fact, if I were the Attorney General, I wonder, given the challenges at hand, whether I would have gone the extent of so many checks and safeguards, but he is being respectful to the system in terms of, to quote Sen. Seetahal, "we cannot do it too revolutionary; we have to take it step by step", and, perhaps, that is a wiser way. Page 12: Where a statement is to be admitted in evidence under clause 16C(1) and the magistrate is of the opinion that a part of it is inadmissible—

Magistrate! Due process, jurisdiction. This is not violating sections 4 and 5. This is paying homage to sections 4 and 5 by having due process in the role of the magistrate. Even though the Director of Public Prosecutions might have done something—there shall be written against that part, the words, and "treated as inadmissible" together with the signature of the magistrate.

And there are similar other checks and balances. In fact, if one looks at the legislation in terms of the problems confronting the Judiciary and the public interest, this is a very conservative piece of legislation, Mr. Attorney General, through you Sir, in all fairness to the rights of the accused but also we have got to express some concern of the victim's welfare.

It is said Parliament is the highest court of the land. I do not believe that and I doubt many of us here believe that. It is the highest forum, it is the highest legislature. The highest court in the land geographically speaking is the Appeal Court; functionally speaking is the Privy Council so far. The role of court is to adjudicate what we legislate but we must legislate not only on precedence because we will be copying the courts. You have to seek a wider horizon, not as broad as Vision 2020 perhaps, but your eyes have to be open to public concerns and the hardships which are empirically demonstrated day after day in your courts, and do not tell me Britain did this and Lord Salmon did this, and Lord

"King fish" did that and so on. The law has to be relevant. That is a serious premise of lawmaking in a country like ours if you are a developing country. We have peculiar situations here. London does not have squatting like we have. That whole Gaza strip issue is a problem derived from squatting, just like the Muslimeen issue. The Muslimeen issue had little to do with anything else than squatting, the inattention by the authorities to squatting and the congestion in the courts to have the trial proceed expeditiously until the Privy Council got fed up and said right now it would be impolitic to continue. They themselves got fed up with all the meandering and the strategic manipulations in the lower courts; accused and victims.

So when the Attorney General tells me and with due respect, he consulted with the Criminal Bar Association, who is this Criminal Bar Association? Do they have a constitution—with due respect, they have a constitution and then you consult the Law Association. They function under a particular piece of legislation which we would deal with another time; ethics, fees and so forth, strategic elements. But I want to ask the Attorney General: Which group of the wider public did you consult? And I am not necessarily speaking of the other self-interest group like the Chamber of Commerce. There are other groups in the country. In fact, sometimes I am disappointed.

We spent a lot of energy, time and money to invite the public to listen to what Parliament wants to do with the Anti-Terrorism Bill and only five or six persons turned up. There were more members of the Committee—better dressed, punctual. In fact, I must tell you Sen. Kangaloo was very flamboyant and ready to engage the public in civic discourse, and so was Sen. Cropper. But of course, self praise is no praise so I will leave out my own presence. But we were ready to go and led by Sen. D. Montano, the Minister of National Security, the Attorney General. We were prepared to spend the time. It is not an issue but when five or six persons of the public came out after we had advertised it and so forth, it does not reflect well on the public. But as a Senate, we must still seek innovative ways as well, not only to bring legislation but to bring the public closer to us in trying to get these Bills which have wide public implications moving forward and that is why I come back to the role of these joint parliamentary select committees. Whether we are here or not, they should be permanent structures in the move towards constitutional reform.

You could never reform the Constitution without several important elements. The role of the Prime Minister and his Cabinet as against the powers of the Parliament, and also the structure of Parliament and the need to have a new way of the people voting and soon. And have a referendum not only for the country

but each constituency must now have a referendum on matters of vital importance and then the representative would know what to say in the Parliament and it would not just come through a small caucus. The caucus cannot run the country alone. The caucus could distill what the citizens say at the constituency level. Do we have that process? If not, we got to put it in a new Constitution.

There are some comments made by Sen. Montano, my good friend who is not here, and think I am quite sure my other very good friend—that is what I said earlier, it did not hurt me to say it but like a parent who must deal with children, sometimes, you cannot spare the rod and spoil the child as it were. I feel strongly about the DPP and the comments made against him and that is why I said what I have, but I did it very reluctantly.

If the solution, as the Opposition is saying, is to hire more judges, to hire more magistrates; listen, money does not grow on trees, and hiring as I know it, must take place through a management audit procedure. Let us know how the resources are being used at present in some documented way and submit it to the Attorney General for consideration and then submission to Cabinet. But this is not a freeness going on here. Just as you object to Tarouba and $800 million, in the same way we would have reservations about spending money after hiring seven, eight judges, what you say, v*aille que vaille*. No, the time has come in this age of management science, and I understand the Minister of National Security is a management expert, he might support me in this, he, too, is my very good friend, always smiles with me and that makes life pleasant. But he should tell his Cabinet you cannot bring in—it costs over $1 million for a judge for a year, much more than that. You can do so, but I do not think that is the immediate solution.

The immediate solution is to ask them to give a management account of what they are doing, what is the case load? What is the average time it takes a case especially in the higher court? I would want to see some screening before the money and resources are allocated. I am not speaking about buildings and toilets and so forth. That is a different thing. Put the toilets in the courts; even though the banks do not want to put theirs, you can put yours. Sen. King who is also chairman of another parliamentary committee, is telling me perhaps the time has come to let the Judiciary appear, even in Chambers before a parliamentary committee. This notion about the independence of the Judiciary and the separation of powers; if the conditions arise that there is incompetence, inefficiency and great public dissatisfaction within the Judiciary there is ample room for a responsible Parliament to meet behind closes doors as a sub

committee with the Judiciary, if not an open hearing. We got to hear what their concerns are and we ought to tell them what our observations are conjointly.

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. Prof. R. Deosaran: Thank you. Mr. Vice-President, I think that is the easy solution, to hire more people and spend more money. That is why I always wonder whether the money is being worth it, because it is a responsible question for a responsible Parliament to ask on behalf of the public.

But it seems to me as if paper committals have already started. That is, a person is tried in his absence by just looking at a letter that he has sent whereas you think that due process will require, which is relevant to the legislation. Sen. R. Montano asked the question: Is it fair to have somebody adjudicated upon in his or her absence? I say no.

I have a report before me from the Committee of Privileges of the Senate on a matter of privilege raised by Sen. Prof. Deosaran. I see a letter from me presented to the Senate and a letter from the other person, Dr. Ayoung Chee. Dr. Ayoung Chee, I understand, never appeared before the Committee. How do you know the letter is right? How do you know somebody else did not really write this letter? It is even unfair in terms of due process to Dr. Ayoung Chee. It is even most unfair to me not to have been invited to a committee of my peers in this distinguished Senate. I find that terribly unfair, disappointing and if anybody say it was like a Kangaroo court, I might be tempted to agree—not a Kangalee court, a Kangaroo court. But it is not completely detached because you were also a Member of the Committee. I say so partly in jest but partly in seriousness because you cannot threaten somebody's physical safety in not going to a hospital where the hospital is a place where you would go for your protection and safety. I believe this report is inadequate and the matter should be revisited if only to due process. I do not concern myself with the outcome, but I think it is like a paper committal and it looks as if the legislation is retroactive.

It looks as if things have started working already so I might very well file an appeal. I think we have overstepped ourselves, too much haste. This has been hasty and, of course, I do not know if it is the responsibility of the presenter my friend, Minister Joseph, but it really looks odd for hon. Senators debating a

matter for paper committal. I am quite sure Sen. Mark, with the passionate expressions he has made, would likely agree with me in terms of denying me my due process and so, too, I think, Sen. R. Montano has denied me and Dr. Ayoung Chee of due process and I hope Dr. Ayoung Chee being enthusiastic as he is, will take up this matter much more than I would.

I think Sen. R. Montano made some comments which I do think—they are some technical points. I do not think I really want to get into the legislation. I think Sen. Seetahal dealt with them but I was concerned with: Are there enough checks and balances? The answer is yes. The role of the DPP to me is still permissible under the Constitution and I still have some regard for his constitutional role and I believe we should give this piece of legislation a try for the time being. Sen. R. Montano did make a proposal. He said if 28 days should pass—I think that is a fair limit as a means of concession, that if the Opposition would require that concession, I think it sounds reasonable so we can start putting some benchmarks in the system, some time lines and even the Judiciary, therefore would feel itself accountable to the people through this distinguished Parliament.

Sen. Jeremie: Can I just make a point on the 28-day time period. A lot is outside of our control with respect to the 28-day control. You are asking the DPP who is an independent judicial officer to make a decision, you are forcing him and you are looking at the court schedules. It is not going to be realistic from a technical point of view.

Sen. Prof. R. Deosaran: That is why you cannot always take a lawyer's advice. Even on this occasion it is free but you have to be careful. We have instances here where lawyers advice have gone wrong and when it comes back with legislation—so we must be careful, which is one piece of advice I am leaving with this honourable Senate.

Mr. Vice-President, I think I have given my views on this. I wanted to get into the legislation itself but I think Sen. Seetahal dealt with most of it properly and even better than I could have, so I leave those. I have dealt with the more infrastructural issues and the major concerns raised by the Opposition and the Attorney General. Thank you all very much for listening to me.

Sen. Dr. Tim Gopeesingh: Mr. Vice-President, in the role of the citizen versus the State or the State versus the citizen, since the days of the early Greek philosophers, namely Socrates, Plato, Hobbes and Machiavelli, which I am sure you are all familiar with, it has been recognized that there will be at times existing a sharp dichotomy and divergence of views between what the State wants and what the citizens want. Good governance necessitates that the State

carry out its duty to protect, to ensure safety and security and to safeguard without trampling on the rights of citizens.

Attempts by different governments to introduce various pieces of legislation to deal with social ills have at times occasioned voices of dissent against flaws and pitfalls in pieces of legislation. And I would like to proffer that this piece of legislation certainly has serious flaws and pitfalls.

What is the Bill? The Bill seeks to modify the amendments to the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01, which was introduced since 1994 to provide for the committal of accused persons on the basis of written statements submitted by the prosecution to the enquiring magistrate. That may be a step towards alleviating the distress and the long time delays in the Magistrates' Court but the Bill would also confer on the Director of Public Prosecutions the power to prefer a voluntary bill of indictment without reference to a judge of the High Court and whether or not a preliminary enquiry has been held.

Mr. Vice-President, we must never, in our haste to bring legislative solutions to the table, be prepared to sacrifice constitutionality and citizens' rights on the altar of expediency. We must recognize that some of our hastily proposed pieces of legislation can be wrong. And we have had examples of legislation which have been subsequently struck down by the courts as being unconstitutional or illegal. For example, we hope that the Bill seeking to review the Judicial Review Act is never to be brought back before this Parliament and that is another naked attempt to stop the last bulwark against the might and the oppression or abuse of power by the State.

Mr. Vice-President, we must never deny citizens their right to access justice through the court systems. We have a court system of the Magistrates' Court in the Westminster system going to the High Court, the Appeal Court to the Privy Council. And here we are making an attempt to institute the authority on one individual to bypass a court system which has been entrenched through the English legal system in all Commonwealth countries whether they are 84 or whatever numbers they are.

It is true that the British system only has common law and they are now beginning to bring statutes in, and they are now designed and governed by the European Community. But we have inherited a system where we have a court system and a hierarchical court system. A hierarchical court system says that the Privy Council is the boss of the Appeal Court in Trinidad, the High Court cannot change anything the Appeal Court has adjudicated on and so the

Magistrates' Court cannot change anything the High Court has adjudicated on. So why are we trying to eliminate a magisterial type of enquiry in a system of criminal procedure and bypass that and send it immediately to a high court without a due process?

My colleague Sen. Mark, alluded to the fact that the Criminal Bar Association—and I do not agree with my learned colleague, Prof. Deosaran, that these associations, the Criminal Bar Association and the Law Association consist of individuals of tremendous work and years of service and years of experience. If I belong to a medical board or a medical council with 31 years experience as a doctor, that must not be taken lightly. The Criminal Bar Association consists of members of tremendous integrity who, collectively with their years of experience, can decide and look at a particular piece of legislation and can make some substantial comments on it and it must not be taken lightly.

The newspapers have reported what the Criminal Bar Association has come out strongly against this proposed piece of legislation. They indicated that the proposal to confer on the DPP an exclusive power to prefer a voluntary bill of indictment is one which is fraught with danger and can open the door to abuse. This is the collective wisdom of a number of people who have been working at the bar in criminal law over a period of time and can substantially evaluate and elucidate whether something is right or wrong and this is why professionals have their associations. You have the Medical Association, the Law Association, the Bar Association, you have the accounting association, the Engineering Association and their value systems must not be put aside without any reason.

In the *Express* of Saturday, July 08, it says that it can open the door for abuse, say the lawyers and a proposed amendment to the Indictable Offences (Preliminary Enquiry) Act may open the way for the State to abuse its power and ensure that certain individuals are prosecuted. The Criminal Bar Association has complained, according to the *Saturday Express*: "To ensure that certain individuals are prosecuted". If members of a legal profession who are working at the criminal bar could make a statement publicly to state that it is an abuse of power and this Bill might ensure that certain individuals are prosecuted, they know what they are saying. I draw no further comments on that and I will make no further comments on that because it is quite understandable to all what that statement means: that certain individuals be prosecuted. I pause for everyone to take that in.

The Bill to amend the Act gave the Director of Public Prosecutions the power to indict anyone whether or not a preliminary enquiry has been conducted. It is not unknown in this country that when I was chairman of the Regional Health Authority, I worked hard for three and a half years and I gave up my profession to benefit the people of Trinidad and Tobago in the field of medicine; I gave of myself voluntarily after 20-something years in the profession—and I was given a Chaconia Medal, Trinity Gold for my contribution to medicine and community service. [*Desk thumping*]—I was hauled before the courts by a Director of Public Prosecutions. In fact, there was nothing substantial, anything financial whatsoever, and nothing criminal could have been brought before the court. What I was charged with is that I did not get permission from the Minister of Health to give a contract to a chief executive officer. Nothing criminal in it whatsoever and I was hauled before the courts with handcuffs and put into a cell.

My professionalism went through the world because I am an associate professor and I write papers in international journals across the world. My professionalism was taken away from me and that hurts. It hurts because here you are through your life trying to build your professionalism, build your character. I have attended to over 20,000 women in my life in four continents of the world in 14 hospitals around the world and here am I hauled before the courts by a Director of Public Prosecutions who did not seem to know the difference between a criminal matter and a civil matter, and when it reached the Magistrates' Court, after a few days of deliberation, the magistrate says this is not a law known to the courts. Why was I brought before the court, to be humiliated? So many other professionals—my colleague, Dr. Naraynsingh, who was my classmate, was also humiliated and we must sit and accept that the Director of Public Prosecutions could take a matter away from the preliminary enquiry and send it to the High Court. I would not be a Member of this House, this legislative body and accede to those wishes. This is draconian legislation and I am sure that Director of Public Prosecutions lives with regret in his heart that he has done this to a professional who has worked his life to earn his reputation.

I am not discussing this present Director of Public Prosecutions. The office of the Director of Public Prosecutions must not be given that authority. It is the safeguard of any citizen to be heard in a Magistrates' Court and if it is found that there is a problem therefore, it could be sent to the High Court but do not take that right away from it being heard in the Magistrates' Court in the first place. The English legal system has that. The Commonwealth countries have that; and do not take that responsibility away and that right away from that place.

The Criminal Bar Association said:

> "A preliminary enquiry… is an important 'due process'…"

And if I did not have that myself I would have been hauled before a jury and being political as I am, you do not know what the jury would have held against me.

> "safeguard for a citizen facing a criminal charge. It mandates the careful scrutiny of the prosecution's case by the magistracy. There is no good reason for removal of this scrutiny,…"

the Bar Association said.

3.45 p.m.

It took issue with the fact that the amendment would widen the group of officials who could use indictments.

> "In addition to the DPP, the power would be granted to a Deputy DPP and any other person authorized by the Director."

Well I have noticed that since this was argued in the other place and since these comments came through, it was the wisdom of the Government to change that and they have now decided to amend it and to say that it is only the DPP and the Deputy DPP who would be doing this. That is good sense.

We are here to debate an issue where, in the Lower House, that criticism was taken into consideration and the amendment brought to this place. There is no good reason for giving this powerful tool of prosecution to such a wide group of persons. Two people—that is fine.

The third area is that there was nothing in this proposed legislation to indicate what criteria the prosecuting authority would use in singling out certain cases and persons for indictment without a preliminary enquiry being conducted into the charge.

