

*Leave of Absence*

*Tuesday, September 05, 2006*

**SENATE**

*Tuesday, September 05, 2006*

The Senate met at 1.30 p.m.

**PRAYERS**

[MADAM PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Madam President:** Hon. Senators, I have granted leave of absence from today's sitting to Sen. The Hon. Joan Yuille-Williams, Sen. Wade Mark and Sen. Dr. Eastlyn Mc Kenzie, who are out of the country.

I have also granted leave of absence to Sen. The Hon. Danny Montano and Sen. The Hon. Satish Ramroop who are ill.

**SENATORS' APPOINTMENT**

**Madam President:** Hon. Senators, I have received the following correspondence from His Excellency the President of the Republic of Trinidad and Tobago:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO”

By His Excellency Professor 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 Joan Yuille-Williams 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, JOAN HACKSHAW-MARSLIN, to be temporarily a member of the Senate, with effect from 5<sup>th</sup> September, 2006 and continuing during the absence from Trinidad and Tobago of the said Senator Joan Yuille-Williams.

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 1<sup>st</sup> day of September, 2006.”

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“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor 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 Danny Montano 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, MAGNA WILLIAMS-SMITH, to be temporarily a member of the Senate with immediate effect and continuing during the period of illness of the said Senator Danny Montano.

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 5<sup>th</sup> day of September, 2006.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor 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: MR. NILEUNG ROLAND HYPOLITE

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, NILEUNG ROLAND HYPOLITE, to be temporarily a member of the Senate with immediate effect and continuing during the period of illness of the said Senator Satish Ramroop.

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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 5<sup>th</sup> day of September, 2006.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor 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: MR. WAYNE MUNRO

WHEREAS Senator Wade Mark 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 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, WAYNE MUNRO, to be temporarily a member of the Senate, with effect from 1<sup>st</sup> September, 2006 and continuing during the absence from Trinidad and Tobago of the said Senator Wade Mark.

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 30<sup>th</sup> day of August, 2006.”

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor 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: PROFESSOR DAVID PICOU

WHEREAS Senator Dr. Eastlyn Mc Kenzie is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

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NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, DAVID PICOU, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Eastlyn Mc Kenzie.

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 4<sup>th</sup> day of September, 2006."

#### **OATH OF ALLEGIANCE**

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

Joan Hackshaw-Marslin, Magna Williams-Smith, Nileung Roland Hypolite, Wayne Munro, Prof. David Picou.

#### **PILOTAGE (AMDT.) BILL**

Bill to amend the Pilotage Act, Chap. 51:02, brought from the House of Representatives [*The Minister of Works and Transport*]; read the first time.

#### **PAPERS LAID**

1. The Judicial and Legal Service Commission Annual Report 2005. [*The Minister of Legal Affairs (Sen. The Hon. Christine Kangaloo)*]
2. Annual audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the year ended September 30, 2003. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
3. Annual audited financial statements of the Trinidad and Tobago Solid Waste Management Company Limited for the year ended December 30, 2004. [*Sen. The Hon. C. Enill*]
4. The Civil Aviation [(No. 1) General Application and Personnel Licensing] (Amdt.) Regulations, 2006. [*The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith)*]
5. The Civil Aviation [(No. 2) Operations] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]

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6. The Civil Aviation [(No. 3) Air Operator Certification and Administration] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]
7. The Civil Aviation [(No. 5) Airworthiness] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]
8. The Civil Aviation [(No. 7) Instruments and Equipment] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]
9. The Civil Aviation [(No. 8) Aviation Security] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]
10. The Civil Aviation [(No. 9) Approved Training Organization] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]
11. The Civil Aviation [(No. 11) Aerial Work] (Amdt.) Regulations, 2006. [*Sen. The Hon. Dr. L. Saith*]

**Statutory Instruments Committee  
(Civil Aviation Regulations)**

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Madam President, may I also advise that the Statutory Instruments Committee considered these Civil Aviation Regulations and found there was nothing to which the attention of the Senate should be especially drawn. The minutes of the Committee were circulated to Members.

**BANKRUPTCY AND INSOLVENCY BILL**

**Joint Select Committee Report  
(Presentation)**

**The Attorney General (Sen. The Hon. John Jeremie):** Madam President, I beg to lay on the Table the First Interim Report of the Joint Select Committee appointed to consider and report on the Bankruptcy and Insolvency Bill, 2006.

**ORAL ANSWERS TO QUESTIONS**

**Madam President:** Hon. Senator, the questions on the Order Paper are for Sen. Mark. Are you going to take them?

**Sen. Dr. Tim Gopeesingh:** Madam President, in the absence of Sen. Mark, who may have some supplemental questions, I think it would be only fair to him that we defer the questions until his return.

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

**Children's Authority  
(Non-establishment of)**

- 64.** Could the hon. Minister of Social Development and Minister in the Ministry of Housing state:
- (a) the reason for the non-establishment of the Children's Authority as mandated by law; and
  - (b) whether Trinidad and Tobago is in full compliance with the Articles of the United Nations Convention on the Rights of the Child to which this country is a signatory?

**Office of the Prime Minister  
(Purchase of Private Jet)**

- 65.** Could the hon. Prime Minister and Minister of Finance state categorically if it is the intention of the Government to purchase a private jet for the exclusive use of the holder of the Office of the Prime Minister?
- If the answer is in the affirmative, would the Prime Minister further state:
- (a) the estimated cost of such an aircraft; and
  - (b) the procedure which would be followed to procure such an aircraft?

**DNA Legislation  
(Operationalising of Provisions)**

- 66.** Could the hon. Minister of National Security state:
- (a) the reasons for not fully operationalising the provisions of the DNA legislation; and
  - (b) when the Government expects to fully operationalise this Act?

*Questions, by leave, deferred.*

**LAW REVISION (AMDT.) BILL**

*Order for second reading read.*

**The Minister of Legal Affairs (Sen. The Hon. Christine Kangaloo):** Madam President, I beg to move,

That a Bill to amend the Law Revision Act, Chap. 3:03 be now read a second time.

Madam President, the Bill before this Senate seeks to amend the Law Revision Act by replacing the definition of "Minister." It seeks to do so in order to bring the law in

line with the present governmental arrangements under which the responsibility for law revision is assigned to the Minister of Legal Affairs.