We see also that there are five amendments that have been brought to indicate the type of cases that would allow the DPP to send this matter to the High Court, but these situations are not really succinct. Therefore, I take the words of advice from my fellow Senator, Mary King. I prefer that it not go to committee stage at the moment, but be discussed—I support my colleague, Sen. Wade Mark—by a Joint Select Committee of Parliament first.

Mr. Vice-President, in the Chief Justice's address at each of the openings of the law term, 2003—2004 and 2004—2005, he criticized the Executive, in his position of Chief Justice who deals with the administration of justice on a daily basis, for, inter alia, interference in the independence of the Judiciary. When we are governed by the Westminster system and we are supposed to adhere to the separation of powers between the Executive, the Judiciary and the Legislature, we must not confuse that separation. We in the Legislature make laws. The Judiciary interprets laws and the Executive tries to bring the laws into Parliament for discussion. They have brought this Bill for discussion, but we must try at all times to maintain that separation of powers. However, that separation of powers is becoming blurred on a daily basis.

We see a security unit in terms of taking care of citizens' rights reporting to the Attorney General. How can that be? This is just one example of the loss of separation of powers. So the Chief Justice criticizes the interference into the independence of the Judiciary, the failure to provide adequate resources, meaning also the Magistracy—particularly the Magistracy—and the office of the DPP.

Mr. Vice-President, as far as knowledge goes, I understand that there are over 40,000 cases backlogged—the Attorney General may correct that—and there are about 43 magistrates in the country. That means each magistrate will have to deal with a backlog of 1,000 cases plus over 100 cases that come through daily.

This Bill is brought in the context of expediting the administration of justice and reducing the backlog of cases in the Magistrates' Court. You cannot bring legislation to deal with a problem when that problem might be administrative and bureaucratic. Legislation is not a substitute for inefficiencies of a system. What are we therefore trying to do? While we here, collectively, are trying to lay down the legislative framework, all part of nation-building, which the Government is trying to do, which we and the Independent Senators are trying to do, we must not be seen as just putting a quick fix or a plaster on a sore that is weeping. This legislation could be interpreted as a quick fix or a plaster put on the sore of the weakness in the magistracy system. What are we trying to do to improve the delay in the justice system? We are trying to improve the administration of justice. We are trying to reduce the backlog of cases.

I refer to what a committee in its report said about the reduction of cases and the backlog of cases in the Magistracy. Who is this committee? This committee is a committee of legal minds, including attorneys and retired magistrates, many of them with hands-on experience, who drew up a draft paper with recommendations for changes in the Magistracy and the law in the fight against crime. The team

was headed by a retired senior magistrate. This was printed on Wednesday, July 06, 2005 in the *Newsday*.

What did this committee state? There are draft comments on some important aspects, including paper committals for indictable offences, the oppressive system for bail, which they claim is open to corruption, and plea bargaining. They went on to state that to end and address this situation, they wanted to make certain observations and suggestions to have due process of law applied swiftly and effectively.

They suggested a number of points to reduce the workload. Sen. Prof. Deosaran speaks ad infinitum on some of the measures we need to take into consideration to reduce crime and to look after criminals and their victims. This committee, including a number of senior magistrates, who understand the working of the Magistracy, made some suggestions. They suggested training:

> "…that new recruits to the Magistracy undergo a course of training in certain aspects of the job, including agencies with which they interface on a daily basis".

There are 43 magistrates. There are new recruits and you have to train them. There are too many cases on the daily list made up of a diverse range of matters, from murder and rapes to inquests. To this end, the committee said it would like to recommend that the functions of magistrates be structured somewhat along the lines of the Assize Courts. They are making representations and recommendations for improving the Magistracy and reducing the backlog of cases. They said that:

> "A closer study of this system and a more refined application may prove of invaluable assistance in streamlining the system now being employed."

The second recommendation was a set of amendments. They said that:

> "With the growth of (serious) crime on a national scale, we would like to recommend paper committals for all indictable offences similar to S 33 of the Sexual Offences Act…"

We on this side of the Senate would be in agreement with the paper committals issue, provided it is done properly and the accused is given fair process in court. Sen. Dana Seetahal, who has been through the system, has, obviously, tremendous experience in that and she gives the undertaking that paper committals would help to some degree in reducing the time wasted in the Magistrates' Court. That was one of recommendation made by this team as well.

They spoke about remand.

> "May we suggest that a new facility at Golden Grove be built with a 'Remand Court' adjudicated over by a visiting Magistrate."

So there is the opportunity to have more magistrates closer to the Remand Yard and therefore it would not be clogged up in the court system where prisoners have to be transported and brought to the site.

People in this country are calling for a different type of governance. They say that we are too quarrelsome in Parliament; that we argue and debate nothing and make no recommendations. I bring this point out to indicate that here is a team of people who have worked in the Magistracy, studied the Magistracy and brought suggestions. I would like to reemphasize these suggestions through this Senate so that they may be taken up for consideration by the Government.

I see that the Attorney General has come in. I refer this Paper to him, so that even though he has his legislative matters, he could take cognizance of the recommendations of this committee of a number of senior lawyers and magistrates. They have made some very valuable recommendations. They spoke about plea bargaining and in his absence I spoke about training and a number of other issues.

They said that:

> "A system of plea bargaining would also add to the Magistrates' repertoire in tempering justice with mercy.
>
> Magistrates' Courts are in the front-line of the judicial process and meet every person accused of a crime in Trinidad and Tobago.
>
> The very first impression should therefore be that it is an institution that is capable of applying and will apply 'due process' effectively."

We should not try to take that away from the due process in a Magistrates' Court and hand it over to a High Court. My colleague, Sen. Mark, said that there are people, who, if you take that process away from a Magistrates' Court and have to go to a High Court, there may be three or four years, in the present system, before their case is heard. So you have to take cognizance of that, worthy Attorney General. [*Interruption*] Do you want to make a point? Make your point.

Sen. Jeremie: There is legislation recently on the books in relation to plea bargaining. It has not worked in our jurisdiction and efforts are being made, together with the Ministry of National Security, to fine-tune the legislation.

Sen. Dr. T. Gopeesingh: I made that point because a number of young first offenders come to the courts and they are frightened about the system, therefore you have to give them some assurance that serious punitive measures are not taken against them. I am sure that that is the reason that this group of professionals has indicated that it wants to see plea bargaining as one of the things you ought to take into consideration.

I am not going to speak about the DPP, but I am speaking about the Office of the Director of Public Prosecutions. I want to draw some statistics and empirical data. Between January and June 2005, 13 murder trials were completed in Port of Spain through the Office of the Director of Public Prosecutions and the result is that there has been only one murder conviction.

Sen. Jeremie: Please allow me to correct you.

Sen. Dr. T. Gopeesingh: I give way to you, hon. Attorney General.

Sen. Jeremie: The position with respect to homicide is that very often the prosecution does not go all the way in relation to a murder conviction, so that while the statistics are correct insofar as murder convictions go—and even there, I think you are one or two short—I think the conviction rate is a little higher, not appreciably. If you look at the manslaughter convictions, which is what you step down to if you do not have the evidence in relation to murder, you would see that the statistics are quite good.

Sen. Dr. T. Gopeesingh: It is good to engage the Attorney General in the discussion because these are stark reality statistics. Do you know how many man-hours and money has been spent on 14 murder cases, only to have one conviction? The hon. Attorney General is quite right in his own way. The Office of the DPP sought to answer why there was such a high failure rate in terms of conviction.

On Sunday, July 03, the *Newsday* carried an article "DPP Vital eye witness reluctant to give evidence". That is just one of the premises on which the Director of Public Prosecutions sought to explain why he had not been successful. There are a number of other reasons which we ought to consider seriously why the office of the Director of Public Prosecutions is not as successful as it ought to be. Of course, there was one murder conviction, five manslaughter convictions and seven acquittals.

The DPP sought to explain some of these, but the reality is that, as our colleague in the other place, the Member for Pointe-a-Pierre, Gillian Lucky and Sen. Seetahal, who have worked in the Office of the Director of Public

Prosecutions office would tell us, there are junior people working in the DPP's office who do not reach a level of seniority where they have the competence at a critical level to deal with the equal competence of senior defence lawyers.

It is something in which the State—and I would not be too critical—would not spend the money badly when it pays young attorneys in the DPP's office better. You may get a better cadre of attorneys. Try to use whatever incentives you may need to keep the better attorneys there, so that you will have a strong calibre of attorneys. Your turnover rate is very high and there are a number of posts that are not filled. These are some of the issues that you ought to take into consideration.

One last point: the court prosecutors in the Magistrates' Courts are still policemen and everyone is still speaking about that. If we have 43 Magistrates' Courts, why can we not get 43 capable young attorneys? The Law School churns out hundreds of lawyers. Even the private law schools are turning out lawyers. There is no scarcity. We just need to keep them here. I would not go into the medical situation, which is abominable. That is something else. We need to pay them properly. I will give way, hon. Attorney General.

Sen. Jeremie: Thank you, Senator. Mr. Vice-President, Cabinet, a year and a half ago agreed to a substantial increase in the DPP's office, precisely because of the problem which the Senator has identified. It is a very real problem. The difficulty is that the office has attracted relatively junior staff, as he pointed out. We have sought to retain senior persons on a fixed retainer basis—the DPP runs his own shop—and these persons have given of their time over and beyond and they have also lent, in terms of training, so that the DPP has actually moved most of his staff out of the Court of Appeal and that is done by persons on retainer. In the High Court he has a mentoring system. So, he is working within his constraints.

Sen. Dr. T. Gopeesingh: That is something that is required, but it needs to be expedited and there must be a multiplier effect so that there would be a meaningful situation where you would have competent people to address issues in the Magistrates' Courts. We started the whole question of the family court which seems to be a success now, so there are many good stories so far as these things are concerned.

I brought up all these analogies and situations to ask whether the DPP's new power would help the lower courts to process cases faster: Will this legislation help to process cases faster? This is just a blip of it. I think that all of us would be aware that even though this legislation goes through and we give the Director of Public Prosecutions the ability to send the cases from the lower courts to the High

Court without a preliminary enquiry and to have these paper committals, that is a miniscule part of the delayed administration of justice. A lot more needs to be done.

We would like to ask you seriously to consider the recommendations for implementation in a number of other areas. Some of our colleagues may not want to hear that you employ more magistrates, but what is wrong with doing that? [*Interruption*] I take guidance from my leader on this side.

The cold fact is that there are too many cases and too few magistrates. It comes back to what Sen. Prof. Deosaran says all the time. We need to look at the basic core of why criminals come before the court. Can we reduce the number of people coming before the court by the implementation of a number of social policies and a number of reform policies in prison, so that we have first offenders not coming to court? You must take his work and the work of his committee very seriously. You must not allow good reports to lie on the desk without implementing them. You must revise the capacity to take good reports and good recommendations and implement them as quickly as possible. This is good governance. All of us who are in the process of governance will realize that to be efficient and effective at anything, you analyze the recommendations, see which ones are priority and deal with the priorities.

If we reduce the number of criminal cases going to the Magistrates' Courts or shift some of them that do not need to go there, as we shifted the family court matters; if we have some system at the Remand Yard and many other things, we would certainly reduce the backlog of cases.

Sen. Prof. Deosaran: It is a vital point that he has made with respect to adding more judges and magistrates. I agree with it, but a responsible government should also have some empirical basis in terms of case load and requirements, to add the new judges and magistrates. It is at public expense. I also make the analogy that if it were the private sector, the business would be conducted like that. It is not a matter of arbitrarily hiring more judges and lawyers. I agree that they can do it, but on a premise. I am sure that you, as a businessman would agree with that.

Sen. Dr. T. Gopeesingh: I correct you. I am not a businessman. I am a medical doctor, professor, and I work with you at the university.

Mr. Vice-President, I discussed with Sen. Prof. Deosaran in the lunch room the question of a management audit. If we have a backlog of 43,000 cases, we need to determine—is it 43,000? These are things we must know. You must have

the figure at your fingertips. I can tell you things about the health sector that are at my fingertips. This is your job. [*Interruption*] I have been proven untrue about something that is ten-fold. You can see the magnitude of the problem. [*Crosstalk*] It has stimulated some discussion

Mr. Vice-President: It has stimulated some discussion, therefore the point is quite valid that a management audit needs to be done. We see the number of cases. We should hire some international people if your local personnel cannot do it. [*Laughter*]

My colleague, Sen. Wade Mark, asked where are the *West Indian Law Reports* in the Parliament library. We ask: What about our own law reports—the Laws of Trinidad and Tobago? I hope the Attorney General keeps his promise that it is going to be in a year. He told us that about six months ago

Sen. Jeremie: In terms of the backlog, Sen. Prof. Deosaran posed a question for written answer and the reason it has not been answered is that the information really is in the hands of the Judiciary and they are not capable at this time to provide us with accurate information. I have a figure, but it would not be fair to the Judiciary to expose that at this time. I have shared with Sen. Prof. Deosaran the dimensions of the problem; what the Judiciary have told me are their constraints in terms of being able to provide the information; how long they would take to provide that information—and it is a period of time. It carries us close to the end of the year and if you respect the separation of powers—I have a figure because I understand the problems, but it would be unfair for me to reveal that.

Sen. Dr. T. Gopeesingh: Thank you for the clarification. It just signifies, Mr. Vice-President, the need to work together in the interest of justice. It does not mean that you are not separating your powers. You have a responsibility as Attorney General and the Minister of Legal Affairs, in the administration of justice and you can work with your colleagues in the judiciary system on the administrative aspect of it, which should be taken into consideration.

Therefore, Mr. Vice-President—I would not be too long again—before the Parliament goes about giving the DPP powers which could be subject to abuse and which, in my humble submission, contravenes constitutional rights—it does contravene the basic rights of an individual to a fair hearing in a lower court without having to be subjected to a jury, which has its biases. Every young law student knows that there are big discussions on the question of whether it is better to be tried by a single magistrate or a judge or whether to be tried by a jury. Being tried by a jury has its inherent difficulties and prejudices.

The question of taking away the responsibility of a hearing at a preliminary enquiry and giving it into the sole hand of one individual who already has a tremendous amount of power in his hands, is probably asking too much for the ordinary citizen. You have to strengthen your system, unclog your courts, make it a presentable area, have enough Magistrates' Courts throughout Trinidad and Tobago that are clean and aesthetically pleasing, where people can go and feel that they would be taken care of in the same way that you want your hospitals and health centres to be good and nice.

I have been through the courts. I never knew where the Port of Spain Magistrates' Court was. My wife has been an attorney for 25 years, but I was subjected to it, therefore I had to know where they were.

4.15 p.m.

When you go to the Magistrates' Courts and have to find that this is an abominable situation, you ask yourself: Do I live in a country where we have a $31 billion budget? Of course, we can build more Magistrates' Courts. We have to deal with the population in a civilized manner, not in an uncivilized manner. I am agreeing with Sen. Prof. Deosaran and some of my colleagues. I was not here but I read in the newspaper that it was said that the banking sector, people who are making millions of dollars, do not have toilets in the banks. We as a government, and the people of Trinidad and Tobago, must ensure that when you go to a court you are not treated like cattle. Someone calls out loudly from inside. It is a horrendous system. It is dehumanizing and uncivilized. Please take all these things into consideration. It is your turn to govern now. It will be our turn to govern in 2007.

My brother, Dr. Keith Rowley, who is my good friend, understands that. He has been my friend since university in 1969, 35 years. He may differ with me politically, but he still remains my friend. They are in the process of governance now but we will in 2007, or whenever elections are called. The Government has the responsibility of doing the things that I am speaking about.

The putting of the technology is a welcome thing. I had the fortunate pleasure of being associated with a brother who is now deceased who was an Appeal Court judge and acted as Chief Justice on two occasions. I had to talk with him many times. My wife, who is an attorney, spoke with him many times. I used to see these judges writing in longhand and at the end of the evening—those of us who write a lot would see—their fingers are in real problem. It happens now. I think there are CAT Reporters in the Appeal Court, but the judges have to write longhand and what is even worse is that the magistrates have to write. When they

are asked to give a decision, could you imagine the delay in having this? They have to transcribe all that is being written by hand. Sometimes they cannot understand their handwriting and they have to make a decision based on that. All these are antiquated systems. The digital recording is a welcome thing. We in Parliament are very lucky that we have our CAT Reporters and we can get the *Hansard* quickly, but that should go for the Magistrates' Courts and the High Courts and with quick alacrity that should be done as quickly as possible. The Government should spend the money in the right places, rather than in the wrong places. [*Interruption*] You can ask. You have a good voice and a close rapport with your Cabinet colleagues, Mr. Attorney General and Madam Minister of Legal Affairs. You can ask for what is desirable. Let the people of Trinidad and Tobago benefit from this windfall, rather than go through an uncivilized state.