Since the year 2002, the responsibility for law revision has, pursuant to section 79 of the Constitution, been assigned to the Minister of Legal Affairs. Under the present Act, however, the responsibility for law revision effectively falls under the Attorney General. This Bill seeks to address this anomaly.

By section 3 of the Act, there is established a Law Revision Commission. By section 4 of the Law Revision Act, the Commission is charged with the responsibility to prepare, publish and maintain a revised edition of the written laws of Trinidad and Tobago in accordance with the provisions of the Act.

Section 6 of the present Act sets out the powers of the Commission, which powers are required to be exercised with the approval of the Minister. By section 2 of the present Act, the Minister is defined as meaning the Minister responsible under section 76(2) of the Constitution for the administration of Legal Affairs.

Madam President, the “Minister” referred to, therefore, is the Attorney General. By section 79(1) of the Constitution, the President acting in accordance with the advice of the Prime Minister, may assign to any Minister the responsibility of any business of Government of Trinidad and Tobago. In the year 2002, the responsibility for law revision was assigned to the Minister of Legal Affairs. The result of this assignment is that the line Minister for the Law Revision Commission should now be the Minister of Legal Affairs.

Madam President, although the responsibility for law revision was assigned to the Minister of Legal affairs, the definition of the Minister in the present Law Revision Act was not simultaneously amended. This Bill comes at a critical stage in the Commission’s present operations. In the due discharge of its responsibility under section 6 of the Act, to prepare, publish and maintain a revised edition of the written *Laws of the Republic of Trinidad and Tobago*, the Commission is at present involved in publishing a new *Revised Edition of the Laws of the Republic of Trinidad and Tobago*.

The publication of the new revised laws will require the responsible Minister to approve orders made by the Commission under the Act for the publication of such laws.

Madam President, every year, both in this honourable Chamber and in the other place, innumerable amendments are made to existing laws. These amendments have then to be incorporated into the respective substantive laws which have been

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amended in order for these laws to be read as a coherent whole for, among other purposes, their correct interpretation. In order that such incorporation may be done systematically, it is necessary from time to time to revise the state of the laws in the country and upon completion of such revision to publish as a coherent whole, the state of our country's laws in the form of *Revised Laws of the Republic of Trinidad and Tobago*.

The publication of such revised laws is of cardinal importance, not only to the administration of justice, but also to the society as a whole, including Members of Parliament, the members of the Judiciary, the Supreme Court library, members of the legal profession, the Faculty of Law of the University of the West Indies, the Hugh Wooding Law School, the commercial banks, the business community and the trade unions.

Madam President, the written laws of the Republic of Trinidad and Tobago were last revised in 1980 and subsequent to such revision, were published in the 1980 Revised Edition of the *Laws of the Republic of Trinidad and Tobago*. This edition was updated by the publication of two supplements, namely, the first and second supplements, with the second supplement updating and revising the laws up to December 31, 1986. Since the publication of the second supplement in 1986, 20 years ago, there has been no further publication of this country's revised laws.

Government recognizes the critical and urgent importance of a modern and thorough revision of the existing written laws of the country and the publication of a new Revised Edition of the *Laws of the Republic of Trinidad and Tobago* at this time. In this regard, the Ministry of Legal Affairs has been working assiduously to ensure that both the revision and thereafter, the publication of a new Revised Edition of the *Laws of the Republic of Trinidad and Tobago* are completed within the shortest possible time.

Madam President, I am happy to be able to report to this honourable Chamber that the revision exercise has been completed, and that consequently thereon, the Ministry has requested the Central Tenders Board to invite tenderers with experience in law publishing to publish the new Revised Edition of the *Laws of the Republic of Trinidad and Tobago*.

The new revised edition of the laws will be published in textual format, that is, in hard copies in volumes and also in electronic format, that is, in interactive CDs with full text search facilities, index hyperlinks and references to sections in the Act.



The publication in electronic format will allow for printing and viewing of sections of the Act, but will have a built-in security system in order to prevent their alterations.

The number of laws which have been revised for inclusion in the new revised edition is 494, comprising some 22,022 pages, and these revised laws will be contained in approximately 32 volumes.

It is important, not only in order that this critical exercise of publishing a new Revised Edition of the written *Laws of the Republic of Trinidad and Tobago* be carried out effectively, but also in order to regularize the issue of ministerial responsibility for law revision as a whole, that the amendment proposed by this Bill be given effect.

Madam President, I, therefore, beg to move.

*Question proposed.*

**Sen. Dr. Tim Gopeesingh:** Madam President, I know this Bill is a relatively short one that necessitates no big debate. It is simply moving the authority from the Ministry of the Attorney General to the Ministry of Legal Affairs. But there are certain statements that ought to be made in the context of what is being undertaken at the moment.

It is very sad that the last law reports of Trinidad and Tobago, put into a compendium, is 26 years outdated—1980. The legal profession and even Members of Parliament, we, who have been looking at making new laws, have had tremendous difficulty over a period of time in establishing what changes in legislation have taken place since 1980 to the present time. We, ourselves, have had difficulties far less the attorneys and members of the legal profession and members of the public, in terms of determining what is the most up-to-date or relevant law because of inaccessibility.

When one speaks to members of the legal profession they will tell you it is a nightmare to be able to understand what have been the changes in the legislation subsequent to 1980. Every year a consolidated index of *Acts and Subsidiary Legislation* is published. I have one here with me. In that, there are a number of changes in legislation that have taken place, but for one to determine what is the most updated legislation one would have to go back from year to year to year to determine when these laws were changed and what were the changes at that time. So it became a logistical nightmare for members of the profession, and all who have been looking towards obtaining some information in relation to the updated laws have found extreme difficulty.

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I am very happy that I put this question about six months ago to the hon. Attorney General and I indicated that this was one of the concerns of the national population, that no compendium had been updated. It was supposed to be updated every 10 years. In 1990 we should have had a compendium; in 2000 we should have had the most recent one. He promised that they were looking into it. I am very gratified to see that the Minister of Legal Affairs has, in fact, indicated that it is complete but there are certain issues I need to raise.

**2.00 p.m.**

There are certain issues I need to raise. I have with me a copy of the 2002 report of the Law Revision Commission in the exercise of its functions and powers. I could not get subsequent ones. Their mission was to create a database of the written *Laws of Trinidad and Tobago*, that is, the Acts and subsidiary legislation, in electronic format, in order to facilitate the process of consolidating, annotating, updating and revising those laws and to make them accessible to the Parliament, the Judiciary, the legal profession and the public in general.

When we look at the historical background—we may go back a little to 1979 and that will help us to determine the tardiness with which all this has taken place, when the general public and legal practitioners suffered. Formerly, the Commission, which was established by the Law Revision Act, No. 44 of 1979, came under the administration of the Law Commission Act, Chap. 3:04, with the Chairman of the Law Commission being responsible for both the reform and the revision of the laws.

The written *Laws of Trinidad and Tobago*, as I mentioned, were last revised in 1980—that was when the Commission fell under the administration of the Law Commission—and were published as the 1980 Revised Edition of the *Laws of Trinidad and Tobago*. As the Minister indicated, this edition was updated by the publication of two supplements—the first and second supplements—and that carried us up to 1986.

On June 12, 2000, our administration decided to amend the Law Reform Act and under the Law Reform (Miscellaneous Amendments) Act, No. 19 of 2000, we enacted that legislation. We amended both the Law Commission Act, Chap. 3:04 and the Law Revision Act, Chap. 3:03 and then we established a Law Reform Commission Department within the then Ministry of the Attorney General and Legal Affairs, as a separate entity from the Law Commission, to deal exclusively with the updating and revision of the written laws and, in the process, the Law Commission was renamed the Law Reform Commission. The Law Reform Commission also provided annual reports to Parliament. This is one of the reports that I was able to put my hands on.

In October 2000, a chairman was appointed to the Commission and the Commission, to all intents and purposes, became operational on that date. Subsequent to that, when we demitted office, work was going apace. I do not know why it has taken almost five years for the matter to be concluded. Why should it have taken five years to establish the Law Reform Commission, whose mandate it is to revise the laws and put them in bound volumes? This is because there was lack of proper infrastructure and a lack of adequate staff and appropriate equipment to carry out the duties and functions under the Act. This is what the 2002 report says—there was lack of proper infrastructure.

We started a project in 2001 and when the present administration took over, they did not give the support necessary for moving the process forward with the alacrity necessary. They did not give it the deserving attention. It is not acceptable that something like that should have taken five years to be brought to fruition. One of the reasons was the status of staff positions. The Law Reform Commission wanted certain staff on board. There were just 13 members of staff and, out of that, eight persons had been absent from the Law Reform Commission, so how could they get the work done? In fact, the persons who were working at that time were the chairman, who I see here this afternoon, one member of the technical staff and one member of the secretarial staff. I want to know, even if it is under the Attorney General or the Minister of Legal Affairs, why there is such sloppiness and tardiness in the implementation of something that is so necessary and for which there was a burning desire from professionals to have it brought together in hard and soft copy.

The Law Reform Commission said that, at the beginning of the year 2002, it commenced its work in earnest on the law revision project, which entailed the publishing of a new Revised Edition of the *Laws of Trinidad and Tobago* and, preparatory to this exercise, had commenced work on the creation of a database of all written laws of Trinidad and Tobago. They understood that the task ahead in the revision of the laws was a mammoth exercise since the number of written laws, including subsidiary legislation, namely, rules, orders, regulations, et cetera, which were to be revised in the inclusion in the new revised edition, span a period of 14 years with about 850 laws.

I heard you mention that there are 494 laws.

**Madam President:** Senator!

**Sen. Dr. T. Gopeesingh:** Certainly, Madam President. So, in 2002, the report said that there were 850 laws to be put in bound volume, comprising about 45,000 pages. I wonder what the Minister of Legal Affairs is indicating now that the

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project is completed with 494 laws, as opposed to 850 that were determined in 2002, and now that four years have elapsed; whether some of the laws that have been passed have been left out of this new compendium. She indicated that there were 32 volumes with about 20,000 pages, but in 2002, the Law Reform Commission indicated that there were 45,000 pages. So something is anomalous in that situation.

Madam President, the point is that it is unsatisfactory in any State when certain things need to be done efficiently and effectively and we find sloppiness, slovenliness and delays because of the lack of the desire to do something. This is where we differentiate our administration from theirs. I know that when we undertake to do something, we do it with speed.

The constraints which the Law Reform Commission had to work under were lack of staff—I bring this to the attention of Senators—and the budget. Madam President, in a day when this Government has \$38 billion to spend in one year and \$116 billion in four and a half years, you know what was the budget disbursed for the purchase of equipment, for officers and so on, under the Law Reform Commission? It was \$421,000 for the officers for one year and \$202,000 for revision and printing; less than \$1 million for one year.

This is a mammoth exercise that needs a lot of finance and in the budgetary allocation, which the Minister in the Ministry of Finance, Sen. The Hon. Enill needs to take into consideration, these need to be looked at carefully. If you put less than \$1 million for a year and want to get a major project going, how could you effectively bring this project to fruition? Obviously, there will be difficulties and they will not achieve their desired goals.

It took almost four years for the Minister to say that it has been completed, but when we say it we really know that it has been completed. There were many promises brought by this administration at previous times. The Minister comes today and indicates to Parliament that this is complete, but then it is going out for tender. We may find another year or two elapsing before this entire exercise is completed, so by 2008 or 2009 we may then get this hardware or software.

I am not convinced when the Minister says that this is complete. First of all, they frustrated the efforts of the Law Reform Commission to deal with this effectively and to bring it into a completed project by not getting the staff, not providing the money and not providing the infrastructure. As is evidenced in this report, Madam President—this is just the 2002; I have not been able to get the 2003, 2004 and 2005 reports—the Law Reform Commission indicated that these

were the issues they had to deal with: lack of staff, lack of infrastructure and no money to spend. Now we are being told that this is going to come into place, but it is going out for tender and we may never get it until, probably, we have moved out of Parliament. Some lawyers may be dead by then and by 2008/2009 and their dream of seeing a new revised edition since 1980 may become 2010—30 years later. This is astronomical.

They tell me that a government has \$116 billion to spend in four and a half years and they cannot bring a simple thing as a revised law edition into fruition? This is a national disgrace, Madam President, and I think that the Government has to take the blame and responsibility for not effecting this.

To bring a piece of legislation—it does not matter which Minister it has to be under; whether the Minister of Legal Affairs or the Attorney General, the work has to be done. This is a matter of semantics and not a matter of trying to pass any blame on the whole question of needing to enact new legislation.