When we do this kind of analysis, which I briefly mentioned and which I skimmed over, I tried to give some of the important things that are necessary in reducing the backlog of cases in the administration of justice. Chief Justice Michael de la Bastide did a tremendous amount of work and at one time in the Appeal Court, the criminal appeals were heard expeditiously. There were no delays in hearing the criminal appeals in the Appeal Court when he was Chief Justice. I am sure the situation is almost the same now. If we can do it at the Appeal Court level, we can do it at the High Court level.

There are very competent judges in the High Court. I am sure that they are capable of doing it. I would like to see many more judges. I know what they have to go through at 2 o'clock in the morning. Sometimes they have to be writing up judgments and they have to go to court in the morning for 9 o'clock. They also have to do research after court finishes at 2.00 a.m. Their work is tremendous. I empathize with them. For them to be given the opportunity to write their judgments they must be given the time off. Therefore, that should be taken into consideration.

Mr. Vice-President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. Dr. T. Gopeesingh: Mr. Vice-President, I hope I do not take up the entire 15 minutes. I will break for tea.

If the Government really wants to streamline the court system, we need to look at this type of analysis and we must do this in conjunction with the legislative changes that they are proposing, but with which we on this side have difficulties in one or two of the issues of this legislation. This is why we are recommending that it go to a Joint Select Committee for consideration before bringing it back to Parliament.

We are happy that the Government has made certain changes in the other place before bringing it here. We are asking that certain changes be made here again before the finalization of this legislation.

I would like to proffer that this Bill demand a special majority for two reasons: firstly, it proposes to give the Director of Public Prosecutions a right of appeal which he does not now enjoy and, secondly, it proposes to assign to the Director of Public Prosecutions a right which was not specifically provided for in the Constitution, that is the right to send matters straight to the High Court without a preliminary enquiry. That is not in the Constitution, Mr. Vice-President.

The hon. Attorney General has been quoting Lord Diplock in the case of Grant in Jamaica to substantiate his point. I want to re-emphasize what my colleague, Sen. Mark, has been saying. The Attorney General has been saying that the DPP should have the power to send come cases straight to the High Court and he is quoting Lord Diplock in the case of Grant in Jamaica, trying to substantiate that point. However, Lord Diplock, who is the guru of law in the modern legal system, made it clear that there was a coroner's inquest before the case was sent to the High Court. On that basis, he believed that the DPP did not violate the rules of natural justice. The coroner's inquest is similar or equivalent to the preliminary enquiry. Lord Diplock advised that the Jamaican law should be revised along the United Kingdom legislation, which allows the Director of Public Prosecutions to avoid the preliminary enquiry, but he must get leave of a judge under their statute. [*Interruption*] Do not interrupt me. We will speak about it after.

The DPP performs a critical function in the administration of justice. According to section 90(3) of the Constitution, his functions are here. The functions are carefully spelt out and we are trying to give him a new function. I would like to state that this function should be part of the Constitution. Since his functions are already defined in the Constitution, and you are giving him a new function, that is a constitutional change, which needs a special majority. I would like to commend that to my colleagues. According to section 90(3), he shall have power in any case in which he considers proper to so do:

"(a) to institute and undertake criminal proceedings against any person before any court in respect of any offence against the law of Trinidad and Tobago;"

But two things are obvious, we have to be critically aware of this in the context of constitutional change and the need for a wider constitutional change and amendment. The first is that no person can be appointed Director of Public Prosecutions without the approval and blessings of the Prime Minister. This is something that is anachronistic and outdated. The Director of Public Prosecutions must have the blessings of the Prime Minister, who is not only head of the Executive, but the head of a political party.

The Prime Minister only has to say that he does not like person A, but wants person B and does not disagree with person A. Remember his position is head of a political party and part of the Executive. We have to be constantly and critically aware that when you give powers to the Director of Public Prosecutions you are in fact trying to send signals. Here is a man appointed by the head of a political party and government. It may be perceived that he has to do the bidding of the Prime Minister. That is something that is unsatisfactory. Therefore, this really calls for wider constitutional changes.

We on this side are disappointed. We read recently where the Prime Minister said that there will be no constitutional change and no discussion on constitutional change before the next general election. That is a bit sad. My colleagues on the Independent Benches are agreeing with me.

The second point is that the Director of Public Prosecutions enjoys very wide discretionary powers to prosecute or not to prosecute. In the absence of any knowledge as to how he exercises that discretion, and in the absence of parliamentary oversight—we do not have parliamentary oversight on any—we have to rely solely on the integrity of the holder of the office. Sen. Prof. Deosaran said that he taught the present DPP, but we have to respect the office. Therefore, as Sen. Mark has indicated, the public's perception at the moment is not aligned in full to the respect for the DPP's office. Sure, everyone will have difficulties; some may like you, some may not like you, some may agree with you and some will disagree with you, but when there is a wider circulating perception that the office has been akin to some type of political play, we have to be very careful. There is no oversight over accountability of the Director of Public Prosecutions and we are giving more powers again to the said office.

The Attorney General, the Director of Public Prosecutions and the Prime Minister can be considered lords over their domain. That is, in fact, so in the Constitution of Trinidad and Tobago.

We are obviously disturbed about the delay in the administration of justice. We are disturbed about the 4000 cases of backlog in the Magistrates' Courts. We are disturbed equally about this entitlement that we want to give to the DPP to bypass the Magistrates' Courts and land it straight to the High Court, in the hands of a jury. There are serious discussions, internationally in any legal system whether a jury is better than a single magistrate, or a judge. There have been commissions of enquiry internationally, to determine this. They still have not come out conclusively on which is better. It depends on the particular situation which you are in.

In closing, what we are seeking to do is to make him who is already, a prosecutor, possibly a persecutor. This is a dangerous situation.

I thank you, Mr. Vice-President.

Mr. Vice-President: Hon. Senators, it is time for us to take the tea break. We shall, therefore, suspend for the tea break and come back at 5.05 p.m.

4.30 p.m.: *Sitting suspended.*

5.07 p.m.: *Sitting resumed.*

Sen. Prof. Kenneth Ramchand: Thank you very much, Mr. Vice-President. I do not intend to speak for a long time, but there are one or two points I would like to raise, if only to have my understanding of what is going on clarified by the Attorney General and the Government's side. Let me begin by saying what everybody knows, the present piece of legislation is only a small contribution to speeding up the delivery of justice. I cannot see that this by itself will make much of an impact. Therefore, there is the need for a comprehensive look at the problems dealing with some of the issues raised by other Senators, such as more magistrates, more Magistrates' Courts, more efficient policing, more efficient collecting of evidence, et cetera. All these things have to do with speedy and, if I may say so, just delivery of justice. I am confining myself to the present Bill.

The legislation has set me thinking about the differences between a preliminary enquiry and a trial. I used to think about that even before the legislation. One thing I have to say is that the length, breadth and depth of some preliminary enquiries would make you imagine that a preliminary enquiry was a trial. Something has gone wrong in the system that caused people to treat a

preliminary enquiry as a trial. Perhaps, I know, but I do not know why the lawyers do this.

Sen. Seetahal began by asking the question: What is a preliminary enquiry? There were two things that came up. In a preliminary enquiry the magistrate considers evidence and decides whether the matter should go to trial; whether it is triable, not whether the person is guilty and whether it needs to be triable in another forum; where we can go at greater length and in greater detail. It is an enquiry that determines whether the matter is worth taking on to a trial. It is not set up to determine innocence or guilt. I think this is one of the misunderstandings that are current about preliminary enquiries. Some of the people taking part in a preliminary enquiry act as if the whole business is to establish innocence or guilt.

The second element she sees in a preliminary enquiry is that it makes all evidence or information known to the defence. It does not do so absolutely, nor does it do so in all cases, but for many cases it does. I remember Sen. Mark touching on this point and seeming to imply that he would be happier if legislation could be passed to make it compulsory that in all cases in the Magistrates' Courts, all information and evidence should be disclosed. I would support such a move, because such a move would allow us to change the nature of the preliminary enquiry from what Sen. Seetahal called the "old type" of preliminary to one that is, for the time being, called a paper committal. I think if all the evidence and information were disclosed in the Magistrates' Courts, we would be on good ground for embracing paper committal or something called something else; something with another name. I say another name because it cannot be paper committal. Part of this Bill is telling you that you want to use other kinds of information and it is not always on paper. The committal will be based upon all the new kinds of evidence and all the new ways of collecting the evidence, a kind of committal which moves the preliminary enquiry away from the old style enquiry, which looks like trial.

That brings me to the second distinction that I feel we need to be clear about. I have already broached it, a distinction between the old style and the one that is now called paper committal. If I have a criticism of that aspect of the present Bill, it is that I really feel that it is a bit lumpy. It leaves too much room for delay and cross-questioning of the information. We must streamline the way in which the information or evidence is presented, so that there will be no need for supplementary information, questioning or elaborations. It must be done in such a way that it is all there.

I really have no problems with a paper committal. The preliminary enquiry, which is in the form, for the time being, of a paper committal, is not establishing innocence or guilt, it is saying, here is all the information and evidence, let us decide whether this matter should go to trial. I would envisage a system whereby attorneys representing the State and attorneys for the defence sit like gentlemen in a noble profession and look at the evidence and decide, not whether the person is guilty or innocent but, whether the thing is triable. I see the Attorney General shaking his head, as if he thinks he cannot get that kind of cooperation; it will not happen. It is the result of the two party system; you are either on one side or the other. I will continue to beat my head against that all my life. The people have to learn to act according to principle and to work for the common good and set aside their self-interest and their partisan interests and deal with matters in a patriotic way, or a way that is in the best interest of the society.

I would really envisage a system in which all evidence and information is gathered and then, when it is decided, it will go to trial. I would agree with Sen. Robin Montano, that you have to set the time limits—two months, three months, 28 days, whatever. As I understand it, if you take time to collect all the evidence or information for the paper committal or preliminary enquiry, you cannot come back and say that you need time to collect the evidence, all the evidence is there. There cannot be any good reason for not having a speedy trial. I would envisage a revision of the system along those lines, and the present recommendations would then contribute to a significantly greater reduction.

Mr. Vice-President, much has been said about the powers being granted to the Director of Public Prosecutions. When I saw the first version of the Bill, with a new subsection (8), which I would like to read—because there is a significant difference between that proposal and the amendment that has just come to us—I said I could never support this.

> "'Notwithstanding subsections (5), (6) and (7), the Director of Public Prosecutions or the Deputy Director of Public Prosecutions or any person authorized in that behalf by the Director of Public Prosecutions,…"

I do not want to read more. If the DPP, or the Deputy DPP is out of the country—

> "any person authorized in that behalf by the Director of Public Prosecutions…"

No way! That has been changed.

> "may prefer an indictment whether or not a preliminary enquiry has been conducted…'"

Again I said no way.

I hurried over to Chap. 12:01 and looked to see what power the DPP had in this respect and I found section 23(5) quite unexceptionable. If a magistrate discharges the accused on a preliminary enquiry he shall, if required to do so, transmit forthwith to the record of the proceedings and if, on perusing and considering the evidence, the DPP is of the opinion that the accused ought not to have been discharged, he may apply to a judge of the High Court for a warrant for the arrest and committal for trial of the accused person. There was a judicial intervention, as it were, although the Director of Public Prosecutions is not satisfied with the judgment of the Magistrates' Courts. He has considered the evidence. I do not want the DPP to say I have considered the evidence and I call for a trial. The Bill says that he goes to a judge and he says: "Look, I am not happy with this, what do you think? I want a warrant. I really want to indict this person." That is okay. If I understand the amendment that is before us now, what it says is:"

> "Notwithstanding subsections (5), (6) and (7), the Director of Public Prosecutions or the Deputy Director of Public Prosecutions…may prefer an indictment whether or not a preliminary enquiry has been conducted."

It also says only in the following instances. It does not say here notwithstanding subsections (5), (6) and (7) the Director of Public Prosecutions may apply to a judge of the High Court. There is no judicial intervention. I would like Senators to consider whether there are enough safeguards in the system to prevent arbitrary behaviour. If we had a system in which all information and evidence were disclosed, and if on looking at that the Director of Public Prosecutions—by law we are saying all the evidence and information has to be disclosed and is now available to the Director of Public Prosecutions. If the DPP in these circumstances thinks it should go to trial, some people might be quite satisfied that he should have that power, that he could look at it and say this can go to trial, we do not need the preliminary enquiry. The evidence must be transparent and obvious to everybody. There is the problem of transparency and credibility still. To me, that will be a requirement, if this is to fly. There has to be the legislation which says that all evidence and information have to be disclosed.

Sen. Jeremie: Under the current practice, if the evidence is such, once you go before the judge, the judge has the inherent jurisdiction to uphold a submission

that there is no case before him. That is the safeguard in and of itself. The judge has to hear the matter, so that you are not deprived of a hearing.

Sen. Prof. K. Ramchand: That is the second thing that we have to consider. The first is that all the evidence and information have been disclosed, as required by law. Secondly, I have been told that if the Director of Public Prosecutions makes an indictment in that way, the judge has the option to throw it out. I am hoping that the defence attorney could tell the judge: "You should throw this out too"; and can make application so that the judge can throw it out on his own steam, or there can be an application to him to throw it out. I do not know if Senators would be satisfied by these two conditions and would say: "All right, we are giving the Director of Public Prosecutions the power, we are satisfied by the fact that all the evidence and information have been provided."

Secondly, the judge has the power to throw it out. Thirdly, the defence can apply for it to be thrown out; whether that would be satisfied, is only a question.

Sen. Jeremie: It goes back to the point that you were making initially, that the purpose of the preliminary enquiry is not to establish guilt or innocence. That is the function of the judge. If the judge finds that there is no evidence before him, there has not been sufficient disclosure, or that there is some other breach him of the principles of natural justice, he will throw it out. As a matter of fact, the present system duplicates the police power. The police have power to arrest and to proceed, but their test is higher than that which the magistrate applies. The police must reasonably believe that an offence has been committed. The magistrate only decides on a balance of probabilities. You have two safeguards, not the police officer making the decision, but the Director of Public Prosecutions who is a quasi judicial officer and then you have ultimately the judge deciding whether or not there is a case before him, so he can throw it out.

Sen. Prof. K. Ramchand: I am asking these questions to have it clarified what it is I am being asked to support. I am very glad for the clarifications as we go along.

I think the listing of the instances is very important, even though I may be in part satisfied that there are safeguards. I would like the further safeguard that we specify. I would not like it to be in all cases. There are certain kinds of cases where it is allowed. That is a revision that I welcome.

Not knowing anything about the law I just had to use common sense and I said that a coroner's inquest is like a preliminary enquiry, so I have no objection to that. Where a co-accused is arrested, et cetera, I would say that the evidence is

the same. At least you would select the right evidence from all the evidence that has been collected. I have no problems with that.

I did not like (c):

> "where a Magistrate has heard evidence…"

If he dies he cannot complete. That is okay. If it is physical and mental infirmity, okay. I feel if he is going to resign, he knows that he is going to resign or retire and he should finish his business before he resigns or retires.

Sen. Jeremie: I do not like it either but not everyone is responsible and we have a job to do, in terms of legislating for a proper criminal process. We have cases of magistrates who do anything, literally and then turn around and sue the Judicial and Legal Service Commission. They leave work halfway done. It is our job to ensure that the system works after them.

Sen. Prof. K. Ramchand: I am sorry that you do not have a system of detention. I would tell them that they are in detention and have to go to work every day and do nothing until they finish their business and if that person has pension to get, he would not be getting it until he finishes his business. Make them accountable. I am not sure that this is the right way of dealing with delinquent judicial officers.

I like (d). If we had (d), we would have finished with the Piarco business already. Instead, we had a farcical enquiry where everybody knew.

Sen. Jeremie: It is still going on.

Sen. Prof. K. Ramchand: Not preliminary enquiry, I mean the commission of enquiry; where this farcical enquiry, which nobody likes to talk about especially on the Government side because they paid money for nothing. They paid money for madness. There is one where everybody finds out what the authorities are coming with, what money they have to hide, or which cocoa the rain is going to fall on. The purpose of most commissions of enquiry is to tell people what we are coming for. The commission of enquiry defeats itself and defeats justice.

Sen. Jeremie: I have forgotten there is another important safeguard, which I neglected to mention, but recent evidence shows that it is alive and that the courts exercise a judicial review over the decision of the Director of Public Prosecutions as to whether or not to do X or Y. At that stage, you have judicial intervention.

Sen. Prof. K. Ramchand: I have to teach you how to make your case. I like (d):

"where a person is charged with serious or complex fraud;"

I think that is an instance where enough evidence has been collected and we feel that this can go to trial. Let them bring out all their defence and argue at the trial. It continues:

> "(e) in exceptional circumstances to deal with offences of a violent or sexual nature and where there is…"

I wish we had another way of dealing with this kind of thing, but for the time being I would accept that.

Mr. Vice-President, I wish to summarize. I am anxious that the distinction between a preliminary enquiry and a trial should be clearly maintained at all times, by all participants in these events and that the preparations for the preliminary enquiry should be so geared. The only way it can be so geared is to have all evidence and information disclosed by law. On the basis of that, and on the basis of a refinement—of what we have to say about the paper evidence and the recordings—in such a way that it is not necessary to get supplementary information or to allow cross-questions that are cross-questioning, at it were. We could refine it and make it tight that this is the evidence and no amount of questioning can change the evidence. Remember it is not about guilt or innocence. If we can collect all the evidence and remember that the preliminary enquiry is seeking to answer the question: Is this triable? Then, in such a case, I would have no problem with our abolishing the old system of preliminary enquiry and going for a system that is at present called a paper committal.

With regard to the powers of the Director of Public Prosecutions, I think I am satisfied that there are safeguards and that there are unlikely to be abuses of any fundamental human rights, if the Director of Public Prosecutions has the power to make an indictment in the instances listed. With that, Mr. Vice-President, thank you.

Sen. Brother Noble S. A. Khan: Thank you, Mr. Vice-President. I just have a few comments to make on what is before us. We are touching on a very fundamental aspect of human existence, when you think in terms of justice and where we as a nation ought to go, plan to go and how we are to go on that road.

I think that outside of justice, if it is not perceived, or if we do not have it, we will have no peace. Obviously, one would think in terms of what is taking place in our country now and for some time. It is a direct relationship between a perception of not being dealt with fairly and squarely within the society that we are dealing with. It is against this background we have what is before us and what

has been said at an attempt, I would assume, to streamline the process of bringing an element of justice within the framework of our society in the way of criminality. That is the formal system of justice within the law courts.

I see this as an attempt to fast-forward a process which seems to be very archaic. What remains in my mind is that if we are making some changes in the judicial process which is before us, some very fundamental questions have been raised. Obviously, some will be giving and some will be taking. It is against this sort of scenario that I am looking at this particular point. If we were to go this way, some things that exist at the moment will no longer be. That, to my mind, is one of the ways of what has been referred to as the preliminary enquiry.

The preliminary enquiry starts the judicial process although we have heard it is not a trial per se, but it is within the framework of that. It is an element, input and variable in the system of delivering justice. We will be moving out that element.

Obviously, in the past and the fact that it has been there for quite some time, it has been acknowledged as having a value. Our people have become accustomed to this. I might be making a statement that all of us may not agree with, but the general feeling I have is that the majority of people in our land—if we were to look at it from an economic classification, those at the lower end of the economic ladder, when we go before the law courts—do not think we perceive that justice is ever given to us. Perhaps that may have its antecedents in the system, in slavery, colonialism and what have you and possibly in what has been referred to as a class arrangement, where those who are on top organize and run things, so that they who are on top will definitely benefit. Those at the lower end, to use the local parlance, are to "ketch". This is not unknown to those who are to "ketch". Starting from day one, if it were something that we were accustomed to and it is again not perceived as improving the system, to remove those old feelings, it means that we would be deepening a process of what we have; you are taking away. I do not think that will go down too well. As I said before, this echoes in the social reactions that exist in our society at the moment.

Some attempt will be made to improve the recording system, at least. This ought to speed up the process, because there is still some hope and confidence in these matters being reached before a magistrate who is a judicial officer. He has some element of balancing things. This is so amply described in theory, by the symbol that exists and hangs over your head. That is the symbol within the Chair. Whenever we look at you, we are reminded of the question that is referred to as the *mizan*, the balance. That is a strong point within the judicial system.

As we know, the country is ruled according to what we hope and believe to be under the judicial system. The other elements that are brought before the court, such as the police, though they form a part of the judicial system, it is still a part of the Judiciary. That brings an element of balance and perception of fairness that one could expect. If this were to be removed again, the little we have shall be taken away. These are questions that come to my mind. The law provides that if you are going through that, there should be a process. I mentioned that before, when I prefaced everything. That was one of my fundamental points. If it is fundamental, I think it will echo into the Constitution. It seems to me that what has been mooted by some of our colleagues before—is an area to which we should give some form of recognition—perhaps, that it goes before the committee. There have been many ideas that have been expressed. I am sure that the hon. Attorney General and the Government will be taking cognizance of this.

This is one of the major points. When the post of the Director of Public Prosecutions came, from the time it was mooted about and argued, there was always a point of creating some form of discussion around that. It seems to me that more power is being given to the position of the Director of Public Prosecutions. I have no problem with all the men who have held the post of DPP; all who were there; and who is there are persons for whom we, as people and a nation should have the highest respect. I do feel that they earn that highest respect, by the way they carry themselves and how they do their jobs. It is not a question of the personalities, but if we are going to interfere with the system to enhance their position, as far as doing the job or putting on them other responsibilities, we are dealing with a very fundamental question again. We should view that position.

It has been said by us and we know that the Constitution makes provision for when we are moving in this area, what we should do, as far as the voting process of the Senate is concerned. To a great extent, some of us may feel that it might be out of extra caution or precaution. Maybe as a conservative person, we should be sure. Again, I have said that the very structure and function of our existence rests on justice and if we move towards making some changes which, hopefully, will improve the whole system, we should consider that point.

From a practical point of view, if a system exists here, there will be changes and improvements that are taking place and perhaps, it was because of that system we did not want a rush to go up. In other words, by frittering down here, some refinement would have taken place in the preliminary enquiry status. If you move that, though there are some improvements here, we will be moving with a big rush into another area. It will be a question of what is referred to as playing three

cards, tap, tap and you do not know where the next one went to. The long-term effect of this could very well be that the groupings down here—we have heard very often that within the Magistrates' Courts many cases are dealt with by far more, maybe because of the nature of them—the lower status, as against the higher court. We may have a big rush of some of these things. Though they qualify to be dealt with at the higher level at the High Court, you may find that there is just a movement and there would be a big clog up here too.

Some of our colleagues have made the point about looking at this thing from a wider perspective with a more holistic approach and there should be a deeper enquiry to see the effects of this change and make proper arrangements for it.

It has been expressed that there is much money around. It is not only a question of money or an increase in the number of people. In these modern days, there might be someone more qualified than me who can make expressions and bring a more efficient and effective service, as far as the management systems are concerned. This, again, is why there is a crying need. It is not before us. How much, I have not observed, of that input has gone into what is before us in this presentation? I would like to put that on the table too; the depth to which the analysis should go. Has it been done in order to bring something in which we can find hope and expression in our thinking processes? That would definitely be a better way of addressing the questions within the judicial system.

These are some of the points. I know that they are simple, coming from a simple mind. I do not think, in my simple mind, that they are simplistic. They may have very far-reaching effects. Towards this end, I share these thoughts with you, Mr. Vice-President. Thank you.

The Minister of Legal Affairs (Sen. The Hon. Christine Kangaloo): Mr. Vice-President, at the outset, I wish to thank all Senators who contributed to this Bill today. I will have some responses to some of the issues raised by Senators Mark and Robin Montano. I believe that Sen. Seetahal, as well as the hon. Attorney General have basically—the Attorney General was constantly speaking and reassuring Senators on the other side about the Bill. I think that they have really highlighted what this Bill is about. I do not think at this hour that we need to go into all the details and everything that was raised with respect to the Bill that is before us. Needless to say, the issues that have been articulated about the Bill revolve around clause 9, which is with respect to the voluntary indictment of the DPP and with respect to the appeal of the Director of Public Prosecutions to the Court of Appeal.

Much has been said about the constitutionality of these provisions. I think the Attorney General has made it very clear that in respect of clause 9, voluntary indictment of the DPP, and the cases of Grant and Others against the DPP and Brooks and Others against the Director of Public Prosecutions, the Jamaican cases set out very clearly that this provision is not unconstitutional. I do not think we need to go into that in any great detail.

In respect of the clause that deals with the appeal to the Court of Appeal, Sen. Mark cited the case of Brad Boyce and pointed out that the 1996 Act that had been passed, had been declared unconstitutional by the Court of Appeal. With respect, the situation between what is being dealt with in this Bill and the situation with the Brad Boyce case and that particular piece of legislation, are quite different, in that, we always have to go back to the fact that the preliminary enquiry is just that; it is not a trial, and, therefore, if the Director of Public Prosecutions sees it fit to appeal to the Court of Appeal, he is not denying anyone due process, whereas in the case of Brad Boyce, it involved a double jeopardy issue. The High Court judge had dismissed the matter against Brad Boyce. That piece of legislation is very different from the one that is before us today.

I enjoyed all of the contributions, but I was particularly attracted to what Prof. Deosaran had to say, not about the kangaroo court, but what he had to say about the rights of the victims. Sometimes when we come here and we are dealing with pieces of legislation, we need to sometimes see how they will affect the citizens of Trinidad and Tobago. We just have to think of the current situation in our Magistrates' Courts how witnesses who come day in, day out for the preliminary enquiries, have to wait sometimes to give their evidence, because the actual process of taking the evidence by longhand is a painstaking process. Sometimes to get the evidence of one witness could take a year and there is that frustration that people feel having to go to the Magistrates' Courts that they cannot get the work done; they cannot get their matters dispensed with quickly. We have to think about that.

5.50 p.m.

You have to think about a magistrate who has to sit during the preliminary enquiry and also have to allow the note-taker to take the notes in longhand, and there are other matters that this magistrate would have to deal with and he cannot deal with them, because of the preliminary enquiry taking that long. So, when you look at it in the context of how the legislation will affect the people of Trinidad and Tobago, I would say that it is a very positive thing that is being done here and that the legislation that is before this Chamber would certainly redound to the

benefit of the people of Trinidad and Tobago, because that is what the administration of justice is supposed to focus on—the people.

Sen. Mark seemed to be implying when he was addressing this Chamber that, when I led off the debate I was misleading the Senate about the legislation that had been passed in 2001. For the record, I just want to again state, that the Bill was passed in the Senate in 2001. In fact, when Sen. Mark raised the issue and seemed to be implying that I may have been misleading the Senate, I actually was a little concerned and I checked it, because when this Bill was passed in the Senate in 2001, I was sitting where Sen. Roy Augustus is now sitting. I remember the Bill having been passed with amendments. As I said earlier and I wish to clarify right now for all members of the Senate, that the Bill was passed; it was passed with amendments, but the amendments had to go back to the House of Representatives and Parliament was dissolved in the interim. That is the history of this Bill and not what Sen. Mark told the Senate earlier.

Sen. Montano raised certain issues with respect to the Bill. In respect to 16C(5), he asked why the magistrate was being given the discretion. All I can answer to that is that the discretion has to be given to the judicial officer, and that is the magistrate. He also said that an accused may be cross-examined, but the prosecution witness would not be subject to cross-examination. That is clearly not what this Bill has. If you would recollect in clause 5, the proposed section 17(7), a magistrate can recall the prosecution witness for further examination. So I just wanted to point those issues out with respect to what Sen. Montano said.

He also recommended that fairness dictates that a person should be tried in the High Court within 28 days of being indicted or else he must be set free. The Attorney General had already indicated that there are other factors besides this Bill that we have to take into account. What I just want to point out is that we are going to see improvement in the administration of justice with respect to preliminary enquiries, and therefore the Judiciary would have to see how it can accommodate now the increased number of matters that it would be getting. I think that it is a little reckless to suggest that it be 28 days or be set free at this point in time.

I agree that justice must be dealt with expeditiously, we on this side have no problem in saying that, but you have to take it as it comes; you have to look at what is happening; you have to examine what happens now and put systems in place to deal with that. So I think that it is reckless at this stage to ask the Government to agree to that.

Mr. Vice-President, I also wish to point out that Sen. Montano asked the question if it is just and necessary to bring this legislation. With respect to that, I think you would recall that when I spoke earlier, I spoke about this legislation, what it would do to speed up the administration of justice, and what that would do in and of itself to the situation of crime in the country. So is it just and necessary; I would say a very vociferous, yes, it is just and necessary. I just want to point out with respect to Sen. Montano. He argued that it is not right for us to come and say that because they brought the Bill in 2001 that they should now support it, but that is what he is claiming. I just want to point out that when in 2001 a government brings a Bill, it must be presumed that it was brought to conduce to better governance, that should be the presumption. So, the presumption now is that it no longer conduces to good governance? I want to say with respect to what Sen. Montano was saying, that his attitude points more to an obstructionist's agenda, and it has nothing to do with the people of Trinidad and Tobago. It is very obvious that this is a Bill that would redound to the benefit of the people of Trinidad and Tobago.

Once again, if there is a need to persuade those on the other side who sought to persuade us in 2001, then, just get on track with what is happening in the country with crime and what we are saying this Bill would accomplish in helping and in putting forward the administration of justice. So, Mr. Vice-President, with those few words, 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 to 3 ordered to stand part of the Bill.

Clause 4.

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

Sen. Kangaloo: Mr. Chairman, I beg to move that we consider clause 4 as the amendment that was circulated as follows:

4 In the proposed section 16C(4) in paragraphs (b), (c) and (d), delete the words "written" or "wrote" wherever they occur and substitute the word "made" in each case.

Question put and agreed to.

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

Clauses 5 to 8 ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Sen. Kangaloo: Mr. Chairman, I beg to move that clause 9 as amended, which was circulated, be considered to form part of the Bill.

9 Delete the proposed subsection (8) in paragraph (b) and substitute the following new subsection:

"(8) Notwithstanding subsections (5), (6) and (7), the Director of Public Prosecutions or the Deputy Director of Public Prosecutions may prefer an indictment whether or not a preliminary enquiry has been conducted only in the following instances:

Chap. 6:04.

(a) where at the close of an inquest, a Coroner is of the opinion that sufficient grounds are disclosed for making a charge on indictment against any person pursuant to section 28 of the Coroners Act;

(b) where a co-accused is arrested before the date fixed for the trial of a cooffender who has already been indicted and it is desired to join them both in the same indictment;

(c) where a Magistrate has heard evidence and the depositions taken before him disclose a prima facie case and he is unable to complete the preliminary enquiry because of his:

(i) physical or mental infirmity;

(ii) resignation;

(iii) retirement; or

(iv) death;

(d) where a person is charged with serious or complex fraud;

(e) in exceptional circumstances to deal with offences of a violent or sexual nature and where there is a child witness, or an adult witness who has been assessed as one subject to threats, intimidation or elimination."

Sen. Mark: We have expressed our reservations about the provisions and we have in fact asked the Attorney General to make an amendment, or we would like to suggest to him that the amended clause 9 should contain a provision in which the power of the DPP should be subject to judicial scrutiny and not this sweeping power that is intended in the legislation. We feel that this, as we argued earlier, could be abused, and as such we would like to suggest to the Attorney General that there be some proviso qualifying the power of the DPP in this instance, where this power would be subject to judicial scrutiny. That is our position on this matter.

Sen. Kangaloo: Mr. Chairman, the power that is given to the DPP is not an unfettered one. The amendments here seek to restrict it to five instances and therefore the Government would like to proceed on the amendment that has been circulated.

Sen. Mark: Mr. Chairman, it is not the question of the five areas that have been confined. We are dealing with principle and the kind of power that is going to be housed without any restrictions as it relates to the High Court of Trinidad and Tobago. It is not a question of it being confined to the five areas as outlined by the Attorney General in the amendments that were circulated. It is a broader issue allowing the DPP to have this kind of sweeping authority, without being subject to some kind of judicial scrutiny before he can take matters away from the Magistrates' Court and send them directly to the High Court for trial by judge and jury. So, it is the principle that we are concerned about here.

Sen. Kangaloo: Mr. Chairman, once again let me just clarify. First of all, Sen. Mark is talking about the sweeping powers. I have already indicated that the amendment is not an unfettered power. Also, the actions

of the DPP in this regard would be subject to judicial review. That is also a check on the power that is being given here, and you may recall when Sen. Seetahal, in her contribution, spoke about the fact that you can squash an indictment—that it can be squashed before the High Court on an application. So that there are several ways that can show that this is not an unfettered power that is being given to the Director of Public Prosecutions.

Sen. Mark: Mr. Chairman, that is the Government's position; this is ours. We are not in support of this amendment.

Question put and agreed to.

Clause 9, as amended, ordered to stand part of the Bill.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Kangaloo: Mr. Chairman, I beg to move that clause 10 be amended as circulated:

10 1. In the proposed section 23B-

A. In sub-section (4)-

(i) after the words "which the accused" insert the words "or his attorney at law"; and

(ii) delete the word "him" and substitute the words "the accused".

B. In sub-section (5)-

(i) in paragraph (a) after the words "by the accused" insert the words "or his attorney at law"; and

(ii) in paragraph (b)-

(a) after the words "where the accused" insert the words "or his attorney at law"; and

(b) delete the word "him" and substitute the words "the accused".