With those few words, I thank you.

**Sen. Prof. Ramesh Deosaran:** Madam President, I want to make what I consider a brief but strategic intervention in this debate. Before I give my views, I congratulate the Minister who has brought what I think is a very significant improvement in the state of our laws, or at least the compilation of the laws through which this country is governed. [*Desk thumping*]

She has done well—not denying all that the last speaker has said—with respect to correcting the gaps and the deficiencies. For those of us who know about compilation of these items, the need for revision, the meticulous attention which the drafting needs, or, to put it another way, the consequences for making an error, be it a comma or a full stop, are so disastrous that it does take some time and oversight.

Since some of the members of the Law Reform Commission are here, I take the opportunity as well to extend our deepest appreciation as a Parliament for the painstaking work they have done. [*Desk thumping*] I know one or two of them. I see one in particular here. I will not embarrass him by calling his name, but he has been one of our distinguished public servants about whom we hear very little, but whose hard work is, like that of many of us here, well recognized and appreciated.

Having said that, I would like to rest my brief comments on the premise that information is the oxygen of democracy and there is no more important medium of information in a democracy, in terms of strengthening civil society and

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knowing what people should do, right from wrong. It means, therefore, that if people who are being governed know very little or nothing about the laws that govern them, they still have no excuse for breaking the law.

Up to this morning I was reading a judgment on the jailing of an editor, Ken Ali, and Karl Hudson-Phillips made it clear in the High Court, in this charge of contempt brought against the editor of the *Mirror*, that ignorance is no excuse for breaking the law. Even journalists who do not know the law, when they write things that are offensive to the court, they cannot claim ignorance of the law. It has, therefore, occurred to me that we need to think about a mechanism, some creative ways to get the laws we enact in this Parliament down to the people who are governed by them, in a rather simple form, without losing the substance or the intricacies of the intention of the laws.

I put this proposal before this present Government because I think, just as they have assisted in bringing live broadcast from this Parliament as a means of freeing up and liberalizing our democracy, if that move could be accompanied by a project in which the laws are put in simpler forms—I do not mean trivial forms; there is a difference between triviality and simplicity—it will strengthen our democracy and give citizens the kind of confidence and knowledge they need so that when they appear at our forums, be it on Constitution reform, whatever, they will have, as a background, not the mass ignorance we are faced with in the talk shows and so on, but they would have come forward with ideas premised on a reasonable knowledge of the laws that govern them.

While I celebrate the initiative or the accomplishment by the Government, I think we need to go a step further if we want to call ourselves a reputable democracy. Madam President, there is precedent for this. In the United Kingdom now, the Attorney General's Office is insisting that the legislators put their laws in simpler language, so that whilst we have the "whereofs", "thereofs", "therefrom", "hereunder" and "heretofore" and so on, there is enough room to put those same things in a simpler sequence. I think it is a disadvantage to have citizens being governed by laws of which they know very little; not only of their own fault, but because they do not have access to an understanding of these laws. It is not Physics where there are formulae to understand the phenomena at stake, whether it is building a bridge, sending a rocket into space; where you need calculus and differentiation and integration. The laws have to be written in English.

I wonder about this when we talk about crime and punishment. The principle under which we live is that if you break the law, you are supposed to be punished. I want to know how many of those criminals know really which laws they are

breaking or, even in school, those children who are breaking this rule and that rule, know exactly where the lines are drawn with respect to right and wrong. I would like to see a more concerted effort made in bringing these laws, in whatever form, to the public in a more effective manner and to follow the example of the United Kingdom if that is what we have to do.

In the United States, there is not a bookshop you can go in that you will not see *Law Made Simple*; not trivial. If you want to divorce your spouse, you do not necessarily have to get a lawyer in the first instance. I am not saying that should be a special attraction in our country, but I am giving you a more dramatic example so that the example would be appreciated. If you want to mortgage a house, or if you have a problem with your deed and the bank is making things complicated for you as is the practice in this country, you would have a basic understanding of your rights as conveyed through the proper legislation.

So there is great value, apart from the principles of deepening democracy, there is great practical value in letting your citizens know their rights; meaning, let them know the laws that govern them, and I have cited some instances.

This issue, especially in what you call modern democracies, about the complexity and the prohibitions consequent to the technicalities of the law, has become a subject of the European Commission too. They have taken a strong decision to simplify their laws, especially since they are integrating laws from different countries, just as we are trying to do now with the Caribbean Single Market and Economy, to put it in a simpler form so that people will know not only their rights, but also where the line of wrongdoing exists. There are many advantages to what I am trying to propose. It is not only a matter of sheer revision; it is also a matter of the distribution of the knowledge and using a Law Reform Commission as a vehicle for using information as the oxygen of our democracy.

Madam President, this is the age of computers and I believe that Sen. Dr. Gopeesingh is right in many respects. It has occurred to many of us that governments tend to forget these basic things in governing a country and perhaps it is through the pressure of time or the pressures of the public to do things in a quick way that they forgot the basic things and the public administration that is necessary to support the implementation of all Government's other projects, especially the bigger ones.

Certainly, Madam President, in this age of computerization and the Internet, you do not have to go around the country to distribute leaflets about the laws. You can put it on the Internet as a responsible government ought to do in a democracy and people can easily access the information. There is also a way to do it that will not be too complicated.

*Law Revision (Amdt.) Bill*  
[SEN. PROF. DEOSARAN]

*Tuesday, September 05, 2006*

I appreciate the remarks by Sen. Dr. T. Gopeesingh in terms of the lack of attention and I hope that from now on we see a greater effort being made to look at the basic things and, in particular, to make the work of the Law Reform Commission and its public servants more effective and noteworthy.

I thank you very much, Madam President.

**Sen. Raziah Ahmed:** Madam President, through you, I, too, would like to express some appreciation for the fact that, never mind how long it has taken, we have an opportunity to print and publish the new revised edition of laws for this beautiful country.

In looking at the Bill, it was necessary for me, coming from a non-legal background, to see the portfolio established in the Law Revision Act for the Minister. While I have no grumble with the fact that the portfolio includes or perhaps has as its major aspect the updating and compilation of the various bills that have been brought over the years, I was attracted to section 12, which spoke to the duty of the Minister. This is where I have some concern.