2. In the proposed section 23G-

(i) after the words "a decision of" insert the words "a Judge of"; and

(ii) after the words "section 23" insert the word "(6)".

Sen. Mark: What I am saying is that in clause 23G, again, this is a power that is currently not enjoyed by the DPP in the kind of way that it is stated. We again want to caution the Government and warn them of the kind of consequences that could flow with this kind of power being given again to the DPP, which currently does not exist, as you know, in law. We have strong objections to this provision and we call on the Government to withdraw this particular provision.

Sen. Kangaloo: Mr. Chairman, we would be proceeding with the amendment as circulated.

Question put and agreed to.

Clause 10, as amended, ordered to stand part of the Bill.

Clauses 11 to 16 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.

TRINIDAD AND TOBAGO HOUSING DEVELOPMENT CORPORATION BILL

Order for second reading read.

The Minister of Housing (Hon. Dr. Keith Rowley): Thank you very much Mr. Vice-President. It was not my intention to delay this honourable Senate, but I am sure we can get through this matter long before dinner time, because some of us are accustomed to having late dinners.

Mr. Vice-President, I beg to move,

That a Bill to establish the Trinidad and Tobago Housing Development Corporation and for related matters, be now read a second time.

The Bill is quite comprehensive in its treatment of its purpose as outlined in a very expansive explanatory note. Basically, the main purpose of this Bill for effect, is to amend the Housing Act, Chap. 33:01, which was established in 1969. In so doing, to repeal sections 1 to 10 of the Housing Act—that section which dealt with the creation of the National Housing Authority—and to replace what we know as the Housing Authority, with a body corporate to be called the Housing Development Corporation, which would be created, as I am trying to do by statute, and to replace the NHA which currently is a body which falls under the strictures of the Statutory Authorities Service Commission.

The purpose of this is to take into account the need to facilitate the acceleration of good quality and affordable housing in communities across Trinidad and Tobago, mainly, but not solely, to middle-income and low-income persons. As you are aware there is a comprehensive housing programme taking place in Trinidad and Tobago, in recognition of the fact that one of the issues that we have to treat with, if we are to attain our objective of becoming a developed country by the year 2020, is a chronic housing shortage which manifests itself across Trinidad and Tobago today, especially in the urban areas, and particularly, in the East-West Corridor of Trinidad. The whole focus of this exercise is to create a new entity and an environment for adequate and modern effective management of the national housing portfolio.

Today in Trinidad and Tobago, the NHA has ownership and responsibility for 134 estates across the country. To manage that portfolio the workload involves under the rental heading, approximately 9,000 accounts, collecting about $1 million a month in rent. Additionally, there are, under the NHA portfolio, 14,000 mortgages collecting about $8 million a month. In the face of this, I would be the first to acknowledge that over the years the NHA has not distinguished itself in being an efficient and effective manager of these estates.

While the national housing portfolio over the decades has contributed considerably to the housing of our population and the creation of communities, what has been required to get the best out of that development and to ensure that a certain standard of management is brought to bear, has not been forthcoming for a very fundamental reason, and I would get back to that in a little while. But over and above what I have said exists today, in the face of our commitment to create approximately another 10,000 units per annum in the coming decade, so as to

treat with this 100,000 unit shortage, what we anticipate is a doubling of this portfolio of the NHA in the next 18 months to two years. What this means is that the NHA, which has struggled to cope with what exists, if that arrangement remains in place, and even as I have acknowledged that there have been severe dysfunctionalities in that arrangement, it would get even worse if we double the portfolio and treble it and leave in place the same kind of management structure and arrangements which have demonstrably failed to treat with what has been in place today.

Let me give you an idea of what we have done so far. In fiscal 2003/2004, through a variety of programmes on 21 sites, we had managed to have 3,562 housing starts at a cost of $513 million. These are additional units built subsequent to the numbers I had mentioned a while ago. In fiscal 2004/2005, which ends in a few weeks' time, we have managed 6,336 housing starts at a cost of $1.379 billion, and added to that we have 50 infill sites across the country where we have 1,000 houses under construction. These infill sites are lots which existed and have been lying vacant in mature approved developments on which no houses have been built. We have taken steps to force construction on those sites by encouraging the owners to not just hold on to vacant plots in developments, but to ensure that they are built upon or the NHA would recover them from those owners. We have 1,000 units as a result of that, at a cost of $107 million. Added to that, we are aiming in fiscal 2005/2006 to put another 8,000 housing starts on the ground. In the face of that kind of expansion, parallel with that progress, we want to create the management environment so that the housing portfolio, which was created by the public sector, would be properly managed.

One of the things we have observed is that there has been some disconnect between what exists and what needs to be done. The portfolio I have just described there as our new construction programme accounts for almost $3 billion—actually it is about $2.8 billion—in construction. We anticipate as we proceed along the path that we are going and given the pace at which we are operating in the housing programme, that for the next many years we would be doing approximately $1.5 billion of new construction annually, adding to the national housing stock. Therefore, we are bringing modern management techniques, bringing available high quality staff and providing the country with proper and efficient management of this massive real estate.

PROCEDURAL MOTION

The Minister of Community Development, Culture and Gender Affairs (Sen. The Hon. Joan Yuille-Williams): I move that the Senate continue to sit until the completion of the debate on the Bill before the Senate.

Question put and agreed to.

6.20 p.m.

TRINIDAD AND TOBAGO HOUSING DEVELOPMENT CORPORATION BILL

Hon. Dr. K. Rowley: Thank you, Mr. Vice-President, and I thank Senators for signalling their intention to stay a bit late to get this matter done and I appreciate your co-operation

Mr. Vice-President, one of the basic problems we have in attempting to manage this portfolio is that responsibility lies at the NHA, but authority lies at the Statutory Authorities Service Commission (SASC). This is not news to any of us in the Senate, but what does that mean in a situation where you require effective management? It means that it is not surprising that you can be at the NHA and someone turns up to be interviewed for a job, because they have been sent by the Service Commission unbeknown to you.

It means that you can train someone for a particular job in the NHA, take for example developing skills in management techniques or Information Technology Computer Skill, and you have a training programme, you trained someone and as soon as the person has finished training them, the person disappears unbeknown to you. When you ask what has happened to my trainee or my officer, then you are told that person has been transferred to some other boondocks somewhere under the umbrella of the SASC. It turns out that you can have a vacancy and the vacancy can remain unattended for months if not years. In fact that has been the style of management of the NHA, where virtually the entire organization are actors, and what you have are acting positions because the filling of positions does not seem to be a priority. The result is that in an organization where there is poor succession planning, there are strange decisions with regard to common sense, there is no succession planning; good quality officers do not stay there or do not go there.

I will give you an example as to how the thing works. Recently there was a vacancy in Tobago for a Clerk II and the next thing we knew is that an officer from the NHA in Trinidad was being sent to Tobago to fill the post of Clerk. Why? Is it because there is nobody in Tobago to fill a post of Clerk? Oh yes, there are

many people in Tobago who can fill the post, but the way it is done and the way it is carved in stone, is that to fill that post of Clerk in Tobago you have to look throughout the entire ambit of the SASC and see who is the next in line by seniority. It turns out, it is a Clerk in Trinidad and therefore you transfer that Clerk to Tobago. Then you pay all the various things that go with that, housing and transport. Of course, the Clerk goes on Monday morning late and leaves Thursday evening early, and of course you get no work done, but that is not supposed to be.

We are saying that we have gone past that and there is no way that we can run and manage the kind of portfolio that I have just described with that kind of approach to management. We are saying that you need to have managers in an agency like the Housing Development Corporation who are responsible for their staff, who can recruit proper staff, who can make decisions and who can deliver the service.

Another aspect of it is the funding of the organization. I just told you about the rental portfolio, that means there are thousands of units around the country where people live and pay rent—albeit subsidized and small rent, but they pay rent—and they are owned by the NHA. They are required to be maintained. For almost 15 years there has been no significant maintenance of those buildings, because maintenance had not been the priority and to the extent that the agency sees maintenance as a priority and the managers see maintenance as a priority. Because of the funding arrangement for the NHA where its revenues go into the Consolidated Fund and then they have to wait for dribbles to come back to them in the national budget, the maintenance is not done. People live in these units and for a dollar or two; the toilets do not work, electrical maintenance is not done, physical maintenance is not done and windows are not repaired because the agency does not get the revenue stream. Those who do the national budget at the Ministry of Finance, they do not see maintenance at the NHA as a priority. There is a disconnect between the NHA's priority and the Ministry of Finance's priority.

At the same time the revenue stream from the NHA is required to go into the Consolidated Fund. We are saying that in this day and age you do not need that, what you need is a management arrangement where your revenues are directed to your responsibilities.

Another issue that we have is the whole question of the limitation of hiring staff. Under the SASC arrangement there are these ranges and fixtures as to who you can hire. So if today as we are doing these thousands of units across the country you need engineering skills and you want to hire an engineer, the most

you can pay under the current arrangement is $6,000. Of course, if you keep the present arrangement in place you can put somebody to act as an engineer and that person gets the $6,000 as an improvement, that person is happy. Which engineer can you hire in this current arrangement for $6,000? The minimum you can get an engineer for, hot out of school, if you can find one, is about $12,000, but the arrangement says you are limited to $6,000. You need architects; you are limited to hiring an architect for $7,500. What architect can you hire for $7,500? Of course you can put somebody to act, the person could be a clerk but that person can act as an architect as the case might be and somebody is happy with that. You need an engineer too; you are limited to $7,500. An engineer with that experience in today's economy, if you can find one in Trinidad and Tobago who is available for hiring, you have to pay at least $15,000.

We have this dilemma, do we stick with the arrangements that we know cannot work, because as the leader of the housing group, I know I cannot get an engineer for $6,000. I know I cannot get an architect for $6,000, but I do know if there is cooperation with the authority to pay what the market is asking we could hire the people we need to do the job that we set out to do, which is to build and manage housing estates.

Therefore, we are saying with this Bill that we put in place a Housing Development Corporation, replace the NHA with this corporation, remove it from under the SASC, put it there and draft the law as it is drafted here to take care of the new arrangements. We need to move a step ahead. We need to make a quantum leap with respect to the creation of housing estates and housing units, so as to create affordability and to put families in homes. We need to put management to manage these estates and as we build these estates, we need to ensure that they are maintained.

My colleagues have had some very unkind things to say about National Housing estates in the country. Some called them ghettoes, some called them crime centres; a variety of disparaging terms, largely because of how they have turned out and how they have been labelled. The main reason being this problem of authority with an agency which does not have the requirement to discharge its functions, and we are saying now is the time to fix that. A time when there is an explosion of construction in the creation of housing units in the country; let us fix this vexing problem of management, of funding, of the hiring and development of staff so that we can provide a service and that service would not be only to those who live in the housing estates, but to those who live near and among and to the national community.

Sen. Dr. Gopeesingh: Mr. Vice-President, can I seek a little clarification from the hon. Minister of Housing. May I ask him the present situation of the new construction of homes, the 3,000 plus, whatever is happening, is that occurring under the existing NHA or is it occurring under a new umbrella as an offshoot of the NHA? Is the NHA conducting this expansive housing programme? And if it is conducting this expansive housing programme and it is working successfully—I understand your need to bring better management practices and principles and so on into this whole thing, but if it is working now as it seems to be working successfully for your administration, is there a necessity to move it out completely?

Hon. Dr. K. Rowley: I take the question in the spirit in which it was asked, it would allow us to clarify it. The answer is yes, there is a necessity, because right now what is happening, all that construction I have outlined, the $2 billion construction on the ground now—and the $1.5 billion to come—is being done by a series of contractors. They are building these units. The minute the contractors are paid and they have gone, what is left is for the NHA to own and manage, sell, collect rents and it is at that point that the issue begins. So yes, we are successfully expanding the housing stock, but we are looking beyond that to the management of the mortgage portfolio after, to the management of the rental portfolio, to the management of the physical environment, to the supply of social services to those who live in the community and to the further expansion of the programme.

It is in that context that we are saying we need to put that in place. Because if we do not do that, the current shortcomings of the NHA would only be magnified as you provide more work for them to do with an expanded programme. Right now they have 9,000 rental units. If we do successfully complete our programme and we end up with 30,000 rental units, all we would have done is trebled the problem and the same thing with the mortgage portfolio. So it is in that context we are talking about.

If I may, Mr. Vice-President, take us through the clauses of the Explanatory Note as to what we—maybe I should go directly to the clauses themselves and make a few comments on how the Bill is structured. I must say I am very pleased with this Bill, because it took a lot of expertise, we involved a lot of technical people, had a lot of experienced lawyers, we had the experience of the NHA itself in its past successes and shortcomings and we tried to create a Bill which covers the bases so as to create this Housing Development Corporation where, I daresay that all the bases have been covered.

Part I, the "Preliminary", we outlined when the Act is supposed to come into being and it says it comes into being on the appointed day and we described what the appointed day means. We described the definition of the authority, the board, corporate plans, what a flat means, what a house means; a lot of important definitions, including the pension fund.

Interestingly, Part I, clause 3(2):

> "For the purposes of this Bill, 'person' means a citizen or resident of Trinidad and Tobago within the meaning of the Immigration Act..."

That means we will take note of the fact that beneficiaries of our National Housing Programme are to be of a certain qualification. Those persons are to be citizens of Trinidad and Tobago or persons who are residents under the meaning of the Immigration Act so as to benefit from the housing programme.

Part II is the "Establishment of the Corporation and the Board". The Bill says that the Act, when it comes into being, will create a "Body Corporate known as 'the Trinidad and Tobago Housing Development Corporation'", which we will simply call the HDC. It shall have its own seal; it shall have a chairman, a deputy chairman, a secretary to the board and it says how this board will operate; how it shall do its business; the make-up of the board; it talks about how the board relates to what the Minister has to do and how the board will proceed.

Clause 9 talks about the creation of the post of managing director and every member of the board, how they are appointed and interestingly enough, it says specifically how they can retire and how they can be removed. Recently we have had instances of persons being appointed to boards and challenging their removal even though the Interpretation Act did say how a person who is appointed can be removed. We have had specific legal challenges, so in this Act we have put specifically the circumstances, how a person can retire or how a person can be removed.

We also take into account—again recent issues—this question of conflict of interest, in clause 9(2);

> "A Member of the Board who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board...;"

How that person shall behave and what the person shall disclose and so on. That is to prevent conflict of interest; we go as far as to say that we put in law that persons on the Board cannot use their position to influence members of the Board

or members of management with respect to the award of interests which they might have and so on.

Clause 11 talks about the requirement to "exercise due care and act in a prudent and conscientious manner".

They all cover our recent experiences and other experiences as to how a board should operate in today's world in a modern management environment.

6.35 p.m.

It spells out the duties of the corporation and it is most exhaustive; an entire list of duties that this corporation will be required to do; and we tried to find them all and list them here so that the corporation will be properly instructed by law. We did not leave much to chance. If you go to clause 13(2) all the way from (a) to (v) there is a list of a variety of things the corporation can do and if I may mention a few of them: It can acquire property, sell, lease and exchange property. It can operate in cooperation with ministries or agencies, or local government bodies. It can manage lands, houses, direct, improve, provide services and a whole list of things related to the owning and developing of housing estates and housing leased across the country.

Clause 14(1) says:

> "The Corporation has the power to do all things necessary and convenient to be done for, or in connection with the performance of its functions specified in section 13."

Clause 14(2) takes note of the Tobago House of Assembly Act where it says:

> "Notwithstanding the generality of subsection (1), the Corporation shall, in respect of Tobago be subject to the provisions of the Tobago House of Assembly Act and in particular section 25(3)."

What that refers to is that provision in the Tobago House of Assembly Act which says that the Tobago House of Assembly, in having responsibility for Government functions in Tobago can enter into memoranda of understanding with any agency of the State to discharge in Tobago that function which ordinarily would have been discharged by that agency in Trinidad, or the Central Government. So this Bill takes cognizance of that.

With respect to the Managing Director, it says who such a person shall be, the necessary skills required, how long the person can serve and clause 15(2) says:

"The Managing Director shall hold office for such period not exceeding five years, as is specified in the instrument of appointment, and is eligible for reappointment.

(3) The terms and conditions of employment of the Managing Director shall be approved by the Minister.

16(1) The Managing Director shall be responsible for the day-to-day management of the Corporation subject to the general directions of, and in accordance with policies laid down by the Board.

16(2) All acts and things done in the name of or on behalf of the Corporation by the Managing Director shall be deemed to have been done by the Corporation."