Under section 17, “duty” appears to include that the Minister named in the Act is responsible for making alterations to the law that would affect the substance of the written law; to draft bills to submit to Cabinet and then to the Parliament. My concern with this is that the original definition references the Constitution and, in that definition, the Minister named is the Attorney General. I feel that it is in the competence of the Attorney General to alter the substance of the written law. The Attorney General of the country is the best person to determine the appropriateness of law and is probably the first in line to receive information about what laws are becoming outdated, to use a bland word. I find it difficult to understand how the Minister of Legal Affairs, who has no input, as far as I understand, in court proceedings and who might be better employed in administrative affairs, should now deal with the substance of the law, which is what section 17 speaks to.

For example, in the event of a legal land dispute, the kind of dispute that goes before the Attorney General, the office that should pilot and prepare drafts where the laws have become ancient, as we have had in our experience where laws with respect to the possession, sale, ownership and possession of land had to be changed, it was to the original definition of the Minister—going to the portfolio of the Attorney General—who would be the person first in line to understand and to deal with these matters. So I find it difficult to understand how we are now removing that responsibility from the Attorney General’s office. The Attorney



General's office is the one most in touch with changing societal needs and now we are moving this out of that portfolio that the court proceedings actually dealt with, over to the administrative arm, the Minister of Legal Affairs, and we are being asked to accept this as a simple shift.

My concern with the simple shift is that the definition in the Law Revision Act references section 79 of the Constitution. I am asking myself, not being legally trained, whether we can, by changing a definition, change the Constitution. I have to get clarity on this. Perhaps the Minister could reply later.

If we are changing the definition why is it that, in the first instance, the definition of the Act refers to something enshrined in the Constitution? Why did it go that way? It could have been defined in the original Act, but it was not. It referenced the Constitution and it named the Attorney General and that is in keeping with the high responsibility of that office and the fact that the Attorney General is charged with understanding the appropriateness of law.

On that note, Madam President, I find it difficult to accept what appears to be a very simple shift, moving a portfolio away from the Attorney General's office, which is a supreme authority, to the Minister of Legal Affairs. While I have no problem with the portfolio of the Minister of Legal Affairs in the Act being the revision and compilation of the administrative and the clerical stuff, I record my concerns with the fact that this changing of the definition of the Minister to remove or appears to be to remove the Attorney General out of the picture altogether, I have difficulty accepting that the portfolio to alter the substance of written law now passes to the Ministry of Legal Affairs.

On that note, I thank you.

**2.30 p.m.**

**Sen. Dana Seetahal, S.C.:** Madam President, it is pleasant to hear that, finally, the *Laws of Trinidad and Tobago* will be readily available in bound volumes, which was last produced in 1980. I do not know if you would recall, two years ago I asked that question in this Parliament and I was assured that it was being worked upon feverishly. I am glad to see that, finally, the fever has emerged and we are to benefit.

I have a few comments, of course, not particularly on the actual amendment but on the question of law revision in general and I also want to know whether there is going to be a system in place, now, to ensure that there is continuous updating. I am not sure if the Minister mentioned that. Under the Law Revision Act, there is supposed to be a system. Subsequent to 1980, there was a 1983

updating, where we got pages to slip into the laws, which replaced the old ones. For example, when we amend the Pharmacy Board Act or the Summary Courts Act, we would have a new page and we would insert it and the bottom would say: "1 of 1983". It happened again in 1986 and 1990 and then the whole process stopped. Madam President, you know that for us in this Chamber there have been difficulties when we have sought to amend legislation. Many Members would have asked for the laws of Trinidad and Tobago and would have had to go downstairs in the library and unless you are familiar with the amendments, and unless the Index carried an up-to-date amendment or the up-to-date list, you would be at a loss. Sometimes we would be amending things and Members would make contributions based on obsolete laws. That is a problem for us and has shown to be.

There is also, of course, difficulties for lawyers and some of those were mentioned by Sen. Dr. Gopeesingh, that the least of that is in terms of prosecution or laying charges by the police, where there would be wrong sections cited because they are not familiar with new ones.

That brings me to the main issue that I wish to talk about, which is the circulation of amendments. Some time ago, we had amendments to the Summary Courts Act, the Bail Act and the Indictable Offences (Preliminary Enquiry) Act, where we updated the law. There can now be paper committals. There are many serious amendments. Do you know that many of these were not known to judicial officers? Magistrates presiding in courts did not know that the laws had been amended. Some lawyers did not know that the Bail Act had been amended. We passed the Bail (Amdt.) Bill. Now, for some offences, if you had two convictions of violent offences in the last 15 years, you can get no bail. Many people did not know that because there is poor circulation of the new laws. That is something that will emanate even after we have the new bound volumes.

As we sit here, every week, we pass laws. Let us say that by the end of this year we would have the 2006 bound volumes and the next month we would have new laws and amendments, who is to ensure that the public knows? Some persons would say that you can get it online. You do not get it immediately online. Not everyone, in his office, or wherever he is, can access that right away. As we sit in Parliament we may not access it. We may have to go to the library. In the near future we may, like some Parliaments elsewhere in the world, have online services right here. That sounds like vision 2020 or 2025. That is something to look forward to. This brings me back to the need for circulation before those laws are presented to the Parliament, so that you can have wide commentary on the laws such as the proposed Constitution that we are hearing about.

I have heard and seen in the newspapers that there is a recommended Constitution. I have heard all kinds of debates and seen written commentaries on what is preferable, whether we are going that way and arguments. The people on the talk shows seem to know everything about this proposed Constitution. People are saying, this is what I heard, until the election or after, it is planned to be brought before the House—all to these things. Yet I have not had a copy. I do not know if any one of my colleagues on this side has had a copy.

**Hon. Senators:** It was laid in Parliament.

**Sen. D. Seetahal, S.C.:** I am saying that I have not had it. I have not been treated well. I looked at all of my stuff and did not see it. It may be that some people got it. The point is that the wider public would have at some point to contribute. At this point, when people are making uninformed comments, ought it not to be published in the media? I have seen previously the Constitution published by media houses. One would think that if it is supposed to be a serious document, it ought to be made available to the average woman, man and child in the street, so that they can have that opportunity. That is an extrapolation of my point; that laws should be made available.