Clause 17 deals with planning and management and I cannot over-emphasize the point that the success of this agency and any change it will make would be as a result of proper planning and the effecting of proper management, and management being used in the widest possible term. How you manage finance, staff, how you manage your contractors, how you manage your whole responsibility to your client base and so on. Management is the key to the whole thing and to that end it says:

"17(1) The Board shall prepare and submit a corporate plan for the Corporation and its subsidiaries to the Minister.

(2) The first corporate plan shall be for a period of not less than three years and no more than five years beginning on a date no later than six months after the commencement of this Act, and each subsequent corporate plan shall take effect immediately on the expiry of the previous corporate plan and shall be for a period not exceeding three years."

When you take the fact that we have said that we intend to spend approximately $1.5 billion a year in new construction for the next decade or so, you will see the need for the requirement of this kind of forward planning and we have spelt it out here in law and we say in clause 17(3) that:

"The Board may review and revise a corporate plan prepared under subsection (1) at any time."

Because you may have a plan but somewhere along the way, the best laid plan may require some tailoring or tinkering and the board has that authority to adjust that plan as the case may be.

And of course for good management clause 18(a) says:

"18. The Board shall—

(a) cause proper books, accounts and records to be maintained…

(b) ensure that—

(i) all payments by the Corporation are correctly made and properly authorized; and

(ii) adequate control is maintained over the management of assets and the incurring of liabilities."

These are basic, sound, management functions which the Board will require under law to carry out.

"19 (1) The accounts of the Corporation and its subsidiaries shall be audited annually by the Auditor General or by an auditor authorized by the Auditor General in writing for that purpose.

(2) The Auditor General or the auditor referred to in subsection (1), shall have access to all books of accounts, records, documents, assets and information concerning the Corporation and its subsidiaries."

So as we remove the National Housing Authority (NHA) from under the ambit of the Statutory Authorities Service Commission, which is a management nightmare, we are entrenching its control under the authority of the Auditor General. So that is not going to change and in fact we are spelling out in law that that has to be so and the Board has to abide by it.

"19 (3) Nothing in subsection (1) precludes the Auditor General, the auditor referred to in subsection (1), or an auditor engaged by the Board from performing a management or comprehensive audit of the activities of the Corporation."

So that flexibility is there; even though the Auditor General has that overall responsibility, that does not say that other kinds of management audits and so on cannot be done.

"19 (4) On completion of any audit of the Corporation, the Auditor General or the auditor referred to in subsection (1), …shall immediately draw to the attention of the Minister and the Board, any irregularity disclosed by the audit which, in the opinion of the Auditor General or the auditor, is of sufficient importance to justify doing so.

(5) The Auditor General or the auditor referred to in subsection (1), shall submit to the Minister and the Board a report on the results of the annual audit."

It goes on to say in clause 19(7):

"For the purpose of an audit conducted under this Act…"

Sen. Anmolsingh-Mahabir: Hon. Minister, I was wondering whether the Joint Select Committee would also have an oversight over this.

Hon. Dr. K. Rowley: Of course, as a state agency, my understanding is that the committee has covered the whole ambit of state agencies and it will be a state agency. The Housing Development Corporation will be a state agency so it will fall in the committee…[*Interruption*] and would have to report to Parliament in that way. So that does not change that.

"19 (7) For the purpose of an audit conducted under this Act, the Exchequer and Audit Act shall apply as if an audit referred to in this section is one to which that Act applies."

So this agency would be subject to the provisions of the Exchequer and Audit Act; and then it is required in clause 20:

"20 The Board shall, within three months of the end of each financial year, submit an annual report to the Minister in respect of the operation of the Corporation and its subsidiaries."

This can only happen if there are proper management systems in place to respond in this way. We know that there are laws that require certain agencies to report but here in Parliament we see financial statements appearing years after they have been done. We are hoping that with this emphasis on management and this requirement by law that the board of this Corporation will comply with law and be able with its management capabilities to respond and we will have proper, timely information coming to the Minister and to the Parliament and, therefore, we will reach to a plane where we can have adequate reporting and oversight.

Of course, there is provision for the Corporation to have subsidiaries, and Part V most importantly deals with finance. As the Corporation is created, there is a requirement for fund.

Clause 22(1) says:

> "There is hereby established a fund to be known as the 'Housing Development Corporation Fund' (hereinafter referred to as 'the Fund')."
>
> (2) That Fund shall comprise of—

And I will like Senators to take note of this.

> "(a) appropriations by Parliament from the Consolidated Fund;"

So there is provision for Parliament to make funds available for this Corporation to carry out its housing mandate.

> "(b) those sums which at the commencement of this Act stands to the credit of the Government under the Housing Act or the Authority whether under the Housing Act or otherwise;"

It means whatever moneys stay to the account of the NHA, on the coming into being of the Housing Development Corporation, these funds will now become funds of the Housing Development Corporation.

> "(c) such sums received by the Corporation from international organizations, multilateral or bilateral lending agencies…
>
> (d) the capital of the Corporation;
>
> (e) sums received by or owed to the Corporation in respect of its functions;"

For example, its mortgages and rentals will come to the Corporation.

> "(f) any other sum paid to the Corporation in respect of the performance of its functions and the exercise of its powers."

In other words, all moneys owed to the NHA in whatever form would come to the Corporation Fund.

> "23 The Fund shall be applied in defraying the following expenditure:"

And it lists a series of things for which moneys owed by this agency should be spent. It should be spent on the acquisition of real estate, to pay employees, pay board members, contribution to the pension fund; pay for services and consultancies and a list of good management requirements. If you have money then you spend it properly.

What that means is that there would be a cash flow to this agency which is now required to manage that cash flow in discharging the various responsibilities as outlined in clause 13.

> "24 Any balance of the Fund after defraying any expenditures referred to in section 23 may be—
>
> (a) applied to the creation of a reserve fund to finance future expansion of capital works and improvement of services of the Corporation; or
>
> (b) invested in any manner that is consistent with sound business practice."

This is a fundamental departure. Before, any funds which were not spent in the fiscal year reverted to the Exchequer and then you had to wait to get a revote for the following year. This changes that, it allows the Corporation to hold on to its funds even to invest and also to use it to discharge its functions. Not the least, as I mentioned earlier on, is maintenance because if you own all this real estate, anybody who owns a house knows that he requires to carry out maintenance on an on-going basis.

However, I do not want to go into this detail at this point in time but one of the things we are currently doing is reviewing the whole question of housing policy and the creation of new ownership. What we are trying to do to reduce the requirement for a Corporation like this to be responsible for general maintenance is to encourage home ownership.

So currently before Cabinet are a series of proposals to encourage home ownership in this housing explosion so that owners or community groups who own units like condominium, town houses, that they will take responsibility for ownership, they will own the asset and therefore have responsibility for maintenance.

But there will be still a considerable housing stock especially for those in the rental section that will still require maintenance as an important aspect.

Under clause 24, this corporation, this board, these managers will have the wherewithal on an on-going basis, to carry out management as a normal part of the function because they have a cash flow and are no longer subject to the whims and fancies of somebody at the Ministry of Finance—with due respect to our colleagues over there—which means that we are sensitive to the needs of those whose windows are falling off and whose plumbing is clogged and whose electrical is a fire hazard.

Clause 25 says:

> "The Minister shall, after consultation with the Board determine in writing as soon as practicable after the commencement of this Act, the initial capital of the Corporation."

So we will determine what sort of capital will be required. Currently the arrangement is that the NHA has this huge asset base, these 134 housing estates all around the country. Those properties are not actualized as an asset to the NHA, it is only the liability side that comes into play with maintenance and the issuing of services but in terms of the owning of this real estate, it plays no role with the NHA.

6.50 p.m.

What we are saying now is that those assets when they come to this corporation, there is going to be a more active role of those assets in the business of the Housing Development Corporation so as to create more assets, and this is what the board would be charged with.

Clause 25(2) says:

> "The Minister shall lay in Parliament as soon as practicable after the commencement of this Act, a report which shall include –
>
> (a) a statement of the amount of the Corporation's initial capital referred to in subsection (1);
>
> (b) a statement of any liabilities converted into capital;
>
> (c) a statement of any amounts paid by way of Parliamentary appropriation; and
>
> (d) a copy of the valuation referred to..."

Now for the first time this question of the valuation of assets would come into play because we know we have thousands of units around the country but what is the value of that housing portfolio as it exists today? It has just been there as something that we have done and it stands there on its own. Now the whole

question of the value of that asset and the putting of that asset to work and the growing of that asset, and the question of valuation, becomes a part of our management issue. If one understands that, then one would see why I have been emphasizing the question of maintenance, because if you are valuing your housing stock and you do not do maintenance, what you would be seeing is a depreciation of that housing stock over time. However, to do the opposite, to maintain or to improve that value, you need to be cognizant of the role of valuation in your management system; and the law spells that out in here, and the Parliament has to be so advised as we provided.

Clause 26(1) says:

> "Within three months after the end of each financial year, the Board in consultation with the Minister of Finance by written notice may recommend to the Minister that the Corporation pay a return to the Government, according to principles determined jointly by the Minister and the Board."

Now, again, we are departing here fundamentally. Up to this point the concept of the NHA paying money to the Minister of Finance is not on, but we believe that with this huge housing portfolio, and where we are encouraging ownership, that there is going to come a time when this would be a revenue-earner of some sort. Notwithstanding what financial position the Minister of Finance may be in, given the amount of funds that will go towards the creation of these housing stock, we see in the not-too-long term, that there would be a flow back from this to the Minister of Finance for other purposes. So the law provides for that.

But it will not be any willy-nilly thing. It calls for some consultation. It says that the board in consultation with the Minister of Finance will determine what kinds of flows will go back to the Minister of Finance, because what we do not want to recreate is a situation where the Minister of Finance says, we want "X" from you and you take that "X" out and you create what we are just trying to put an end to, which is insufficient funds to carry out the duties of the agency.

So that consultation will determine what is required by the agency; how much surplus the agency has and how much the Minister of Finance will take without risking the agency's cash flow health; and the provision of clause 26(2) is made there for that. When that day comes we can use it in that way. It says:

> "In making the recommendation, the Board shall have regard to those matters required to be considered in setting its financial target."

So, of course, what it is saying to the board, is that in dealing with the Minister of Finance you shall not cut your nose to spoil your face. You shall give the Minister of Finance what is available without risking your own targets. Clause 26 deals with that whole relationship of that possible payment to be made. Subclause (5) says, having agreed to that payment, that payment shall be made within six months of the notice of referral in subclause (1). But of course, it says: "As the Minister directs."

Clause 27 states:

> "The Minister with responsibility for Finance may, on behalf of the Government, out of money appropriated by the Parliament for the purpose, lend money to the Corporation on such terms and conditions as he determines in writing."

So there is provision for the Minister of Finance to support the corporation by providing funds for projects and programmes which the corporation may advance.

Clause 28 states:

> "The Corporation may, with the approval of the Minister and the Minister"—

The Minister there being the Minister of Housing:

> "with responsibility for Finance—
>
> (a) borrow money from bodies other than the Government; and
>
> (b) give security over the whole or any part of its assets for the due performance of its obligations incurred pursuant to this section."

One of the things that we have not done to the best of my knowledge is use any of NHA's housing assets to raise funds for housing development. We are saying that in today's financial market it is possible, as the NHA owns these assets, to use them as collateral, raise money, build more units, sell those units, repay your loan and do all of that under the watchful eye of the Minister responsible and the Minister of Finance. This is not anything new. We have discovered that on a recent visit to the United Kingdom to look at their housing programme, they have been much more experienced than we are in this public sector housing, and we discovered that this is a normal arrangement where housing associations acting on behalf of the Government or housing corporations use their housing stock to raise money, to improve the stock and to expand the stock.

What that does, it prevents the State from having to provide new money to continue the programme. It also allows the State to support a programme; if the State has to borrow, that borrowing will not be on the books as a liability, because the housing corporation is raising that money against collateral which it owns, as against what we have been doing here in Trinidad and Tobago, where we build the units, have them there and then disconnect them from any further contribution to the housing programme. We are saying we are not going to do that now; we will look at what is available; assets and housing market, and under the guidance of the Minister of Finance, allow the corporation to use its assets in this way.

It also says, interestingly enough at clause 28(2) that:

> "Money (for this exercise) may be borrowed by the Corporation wholly or partly in foreign currency."

That is interesting because, you see, our financial markets are developing quite rapidly. A lot of our local banks are now operating externally and doing quite well, and we can see how we as a country can benefit from that, because even now, it is possible to borrow in foreign currency cheaper than to borrow in local currency. And why not? We have a sound economy; we have sound foreign exchange reserves; our banks are rated properly; our national credit rating is good. Why not take advantage of borrowing externally cheap to build houses in Trinidad and Tobago? And the Minister of Finance will oversee that.

Also interestingly again, we have a small number of local banks and there is always the possibility that cartelization can take place; that you can go out to borrow on the local market and three or four boards or fellows can decide what they are going to lend you money at. The way you deal with that possible cartelization is to ensure that you allow yourself to borrow both at home and abroad. That ensures that you get the best rate at home from your own banks. So this law allows the Housing Development Corporation to have access not only to local funding, but to foreign funding in foreign currency, and the Minister of Finance would guide that process because permission would be required for that.

Clause 29(1) says:

> "Subject to subsection (3), the Corporation in pursuance of its functions, is exempt from the Central Tenders Board Ordinance."

That is important, because if we had to wait for the award of contracts by the Central Tenders Board, I can guarantee you, with the best will in the world, that the programme that we have set ourselves for housing construction will not be achieved. However, what we have are proper tendering arrangements within the

agency, meeting the requirements as outlined in the public procurement White Paper, and the agency will follow proper tendering procedures as outlined in that White Paper, and not having to wait for the strictures. The same dysfunctionality I described earlier on with the SASC—I do not have to go into any details tonight—we know what the dysfunctionality is with respect to the Central Tenders Board. And I can tell you that the Central Tenders Board, with all due respect to the good work that it is doing, is not the agency to be awarding contracts in the Housing Development Corporation if we are talking about modern management systems. Modern management systems require that the board be held accountable; that the management be held accountable, but they be given the responsibility to do these things. But there are guidelines and procedures and they are laid out in the national White Paper and I think more and more public procurement will be going in that direction.

So in this case we are quite clear that this agency is exempt from the Central Tenders Board. In fact, even now, in the event that persons are saying that we would not be doing anything new, the NHA is not subject to the Central Tenders Board. I want to make that quite clear. So we are not creating new arrangements by doing this; we are simply restating it. Today the NHA has within the NHA, tender arrangements which are not Central Tenders Board arrangements. They have to be under the law of the Housing Act; a tenders committee which awards all the current contracts. That will continue.

It says at subclause 29(3):

> "Until the rules are made under subsection (2), the Corporation shall follow the procedures detailed in the Central Tenders Board Ordinance."

So even though the Central Tenders Board is not effecting the award of tenders, the tenders committee of the board of the NHA and of this Housing Development Corporation Board, must be guided by an Ordinance of the Central Tenders Board. So the procedure has to be the same. It goes on at clause 29(4):

> "Rules made under this section shall be subject to negative resolution of Parliament."

So I would have to come back here with those new rules and it would be open to that negative resolution. Of course, it says at clause 29(5):

> "Rules made under this section shall be available to any person on request and on payment of the prescribed fee."

The prescribed fee would then come with the regulations when they come back.

With respect to staff, Part VI talks about the organization of staff; the employment of staff; fix qualifications, terms and conditions of service and salaries, and so on. Clause 31 talks about—

Sen. Mark: Mr. Vice-President, I was wondering if the hon. Minister could tell us why a fee and not upon request? Why are we prescribing a fee and not upon request as is contained in the Postal Corporation Act of this Parliament? I think people should have access to these things rather than determining a fee. So I just wanted to get clarification.

Hon. Dr. K. Rowley: The fee is something nominal and it is really there to prevent abuse. If a person can just have something for free, we expect that the possibility of abuse is there. But if you have to pay even 10 cents out of your pocket, it could dissuade abuse. But it is not going to be a fee that makes it unavailable or exorbitant. These fees are usually very peppercorn. To show that you really want the documents, you pay your 25 cents or $1 and most persons would not just throw away a dollar, even though it would not buy you much. That is the real reason. It is not to make it unavailable at all.

Sen. Dr. Gopeesingh: Mr. Vice-President, this is an important area in the Bill, clause 29(2). It really goes to clause 29(4), the part of affirmative or negative resolution of the rules governing the tendering procedures. I just want to ask the Minister for clarification. Why is it that this Act has adopted the negative resolution approach, which means then that the rules can go through, unless some one of us asks a question in Parliament within 40 days? Why could it not be, to show more depth of character in terms of the tendering procedures, by affirmative resolution? Because this is fundamental to tendering procedures, that it must have the transparency. So these rules can be made very easily and we would probably glance through it, but when it comes back to Parliament we debate it and look at it a little more. So I would just ask the Minister to countenance that aspect of it; whether he may consider the question of affirmative resolution rather than negative resolution.