Madam President, I want to respond to a couple of matters raised by my colleague, Sen. Raziah Ahmed. She mentioned that she had some concerns as to the power of the Minister. I am just summarizing what the Senator said. She spoke of section 17 of the Law Revision Act, which, to her, appeared to give the relevant Minister power to alter the substance of the law. My understanding of what the Senator said is that she queried why that power is to be transferred to the Minister of Legal Affairs, when one would expect that the Attorney General, who deals with court matters and ought to be more familiar with the court proceedings, ought not to properly have control of the law revision, as he does, under the legislation, as exists. This is my understanding of what the Senator is saying. My reading of the Act really gives power.

First of all, the Act deals with constituting the Law Revision Commission. It is the commission that has wide powers under the Act. Under that Act, you also have an indication of what the Laws of Trinidad and Tobago should contain. I say this, in order to point out that under section 17 that the Senator was concerned about, the only reference to the Minister is this:

“Every Bill drafted pursuant to subsection (2) shall be submitted to the Minister who shall, upon the authority of the Cabinet, cause such Bill to be submitted to the Parliament to be dealt with in accordance with normal procedure.”

It is really dealing with the Minister having, under the authority of Cabinet, the power to cause this Bill to be brought to Parliament. In other words, the commission is given the power, under the Act, to alter the substance of any written law, where it appears necessary. It is the commission that does that and the commission would do that upon instructions from relevant Ministries and then the Minister, it was the Attorney General, will cause this Bill to be submitted to Parliament to be dealt with in accordance with the normal produce. That is upon the authority of Cabinet.

In other words, all that is said about the Minister is that the Minister would bring the Bill to this Parliament or, if the Cabinet dictates otherwise. For example, if the Minister of Foreign Affairs is dealing with a matter concerning foreign affairs, such as a Bill dealing with the Revised Treaty of Chaguaramas, he would bring that Bill. We have seen this happen. Section 17 has nothing much to do with any information or any kind of input from any particular Minister. I do not think that should be a question for concern really. It is just a kind of supervisory role that the Minister has but the real authority or people who would be doing the job is the commission. Then the commission sends its Bills and it comes to Parliament.

There was another concern with the proposed Bill, which amends the Act. The Bill before us has three clauses. The nub of that is that it proposes to change the definition of "Minister". The definition of "Minister", under the current law says that "Minister" will be the person who, under section 76(2) of the Constitution, has responsibility for the administration of legal affairs. Under section 76(2), that person is the Attorney General. Section 76(2) of the Constitution states:

"The Attorney General shall, subject to section 79, be responsible for the administration of legal affairs..."

What this Bill proposes to do is to delete that and substitute another definition saying:

"'Minister' means the Minister to whom responsibility for law revision is assigned;"

At any given time, any Minister could be the Minister under this Act; whether it is the Minister of Legal Affairs, the Minister of Trade or the Minister of Planning and Development. When you stick under his portfolio, law revision, he becomes the Minister. It makes life easier. There is nothing unconstitutional about it because it is what we have done numerous times here; we have changed legislation and we have deleted and replaced. I do not think that should be a substance for concern.

That would be my contribution. I hope we can get some positive indication as to any more updates and what the Minister proposes to do about circulating the new laws.

Thank you.

**Sen. Brother Noble Khan:** Thank you, Madam President. I would like to make a short contribution. I too am very happy and pleased to see that some attempt is being made to change the Law Revision Act. This may open the doors for a speedy revision of the laws that exist. For quite some time, there have been laws on our books and there is definitely need for change. I would like to make reference to them. This might be one of the chief reasons I support this Bill and would like to see it come to pass.

Going back to the colonial and slavery days, there are laws on our books that are still valid, if we were to put them into effect. Every time August 01 comes around there are parades in town, the big drums come out on the road and the flambeaus are lit, I think that there might be some breaking of the law there, particularly if permission is not granted by police. These laws have antecedents way back. Up till now they exist on our books. I know organizations have made repeated attempts to have them removed and recognized because, to a great extent, they are still ineffective, as far as practice is concerned. In the psyche of our people, the mere existence of these things may have a correlation deep within our soul, which might be a little more difficult to remove. While the slave/indentureship mentality might take a bit longer to be removed, as far as the law is concerned, this could be easily done through this system.

I would also like to bring to bear the part of psyche we are talking about, with particular reference to three laws: the Muslim Marriage and Divorce Act, the Hindu Marriage Act and the Orisa Marriage Act. There is a discriminatory effect within these Acts. One should note that these Acts do not cater for people who do not fall within the ordinary pattern of things, which our society is supposed to represent, which is the Judaeo-Christian input, which is challenged throughout the world in respect of diversity and the recognition of diversity. These laws state if a marriage is done by the marriage officer, according to the law, it does not become a marriage until it is recognized in the Registrar General's Department records, unlike what exists. Under the different systems, when they perform a marriage, that marriage is accepted and the document is signed at that time. This is my layman approach to it.

The effect of what we would have in a Hindu marriage, Muslim marriage and Orisa marriage is that there is a time-lapse before registration. —[*Interruption*] This is about the need for change, Madam President, with due respect.

**Madam President:** You have gone off. Senator, with due respect, you have gone off the Bill.

**Sen. Bro. N. Khan:** The Bill that is before us would address questions such as those I have mentioned. This particularly, I would like to bring to your attention and also those who would be putting this into effect. I hope they would pay particular attention to this area of law reform.

Thank you and God Bless.

**Madam President:** If there is nobody else I call on the Minister. [*Sen. Prof. Ramchand stands*] I am so sorry. You are at the end. I did not see you. Go right ahead.

**Sen. Prof. Kenneth Ramchand:** That is how good spinners operate; you do not see them but they rattle the stumps.

I agree on the need for updating and for publication of a new Revised Edition of the *Laws of Trinidad and Tobago*, an edition that would incorporate legislation passed since the last printing and amendments since that last edition. I, therefore, applaud the Minister for taking action on something that is long needed.

I have two matters that I would like to put up for consideration. The first is, whether the country needs to publish a hard printed edition of the laws.

**Hon. Senators:** Yes.

**Sen. King:** It is understood.

**Sen. Prof. K. Ramchand:** I ask this because of the convenience of working with the electronic version. If it is properly indexed, an electronic version avoids tedious search, allows us to compare different laws, to find overlaps and possible contradictions with ease. If we had an electronic edition, we could print out sections to bring to Parliament for debate, especially when there are amendments being proposed to the legislation. I have problems with that. Whenever there is an amendment coming to the House, if I do not pull out, with great trouble, the original law, to come here, to compare with the amendments, I am in trouble. Then I am so busy, when I go back home I flop it on the table and I lose it. I do not put it back in the right place, my fingers are bruised and these hands are made for— It should be printed and brought to the Parliament for debates.

If I had an electronic edition, a CD, which I could put on my hard drive, or a jump drive, I could continuously update the *Laws of Trinidad and Tobago* in my possession. I do not have to wait on the Law Reform Commission to send me

that. Every time I come here and I see amendments that are accepted, I could go home and make the amendments. I would always have, on my computer, an updated version. The electronic version, of course, will permit the Law Reform Commission to do continuous updating. *[Interruption]* Wait, we can have both.

What I am suggesting is that the main publication should be electronic and that we should print copies from the electronic system and have them specially bound for reference in libraries and institutions that need them. It is very expensive to mass-produce a thing like a hard edition of the *Laws of Trinidad and Tobago* and the thing has very little shelf-life. I feel we are wasting our money if we go into a mass-production of hard copies of the *Laws of Trinidad and Tobago*. There should be hard copies available for reference in libraries, institutions and schools. I think we have to go with the electronic copy. If I can do it, I who am so handless with the computers, everybody in the country can do it. That is the first matter for consideration.

The second matter is very supportive of what Sen. Prof. Deosaran was proposing. The happy accident really is further evidence of the special benefits of having, in the Parliament, unprogrammed, non-caucusing members like the Independent Senators. Again and again, Independent Senators make points that overlap the points made by other Independent Senators, without there having been a caucus or a party directive. This is a major contribution, I think, that having an independent presence in the Parliament will continue to serve. That is only in passing.

I had jotted down that what we need, in addition to a revised, updated edition of the laws, is an abridged edition that would go to magistrates, lawyers, citizens and to schools. That abridged edition will let people know what laws and offences exist and, therefore, what redress is available. I have just been thinking about it so I do not have a complete plan but there would have to be some classificatory principle worked out so that offences—some of these classifications already exist—against the person, laws relating to property, laws relating to behaviour in the workplace, laws relating to women and laws relating to children, et cetera, would be indicated that these are the main laws under these headings. But, in every instance there will be a precise set of references to the complete *Laws of Trinidad and Tobago*, so that when you want to go into detail, you would go into the revised laws.

I have a friend who has been trying for years, to get alimony as a common-law wife and when the matter goes to the Magistrates' Court, the magistrate does not know about the legislation. She has lawyers and the lawyers do not know about the legislation. They would come to me and ask me: What is the law? What do I know about the law?

**Sen. Seetahal, SC:** Change the lawyer.

**Sen. Prof. K. Ramchand:** She has changed lawyers several times. Magistrates are not up-to-date. That is only one glaring example that many of the magistrates and lawyers do not know when laws have been changed. I know Sen. Dana Seetahal, SC would pound me for this afterwards. I hope she does not pound me in public. Those are my two main suggestions. The abridged edition, while alerting magistrates and lawyers, would also be important for citizens and for schools and it would have the effect of giving people a greater sense of their civic rights and responsibilities. It is like a civics textbook.

That, in essence, is what I have to say. I think we should give thought to doing the electronic version and letting that be the main version, which would save the expense of a mass production of hard copies and we should appoint a committee to produce an abridged edition along the lines that I have suggested in a sketchy way.

Thank you very much.

**Sen. Parvatee Anmolsingh-Mahabir:** I too would like to register my full support for the Bill before us: the Bill to amend the Law Revision Act, Chap. 3:03, which has been introduced in the Senate by the hon. Minister of Legal Affairs. I doubt very much whether the general public is aware of the important function which the Law Revision Commission is performing. I have been made to understand that law revision is a highly complex field of law, in which there is a paucity of trained personnel in this country, yet we are in a very fortunate position to have very competent staff therein. Therefore, I must congratulate the Minister of Legal Affairs, Sen. The Hon. Christine Kangaloo, for providing the Law Revision Commission with the necessary resources for the commission to carry out its duties and functions mandated by the Law Revision Act. As parliamentarians, we look forward to the fruits of their efforts, especially the electronic version, which we know will redound to the benefit of not only those in the legal profession, but to all those in the nation as a whole.

Let me reiterate that I give you full support. Thank you.

**Madam President:** If there is nobody else, then I will call the Minister.

**The Minister of Legal Affairs (Sen. The Hon. Christine Kangaloo):** Thank you very much, Madam President, and thank you to all those who participated in the debate. I also wish to, on behalf of the Law Revision Commission, express the gratitude for your acknowledgment of the very hard work that has been taking place by the officers of the Law Revision Commission.



I have a few things to say in response to some of the issues raised. Of course, I need to start with Sen. Dr. Gopeesingh. Of course, he asked: why did it take five years for us to reach this stage and he said, very sweetly, “When we undertake to do anything, we do it with speed”. I wish to point out, from my information, in 2002 the Law Revision Commission was assigned to the Minister of Legal Affairs, the staff of the Law Revision Commission was comprised of five persons: the chairman, the manager of the desktop publishing, a secretary and two proofreaders. That was the staff that was to achieve the revision of the *Laws of Trinidad and Tobago*. That is the first thing I want to point out.

I also wish to say that in May 2000, the former Attorney General piloted a Bill to create the Law Revision Commission apart from the Law Reform Commission. At that stage the then Attorney General said that it would take approximately one and one-half years to complete—so much for speed.

A question was asked about the number of Acts. I am informed that, yes, there were 892 Acts initially, that were to be revised. That number is now 494, because we are not going to include repealed Acts. There are certain Acts that have now been repealed; they are no longer in existence, so they will not be included in the law revision exercise. There will be some Acts omitted. There will also be Acts of incorporation of private organizations, which will also not be included. There will be a full list of the particular pieces of legislation that will not be included in this new version of the laws. I hope that answers Sen. Dr. Gopeesingh.

Sen. Prof. Deosaran raised the issue about the language used in legislation. I take off my hat as an attorney-at-law and say that I agree. We all know that sometimes the language is quite troublesome. That should be an exercise—not for the Law Revision Commission, which really has the mandate of consolidating whatever the existing laws are—that, perhaps, should be addressed by the Law Reform Commission. I hope that answers the question. Yes, it is something that should be addressed. Everyone, including lawyers, has concerns about the legislation.