Hon. Dr. K. Rowley: Mr. Vice-President, there is nothing sinister about negative resolution. In fact, there are a number of instances where negative resolution is in the Acts across the library of the statutes. What negative resolution means is that we supply—those of us who are responsible for bringing this here, if it is passed into law, the law requires that you operationalize it with that sort of thing. In negative resolution, it means that you do not tie the House up in a debate

unless there is good reason to do that, and of course, when the terms come here, if any Member thinks that there is something that requires the attention of the Parliament by way of a debate, then such a debate is advanced and it would require a vote which must be carried.

So if there is nothing wrong with it and if you do not see a problem with it, then why create a bureaucratic issue? That is what negative resolution is all about. I would hope that all Members who receive documents in the Parliament would treat them all as important documents. When you receive documents which say that these are the tender rules of the HDC, that is a very important document, you are right.

7.05 p.m.

If you look at it carefully and you see something that warrants the attention of a parliamentary debate, then you raise it and say let us have a debate and have a negative vote. If you look at it and do not see a problem, it would have been made available to everybody and it would go through. I am taking your comment in good stead. The reason it is negative is that it will proceed unless there is something that warrants attention; something out of the ordinary. If that is the case any Member can say halt, let us deal with this matter by way of a resolution. Otherwise, it would come to the Senate; you would look at it in detail and if you are okay we go forward. This is pretty standard practice. There is nothing sinister in that.

I draw Senators' attention to clause 31(1) which says:

"This section applies to a person who on the date of assent of this Act—

(a) holds a permanent appointment to; or

(b) holds a temporary appointment to, and has served at least two continuous years in,

an office specified in the Third Schedule."

The Third Schedule outlines all the posts in the NHA. When this comes into being all the persons in these posts will qualify for what is in clause 31(2). It says:

"A person to whom this section applies may, within six months of the appointed day, exercise one of the following options:

(a) to retire voluntarily from the public service on terms and conditions agreed between him or the appropriate recognized association representing him and the Chief

Personnel Officer; or"

I must tell Senators that it is the intention of the Government to offer VSEP to NHA workers. We anticipate that about 40 per cent of the staff will access that programme.

Sen. Mark: What is the workforce?

Hon. Dr. K. Rowley: It is about 900.

Sen. Dr. Gopeesingh: Mr. Vice-President, I do not want to be a bother. I hate being but this is a very critical area that the hon. Minister has gone into. Having been a chairman of a regional authority in the health sector where there are over 7,000 workers, since 1994 to 2004, after 10 years, it has been on the Regional Health Authorities Act to transfer or voluntarily retire. This has caused the main problem in the health sector because there are two parallel employees. The workers of the Ministry of Health never wanted to go to the regional authority. I am indicating to the hon. Minister that the same situation may arise where the NHA employees may not want to go over.

Sen. D. Montano: They have to retire.

Sen. Dr. Gopeesingh: I heard him mention that he will offer voluntary separation. It was the same thing in the health sector but it never happened. You still have 2,000 workers out there and two parallel bodies. That is creating the bugbear in the health sector. If this Bill has it, would you show us, hon. Minister?

Hon. Dr. K. Rowley: I see that Senators are on the ball with respect to our experience. We have taken that into account. Options are available. They can voluntarily retire; transfer on terms and conditions no less favourable. I know that we have taken care of that but I cannot find it.

Sen. Dr. Gopeesingh: You will find yourself just as the RHAs.

Hon. Dr. K. Rowley: The reason we will not find ourselves there is that the NHA will cease to exist. We are repealing sections 1 to 10 which created the NHA.

Sen. Dr. Gopeesingh: You cannot repeal them if the workers are there.

Hon. Dr. K. Rowley: You make provision for the Housing Corporation to absorb the NHA. With RHAs you had two parallel employers: the Ministry of Health and the RHAs. We are not doing that. We did not dissolve the Ministry of Health. Doctors are telling you that they are working for the Ministry of Health and since you have no hospital and they are permanent employees—you know that. For years some of your colleagues did not go to work because they were

working for the Ministry of Health and it had no hospital. You are right. It will not arise because we are repealing sections 1 to 10 of the Housing Act. The NHA will cease to exist.

If you want to continue working you go with the Housing Development Corporation or accept that your post has been abolished and you leave on terms of that. Before that we are offering VSEP so that those who would like to go but not by way of being abolished by the death of the NHA; access the VSEP and we are ready to move forward. Your fear will not come to pass because there is a different basis for the transfer. We should have done something with the Ministry of Health. We have learnt from our experience. That is probably the biggest issue in the delivery of health care in the country at present; that lack of cooperation and those two employers. We have taken care of that in the repeal. Clause 34 specifically says that the posts will be abolished.

I should say that one reason for the VSEP is that a number of NHA employees would have been around for a long time as construction workers. Many of them do not now see the rigours of construction as something they can continue doing and would like to get out. A maintenance worker who is required to climb a nine-storeyed scaffold will tell you, "I am an old man. What are you asking me to do?" Even to go up two floors, but his job is in the system. Such persons would like to retire. They may be able to do plumbing or painting work. We need to treat with that. With VSEP some people will leave and some will stay on. We are engaged in a massive training programme and updating the staff. We will hire better and stronger management and end up with a better agency. That is the intention.

Clause 40 states:

> "On the appointed day all the rights and responsibilities of the Authority under the Slum Clearance and Housing Act shall vest in the Corporation."

The Slum Clearance and Housing Act is a major piece of legislation that will come into being very soon. It is a law which was meant to have some significant environmental impact especially in the urban areas of Trinidad which has not been brought into force. We are currently engaged in preparing to do some significant work under this Act. We are signalling that the Slum Clearance and Housing Act will be the responsibility of the Housing Development Corporation for administration.

It talks about the liabilities and obligations being absorbed by the HDC; the inheritance of all contracts of the NHA; other related matters and staff duty.

Clause 41(3) says:

> "The Stamp Duty Act or any other charge enforceable by a written law with respect to the conveying of property and the transfer of assets, rights and obligations shall not apply to the vesting of property in the Corporation."

As we transfer the property and vest from the NHA to the HDC the Stamp Duty Act will not apply. It also says that within five years of the appointed day, the value of the property vested in the corporation under this section shall be determined by an independent valuator. This brings back the point I made earlier about the role of valuation in proper effective management.

Under clause 42(1) the Minister is required to have regulations made and permitted by the Act to be prescribed. The regulations are to be subjected to what we were talking about a while ago. Regulations made would be subject to negative resolution of Parliament.

Clause 43(1) says:

> "The Board may, with the approval of the Minister make regulations prescribing—
>
> (a) appropriate standards for construction of houses;"

That is very important. This housing programme is not willy-nilly. The whole question of standards will become more and more important as we focus more and more on the quality of communities and abodes.

The board will be responsible for the question of fees and charges that apply to the estate management and shall ensure that regulations are made especially where we are moving towards building into the housing estates committee management to manage these units. We will require some supervision of what fees and charges should apply for these committees that will manage these estates.

Clause 45 effects all that I have said by saying that:

> "The Housing Act and the National Housing Authority (Vesting) Act are amended by deleting the words 'National Housing Authority' and the word 'authority' wherever they occur and substituting the words 'The Trinidad and Tobago Housing Development Corporation' and 'the Corporation' respectively."

In so doing we would have transferred all the applicable texts from the NHA and the Vesting Act to the Housing Development Corporation.

The First Schedule talks about the terms and conditions of board members. We spelt them out in detail.

The Second Schedule talks about the conduct of proceedings by the board to ensure that whatever board we appoint there will be guidelines for them to follow.

Basically, this is what we are asking you to support; the movement of management of the national housing stock from a *vaille que vaille* virtually offered arrangement. I am asking you to acknowledge that what we have done since 1969 probably would have served us reasonably well. In some instances, it did not serve us well at all. One of the problems I have right now is the question of how we could have allowed a situation to develop where large numbers of persons who are beneficiaries of subsidized rental turned their backs on even their meager responsibility, to the extent that they are welfare issues.

7.20 p.m.

Our position today at the Ministry of Housing is that if they are welfare issues, welfare issues must be identified as welfare issues and the Ministry of Social Development must pay for those welfare cases. So the Ministry of Housing, or whoever it is, must get their rental from the social development budget if there are persons who are welfare cases. Other persons who do not qualify under that heading must discharge their responsibilities and that is, pay their rent, pay their mortgage. The very fact that they are in a state-provided structure means they are already ahead of the game. Because where they live, whatever they are paying, it is a fraction of what they would be paying if they were to find places in the open market and, therefore, they must acknowledge that. And what is worse, even as you are under a shelter and being charged a subsidized rent, and you are turning your back on that responsibility there are tens of thousands of persons who would love to get access to a state shelter. So they must acknowledge their good fortune and accept their responsibility.

When I was in the Ministry of Agriculture, Land and Marine Resources a farmer's group came to see me once, in all seriousness. They asked for a meeting. I agreed to see them and they came to see me. They owed the Agricultural Development Bank some significant sums of money against which their properties were the collateral. They looked me straight in the face and said it is the ADB's fault; the ADB did not collect the money.

At first, I thought I was dealing with "mad" people but then on further reflection I said maybe they have a point. If people owe you and you take no steps to collect, then maybe, it is your fault. I have carried that experience to the

Ministry of Housing. If people are in there and they have rentals to pay, our position as you might have seen is, pay your rent before you go to fete. Pay your mortgage before you go abroad; pay your mortgage before you pick up a second wife and a second home. These are your responsibilities. [*Interruption*] If you could afford it, but you have to be a Muslim first. We are emphasizing that there is a social side to this whole question of the State taking the responsibility for expanding the housing stock. It is not freeness, it is not a free-for-all. There are serious responsibilities. Most families in this country, their single largest asset will be the home in which they live.

As we use our good fortune in the energy sector to obtain revenues, the philosophy of the current Government is that the State is a trustee, handling those revenues on behalf of the people of Trinidad and Tobago, and whatever moneys we put into building up the housing stock and making housing affordable, especially to those who are least able to contend in the current housing market; such persons would be beneficiaries of their own assets as owners of part of that revenue. But as a society, we would have provided them with one of the basic needs of the human condition, and that is, housing. We cannot become a developed society if 100,000 families are living in conditions which are unacceptable to us even today. The housing programme is meant to address that problem and it is one area in Trinidad and Tobago where you can see the tangible results, because every time we start the construction of one house, it means that the potential per one family to improve its physical condition is there, not to mention the employment and the economic spin-offs of the housing construction and so forth. Of course, it is not an open-ended thing. We expect that in a certain period of time, long before 2020, this particular issue of the housing shortage and poor housing condition would be a thing of the past in Trinidad and Tobago. We ask you to support this Bill to bring management to those issues.

Sen. Seetahal: I find what you were saying is very persuasive. However, when I am looking through the legislation, I do not know if I missed it, I came in late; I am trying to find out where there are specific provisions which would make this work so much better than the NHA. You might say the underpinning of the whole Act is for that purpose and you have talked about different things: management fees, whatever, regulations. There are regulations and provisions in other legislation. You have given us a good example but where exactly. What about it? Maybe you said it already when I was not here.

Hon. Dr. K. Rowley: I am sorry that you came late. I started by pointing out the reasons why the current arrangements have not worked. The main reason was that responsibilities lie elsewhere, the dysfunctionality of the existence of

management and other issues under the Statutory Authorities Service Commission which now exist, which we are going to remove this agency from, and also the question of the Ministry of Finance funding the agency while its cash flow is not for its own use and so forth. I am sorry you were not here because those are the problems we are dealing with and these changes would eliminate those things and bring direct contact between responsibility and authority and, therefore, we are able to carry out proper management issues.

I also talked about the strictures of hiring staff in the current marketplace where you are—the very fact by creating the agency by statute, as we are doing now, and not having it subject to the myriad controls of the SASC means that we can operate this like Neal & Massy; it means that the management and the board will run the organization under the watchful eye of a minister reporting to the Parliament and a Minister of Finance who has to acquiesce to some of the things that are authorized in this.

Mr. Vice-President, I beg to move.

Question proposed.

Sen. Sadiq Baksh: Mr. Vice-President, the Bill as presented by the hon. Minister, for the efficient management of the delivery of housing solutions to the citizens of Trinidad and Tobago, is one in which no right-thinking Member of this Senate or for that matter, no right-thinking citizen could oppose in terms of the more efficient management of the delivery of housing solutions for citizens in need.

All the issues that the Minister laid out for this honourable House in terms of the necessity to have better control of the management and of the delivery of those services, happen to be rooted in what we could all consider constitutional reform. It is very important because I agree with the hon. Minister that the Statutory Authorities Service Commission and their method of management and their method of allocating resources in terms of human resources to any of the authorities in Trinidad and Tobago leave quite a lot to be desired. It cannot be faulted in terms of the movement of labour, the money and the inconvenience that that causes for any organization especially the Ministry of Housing.

In addition to that, today is an historic occasion in this Senate. It is the first time at any sitting in the Parliament of Trinidad and Tobago, there are three former Ministers of Housing and a present Minister of Housing, all the more reason for us to understand the bureaucracy that exists within the National Housing Authority. But it will be remiss of me if I do not remind this honourable

Senate that the necessity for having housing solutions for the citizens of Trinidad and Tobago did not occur in the 1970s, 1980s, 1990s or in this century. This PNM administration recognized the need for housing solutions as far back as when the first housing policy committee was established in 1957. And in fact, in the budget speeches, 1957 to 1981 on page 67, paragraph 3, it identifies that the committee in 1957 estimated that 107,000 new houses would be required by 1965.

Mr. Vice-President, based on what the Minister told us in terms of the rental accommodation now under the portfolio of the Ministry of Housing which stands at 9,000, that could be 9,000 rental units which is the sum accumulated total of rental solutions provided to the citizens of Trinidad and Tobago from as far back and then to a current time. In addition to that, the 14,000 mortgages still on the books of the National Housing Authority, I estimate that a further 20,000 mortgages would have been provided during that period to the present time and are now off the books. So you could safely say of that 107,000 that were recognized, as far back as 1958, those less than 14,000 solutions were provided to citizens of Trinidad and Tobago.

I agree with the estimate of the hon. Minister that there is a shortage at present of about 100,000 housing solutions and the Minister went at great pain to say that having recognized that the Ministry over the last four years was able to accomplish 10,000-plus starts in terms of the commencement of construction at different locations throughout the country, in terms of a provision in many cases of low-cost housing to low-income earners. I am certain that all would not fall in that category, but the Minister made that very clear.

I am also satisfied that many other homes in a different category would have started under private developments that would add to this particular figure. However, the Minister failed to tell us for over the last four years how many housing starts actually reached conclusion. I think from a question we asked recently it was less than 2,000 and it is not only a question of having starts but having completion and having people actually in a home. It cannot be homes where people have keys but cannot access those homes, and we are aware of some of that happening at the present time.

The establishment of the Trinidad and Tobago Housing Corporation and the introduction of what the Minister described as a revolving fund where you have established money available, make units available to people and as they pay, use that fund to construct housing, that is not new. In the first settlements programme as far back as 1969 the revolving loan concept was, in fact, initiated by the National Housing Authority and most of the things that the Minister told us on

this occasion about the establishment of the Trinidad and Tobago Housing Corporation were quite similar. The establishment of the National Housing Authority was for that very reason, to improve the efficiency of the delivery of low-cost housing to the citizens of Trinidad and Tobago.

I am certain that we would have acquired a lot of experience between then and now, and that more modern management techniques would be employed in the new corporation that would avoid the pitfalls of the past. But the Minister did not tell us what the quantum of funds are due to the National Housing Authority at present that will come into that fund. He told us that the money collected from rental income was in the vicinity of $1 million monthly and from the 14,000 mortgages, $8 million. So it would be about $9 million for a certain period of time. But what is the total value? And I know it is stated very clearly in the Bill that there would be a valuation and at some point in the future you would know that.

Mr. Vice-President, in the establishment of any corporation or enterprise, whether in the private or public sector, it is important to use sound management practices in the establishment of such organizations, for example, having a proper cash flow, having a proper estimate in terms of all the inputs into the organizations so that when you establish the corporation you would know how much would be capitalized, the inflows that would come. I am certain that the Minister thought of all of that but he did not prepare it for the establishment of that organization. I am suggesting if the fundamentals are not in place chances are it would take a long time to be established and you would find yourself in a similar situation that existed in the National Housing Authority. For example, you cannot expect—and I am certain that new people would come into the organization—the same people to do the same thing with the same resources and expect different results immediately just by changing the name of the corporation. I am certain that it is not the intention of the Minister and I understand quite clearly what he said. But saying it is one thing and having those wishes and those words converted into action is a different story altogether.

We have had experiences in the past in almost every state organization, state agency, state enterprise or public authority, where that malaise and that attitude of not wanting to get things done, but more talking about them than planning them, having wonderful plans but no real mechanism to deliver. If this corporation will mark an end to that performance, we would be only too happy to support this move to the modernization of the management techniques at the Housing Corporation of Trinidad and Tobago.

If the change of the name from NHA to the Trinidad and Tobago Housing Development Corporation will deliver on the PNM promise of 10,000 housing units per year we would have no objection in supporting that. But by the Minister's own figure, and based on times so far, and on their promise, we have a deficit of 30,000 housing units. It is simple.

If you promised 10,000 housing solutions in one year and you have had 10,000 starts and I am crediting those 10,000 starts as 10,000 completed for the purpose of this argument, then by the same token you have a shortfall of 30,000 units by your own projection.

Mr. Vice-President, we will support the establishment of the Trinidad and Tobago Housing Development Corporation if after today no homes in Trinidad and Tobago would be destroyed, the way the houses in Union Hall were destroyed, were broken down and people were dislocated, families had a real hard time and if with this new organization a more humane approach would be taken then we would support it.

It is even worse—and we are hoping that the new Housing Corporation of Trinidad and Tobago would ensure that you do not relocate those people, put them into Thompson Gardens and then provide one toilet facility for every 10 houses that you build. That cannot be the intention of the Government.

If the Housing Corporation of Trinidad and Tobago would ensure that when you construct multi-storey buildings on Circular Road in San Fernando that you would provide adequate infrastructure in terms of roads, drainage, garbage collection, recreational space for the citizens who would occupy those houses, and that error of the past would not be repeated, then we would have no other alternative but to encourage the speedy establishment and assent to this Bill because it would avoid that from happening in the future.

I am not blaming the hon. Minister for that because I know he did not conceive those programmes. He is only there less than a year but I am pointing it out, and I have reason to believe that those things will not happen under his stewardship.

Mr. Vice-President, only recently one of the buildings at Hickling Village in Fyzabad—you cannot imagine that site. They actually built a home under a high tension line with the first floor and could not proceed to its completion because the lines were just four feet above the decking. It is still there. I saw it on Saturday, not yesterday, and I am sure they did not move the electrical line since then.

I agree with the Minister, but I could not believe that one. Hon. Minister, I would invite you to enquire about that because it really brings the Ministry and the Government into bad light based on that because everybody sees the other houses—there are four houses on that block and three are completed and that one cannot go any further. You have to wait on the cost of removal. If they plan to remove those high tension lines from the building, in fact, it will cost more than the four buildings put together.

The hon. Minister needs to tell us how the establishment of this new Trinidad and Tobago Housing Development Corporation would impact on the loan agreement with the Inter-American Development Bank.

In fact, when the loan was signed—the former Minister signed that agreement—there were certain conditions precedent. There was a ceiling on low-income homes at $120,000 for house and land and that the beneficiaries of those homes would qualify for subsidies of up to US $6,000 for families with a joint family income of less than $4,800. The Minister did not tell us, and I am sure in his winding up, or the former Minister in his contribution would tell the Parliament how that computes in terms of the ceiling for the housing option under the Inter-American Development Bank and if the new policy of the Government is in line with the condition precedent of the Inter-American Development Bank, so that citizens who qualify would be able to access those subsidies.

In addition to that, there is a Home Improvement Grant under the Inter-American Development Bank loan. I want to enquire from the hon. Minister, how many citizens access that Home Improvement Grant as provided by the Inter-American Development Bank, and if any was provided or if it was counterpart funding that we would utilize as 10 per cent of the total value of the loan that might be optional for the Government to utilize and then have it reimbursed and whether the same quantum of $10,000 is applicable to Tobago or, if in Tobago it is a different figure. I understand that the Home Improvement Grant in Tobago is $15,000 and that in Trinidad it is $10,000. I am not sure about it.

Mr. Vice-President, in fact, that is the reason I am asking the Minister. I have confidence that the Minister would be able to provide this Senate with the proper information.

In addition to that, another condition precedent of the Inter-American Development Bank loan is that the Government of Trinidad and Tobago would undertake to phase out and not get into additional rental properties and the existing rental properties would be made available in terms from rent to ownership or some form of ownership to the existing occupiers.

In the negotiations for this loan it was recognized that rent money is bad money, and when people rent they do not have the opportunity to acquire a property, not only for a home but also to be able to use as collateral to go to the bank and be able to use that collateral to access finance, either for investment or for education for their children and for other things. Basically, I am of the opinion that with the Government getting involved with additional rental properties that it would cast some sort of shadow on the loan agreements signed by the Government of Trinidad and Tobago. If that is not so, the Minister would be able to explain to us. Another very important factor is that of the quality of the homes provided presently by the National Housing Authority, the Ministry of Housing and with the future, Trinidad and Tobago Housing Development Corporation.

I am requesting the hon. Minister to ensure that in the new arrangement in the Trinidad and Tobago Housing Development Corporation, in the recruiting process that they recruit proper inspectors to ensure the quality of those homes.

Many of those houses would be under mortgage and it would be for a period in some cases, 20 and 30 years. And if the design life of those homes cannot stand up to scrutiny for 20, 25 and 30 years, as in some cases where houses are now being constructed on soils that are shifting and without proper foundation, then the people providing finance would not do so based on the design life and the life expectancy of those homes.

In addition to that, there is a situation where insurance companies have to insure these houses. If the quality is not up to mark you would find they would not want to insure those properties. I want to hear from the hon. Minister in his winding up on some of those issues.

Mr. Vice-President, the cost of low-cost housing at this particular time, whereas during the period when the loan was negotiated and signed by the Government, the cost of a housing solution for the low-and no-income earner was established. We need to find out from the hon. Minister what is the new price for those houses and what is the income qualification to access one of those solutions? Generally, we would like the Minister to inform this Senate as to the status of the loan agreement between the Inter-American Development Bank and the Government of Trinidad and Tobago. Have we accessed any funds from that loan at this time, or are we going to just go through utilization of the new funds established under the Trinidad and Tobago Housing Development Corporation?

Mr. Vice-President, if the establishment of this new body, this new corporation will, in fact, ensure that all the elevators in the nine-storey buildings are working—functional and properly maintained—we would have no alternative

but to support this Bill.

The hon. Minister stated that there are 134 housing estates under the portfolio and would be under the portfolio of the new corporation. Along with that, there are over 134 sewer treatment plants. I would like to know whether they took into consideration the need for the environment and whether under this new arrangement, within what period of time those sewer treatment plants would be brought up to the national required standards.

Mr. Vice-President, we need to have some assurance that that will take place. We are aware of a number of joint ventures taking place between the Ministry of Housing and the National Housing Authority and many citizens, many contracting firms of Trinidad and Tobago, some firms without any experience, some new organizations, some new companies and you will recall the Minister's answer in this Parliament, a specific one on Ramgoolie Trace. A company, Winchester Industries, got a contract for over $80 million and drew down $20 million so far and had a fourth withdrawal or an amicable withdrawal, but all in all, the discontinuation of the construction of those apartments at Ramgoolie Trace.

7.50 p.m.

Mr. Vice-President, we had the same thing at the Green Street apartments. The Minister came to this Senate and brought the information and if the Trinidad and Tobago Housing Development Corporation will bring that to an end, we would have no problem with that. We want to support it.

Mr. Vice-President, I am aware that the corporation would not look after squatters. There are other agencies in the Ministry, and other Ministries that would look after them, but that is also an important portfolio under the Ministry. There is the Sugar Industry Labour Welfare Committee that is possibly the only organization in Trinidad and Tobago, so far, successfully to utilize a revolving loan fund on a continuous basis for decades for the creation of new housing solutions.

Maybe the Minister did not need to go to the United Kingdom. Utilize the experience from the Sugar Industry Labour Welfare Committee that did it on a smaller scale; that successfully utilized funds from the sugar levy to ensure the delivery of housing solutions. What might be of benefit is for the Minister now to inject additional capital into the Sugar Industry Labour Welfare Committee, so that they would be able to provide additional housing units, albeit no longer for sugar workers only, but to the expanded community.

Mr. Vice-President, we are very concerned about titles. We have a situation where the Trinidad and Tobago Housing Development Corporation would inherit

all of the NHA estates. On the majority of those estates, many citizens have successfully completed paying off their mortgages, but have not been able to get the leases, so that they do not have proper title for those lands. I know that we vested the lands recently, after decades, but what mechanism would the new Trinidad and Tobago Housing Development Corporation put in place to ensure that titles that are outstanding are prepared at an accelerated pace?

Is the new corporation to have a special department to deal with that? How soon will all the owners who have completed paying for their mortgages under the National Housing Authority, now transferred to the Trinidad and Tobago Housing Development Corporation, receive their titles so that they can sell, access additional capital or renovate, but basically so that they can access funding from other institutions?

Mr. Vice-President, whereas the Minister stated quite clearly that we now have an investment of over $3 billion in the low-cost housing sector and an anticipated $1.5 billion annually from now on, I ask the Minister to take note of the impact of that accelerated programme. I am not against it, but there is an impact on the escalating cost of building material. I am aware that the Government removed certain taxes on building material in an effort to alleviate some of the plight of the new housing owners; of persons who are building on their own, including those with low-cost solutions. We have a situation where we have had a continuous increase in the price of building materials that did not only come about because of increased world prices but because of the demand for housing and construction materials for the housing sector.

So, Mr. Vice-President, we are not against the accelerated programme, but we request that note be taken of the escalation in the prices of building material. Only recently we had a hike in the price of cement. We have had a continuous hike in the price of steel over the last four years. We have had an increase in the price of almost every single commodity as it pertains to housing construction. In addition to that, we have a labour situation and I would have thought that a training programme would have been incorporated into the new Trinidad and Tobago Housing Development Corporation so that as you construct houses, there would be a programme to ensure a continuous supply of labour within that sector.

The provision of housing solutions on an annual basis by the Government is a necessity. I would like to suggest to the hon. Minister that the corporation also make serviced lots available to citizens who are willing to construct their own homes with their own designs and they are taking the time to begin by constructing one section of the house and expanding as there are inflows of funds.

The private sector needs to be encouraged to be more involved in the delivery of housing solutions in Trinidad and Tobago, with all the good intentions of the Government in terms of the establishment of the Trinidad and Tobago Housing Development Corporation. I am not confident that, with all the latitude that you will get, you will be able to deliver the quantum of houses that you have set for yourself to deliver in a timely basis and a cost effective manner; that you would be able to deliver quality homes to the citizens and that you would be able to handle the reduction of the housing needs of the citizens of Trinidad and Tobago.

Mr. Vice-President, by contrast, the vision of the United National Congress and our policy on housing is different to that of the People's National Movement. It is not for constructing houses for people. It is for providing an enabling environment and allowing citizens to have the opportunity to get land, serviced lots, and to allow them interest-free and low-cost loans, provide them with a subsidy so that they can become the best that they could be. We allow them to start off by providing them with a design, so that they would not have to pay exorbitant prices for the drawings, if they wanted to utilize that option; by providing legal assistance in terms of having a set format for leases and transfer of land; by making available through the Trinidad and Tobago Mortgage Finance Company interest-free loans up to $10,000, for repayment in a period up to 50 years, for low income earners; by utilizing the subsidy from the Inter-American Development Bank and encouraging citizens to put in a savings of $10,000 together with that and using that as collateral to access funding from commercial banks at preferred rates.

In addition to doing that, and recognizing that over the years over 50,000 families squatted on state and private lands, we made our first step in the Regularization of Squatters Act in 1988 to ensure that people had a spot of sand in this land called Trinidad and Tobago. We guaranteed a minimum of 5,000 square feet of land to any citizen who squatted and, simultaneously, tried to make serviced lots available to other citizens to halt squatting.

Since this administration came into office, with all good intentions, we have had an increase in the squatter community, although the law from 1998 is to have a containment unit to ensure that no new squatters come on the scene in terms of state lands. The next step for the administration is to look at people squatting on private lands. There are a number of persons squatting on private lands in Trinidad and Tobago from Enterprise to Pinto Road and in a number of other areas. People need to act because those people are harnessed. Because they are squatting, they do not have another option and they cannot access capital. They

are out of the formal economy and as such they cannot become the best that they can be.

We share the vision of the hon. Minister and the Government in terms of making Trinidad and Tobago an intelligent nation; to have it developed in the shortest possible time; to ensure that shelter is available; to ensure that food prices are kept to a level that would allow citizens to access food on a regular basis. But it is equally important that the administration recognizes that we need to introduce programmes to train our citizens. We need to encourage our citizens to save and we need to ensure that we get them to take responsibility for themselves and in that way we will have an improved society.

We look forward to the establishment of the Trinidad and Tobago Housing Development Corporation and to the sustainable delivery of 10,000 housing solutions for the citizens of Trinidad and Tobago.

ADJOURNMENT

The Minister of Labour, Small and Micro Enterprise Development (Sen. The Hon. Danny Montano): Mr. Vice-President, we have had a long day. I would like to move that the Senate do now adjourn to Thursday, August 25 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.04 p.m.

WRITTEN ANSWER TO QUESTION

The following question was asked by Sen. Wade Mark:

Mr. Clive Phelps
(List of Cases as Retained Counsel)

14. (a) Could the hon. Attorney General provide the Senate with a list of all cases involving state enterprises, statutory authorities and any other state institutions/agencies in which Mr. Clive Phelps, Attorney at Law has been retained as counsel; and

(b) Could the hon. Attorney General also indicate the amount of moneys paid to him for services rendered to the State during the period January, 2002 to April 30, 2005?

The following reply was circulated to Senators:
The Attorney General (Sen. The Hon. John Jeremie):

(a) One state enterprise, Trinidad and Tobago National Petroleum Marketing Company Limited and one statutory corporation, the Airports Authority of Trinidad and Tobago, indicated that Mr. Clive Phelps, Attorney at Law was retained as counsel.

(b) During the period January 2002 to April 2005 the moneys paid to Mr. Phelps for services rendered were as follows:

State Enterprise/ Statutory Authority/ State Institution/Agency	Details of Engagement (Mr. Clive Phelps)	Period(s) Retained	Monies Paid for Services Rendered
Airports Authority of Trinidad and Tobago	Legal Services in the matter of a dispute arising out of a Maintenance contract between the AATT and Calmaquip (the Contractor) dated March 22, 2000.	July 2004 to December 2004	$275,000.00
Trinidad and Tobago National Petroleum Marketing Company Limited (NP)	Legal Services	March 2002	$6,500.00
NP	H.C.A. NO. 3052 OF 1997:- RALPH LUTCHMENARINE VS. NP. This matter is an action for Damages and Breach	August 2002 to March 2003	$37,510.00

State Enterprise/ Statutory Authority/ State Institution/Agency	Details of Engagement (Mr. Clive Phelps)	Period(s) Retained	Monies Paid For Services Rendered
NP	of Contract caused by the Company's alleged failure to replace and/or maintain its underground tanks, which were leaking. The claim for loss of product is $712,935.72.		
NP	H.C.A. NO. S-619 OF 1999:- JACQUELINE BAIRD VS. TRINIDAD & TOBAGO NATIONAL PETROLEUM MARKETING COMPANY LIMITED AND OTHERS The claim for loss of fuel from the plaintiff's tanks because of leaking underground lines which NP allegedly failed to maintain. The actual sum claimed is $320,525.92	August 2002 to April 30, 2005	$45,850.00

State Enterprise/ Statutory Authority/ State Institution/Agency	Details of Engagement (Mr. Clive Phelps)	Period(s) Retained	Monies Paid For Services Rendered
NP	H.C.A. NO. 2545 OF 1998: - SALLY GEORGE AND OTHERS VS. MICHAEL DANIEL, TRINIDAD & TOBAGO NATIONAL PETROLEUM MARKETING COMPANY LIMITED AND OTHERS This matter arises out of an explosion which occurred on the compound of a Service Station in Chaguanas whilst the subject's vehicle was discharging CNG into its tank.	August 2002 to April 30, 2005	$85,950.00
NP	Resolution of Contractual and Copyright issues between Trinidad & Tobago National Petroleum Marketing Company Limited and Watson Construction Management Company Limited	September 2002	$35,000.00

State Enterprise/ Statutory Authority/ State Institution/Agency	Details of Engagement (Mr. Clive Phelps)	Period(s) Retained	Monies Paid For Services Rendered
NP	Attorney fees for NP v N.E.M.	September 2002	$25,000.00
NP	Legal Opinion	July 2003	$48,750.00
NP	Legal Opinion	April 2004	$40,350.00
NP	Legal Opinion	April 2004	$12,650.00
NP	Legal Opinion	April 2004	$35,000.00