I think that the concerns raised by Sen. Ahmed were really addressed by Sen. Dana Seetahal, S.C. and I thank the Senator for answering the issues that have been raised with respect to the Minister of Legal Affairs amending the legislation. I think it is quite clear now what the Act provides for and that should the need arise, there will be the normal practice. It will go through Cabinet and it will have to come before this Parliament to be passed. I do not think that there is anything sinister involved in having the Minister of Legal Affairs assuming the portfolio of the Law Revision Commission.

*Law Revision (Amdt.) Bill*  
[SEN. THE HON. C. KANGALOO]

*Tuesday, September 05, 2006*

There was something that I omitted to say when I was introducing the Bill, which is by the end of October, for the very latest, the revised laws will be available on the Internet. It was raised as to whether or not we needed to have the laws in the hard copy and the answer to that is yes, we do. Remember that the hard copies are what are currently admissible in the courts and until we have amendments to the Evidence Act, we still need to have the hard copies. We are going the step further, as you know, Sen. Prof. Ramchand, of having the laws available in the CD format as well.

I believe that those were the main issues that were raised. With respect to the abridged edition of the laws, I cannot give an answer to that right now. It is something that, perhaps, should be considered and it will be considered. I really cannot respond to that issue right now. It is a novel one though.

Madam President, the process of revising the laws is not an easy one. In fact, in 1986, to arrive at having the revised laws, there was a consultant who was brought on board, I think, through the UNDP, to assist with the process. We do not have many qualified law revisers. It is a very technical matter. I do hope that when all parliamentarians enter the Chamber and on their desk they see the new, nicely bound revised laws we will all join together and celebrate and we will commend the Law Revision Commission for their very hard work.

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.*

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

*Senate resumed.*

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

#### **CARIBBEAN COURT OF JUSTICE TRUST FUND BILL**

*Order for second reading read.*

**The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift):** Madam President, I beg to move,

That a Bill to provide for the implementation of the revised agreement establishing the Caribbean Court of Justice Trust Fund and for related matters, be now read a second time.

I shall begin with the purpose of the Bill. The Bill before this honourable Senate is entitled: An Act to provide for the implementation, by the Government of Trinidad and Tobago, of certain of the provisions of the revised agreement establishing the Caribbean Court of Justice (CCJ) Trust Fund and for related matters. The intent of the Bill is to give the force of law to the revised agreement establishing the Caribbean Court of Justice (CCJ) Trust Fund, which we shall refer to as the “Revised Agreement” or “the Fund Agreement”. I shall now turn to the main provisions of the Bill.

Clause 2 defines the terms “Board, Fund, Fund Agreement, Minister, Officers and Trustees” used in the Bill.

Clause 3 gives the Fund Agreement the force of law in Trinidad and Tobago.

Clause 4 empowers the Minister responsible for Caricom affairs, to extend the privileges and immunities to the extent permitted by the Fund Agreement.

Clause 5 establishes that the Minister's certificate, as to privileges and immunities to which a person is entitled, would be conclusive evidence of that fact.

Clause 6 makes contributions by Trinidad and Tobago, under the Fund Agreement, a charge under the Consolidated Fund.

Clause 7 makes unofficial use of the seal of the Trust Fund unlawful.

Clause 8 provides for the amendment of the Schedule to the Act, following acceptance by the Government of Trinidad and Tobago of any amendments to the Fund Agreement.

In July 2002 at the 23<sup>rd</sup> conference in Georgetown, Guyana, the Heads of Government of the Caribbean Community decided to establish a Trust Fund referred to as the “Fund” to be capitalized in an amount of US \$100 million. The proceeds of the Fund are to ensure the efficient operation of the Caribbean Court of Justice (CCJ) on a financially-sustainable basis.

The CCJ, as this honourable Senate is aware, has a critical role to play in the structured development of the Caricom Single Market and Economy, in the exercise of the original jurisdiction to interpret and apply the Revised Treaty of Chaguaramas. This role is, of course, distinct from its function as the court of last resort in civil and criminal matters, for those Member States of the Caribbean Community that accept its appellate jurisdiction.

The Revised Agreement was signed by the Prime Minister of Trinidad and Tobago, Hon. Patrick Manning, on January 21, 2004, at Nassau in the Bahamas. There are 14 members of the Fund. They are the 14 Caricom Member States, which have indicated an intention to participate in the Caricom Single Market and Economy.

I shall now turn to the entry into force and the distribution of the shares of the Trust Fund. In accordance with Article XV, the Revised Agreement entered into force on January 27, 2004, upon signature by 10 of the Caricom Member States listed in the annex of the agreement.

Article III of the Revised Agreement stipulates that: “The purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the Court and the Commission in perpetuity.”

According to Article IV of the Agreement:

“The resources of the Fund shall consist of:

- (a) the contribution of Members;
- (b) the income derived from operations of the Fund or otherwise accruing to the Fund; and
- (c) contributions of third parties being contributions which are not likely to prejudice the independence or integrity of the Court.”

The annex to the agreement sets out the respective member's share of the Fund. Trinidad and Tobago contributes the largest share of the Fund at 29.73 per cent. The other contributions are: Jamaica with 27.09 per cent; Barbados, 12.77 per cent; Guyana, 8.33 per cent; Suriname, 3.92 per cent; and Belize, 3.44 per cent. Six of the Member States of the Organization of Eastern Caribbean States (OECS) contribute 2.11 per cent each, while Haiti and Montserrat contribute 1.68 per cent and 0.42 per cent respectively.

I shall now turn to particular provisions of the Revised Agreement, which have the force of law, beginning with the operation of the Fund. Article III of the Revised Agreement provides that the purposes of the Fund shall be to provide the resources necessary to finance the biennial capital and operating budget of the court and the commission in perpetuity.

Article IV of the Revised Agreement stipulates that:

“The resources of the Fund shall consist of:

- (a) contributions from Members;
- (b) income derived from the operation of the Fund...
- (c) contributions...”

from parties, provided that such contributions are not likely to prejudice the independence or integrity of the court.

The consent of all members of the Fund is required before the Fund can solicit or accept any gift or other material benefit from any source. Very importantly, the financial arrangement of the Fund is to be governed by the “considerations of the economy, efficiency and cost effectiveness and the need to safeguard the independence and sustainability of the court and the Commission.”

The Fund is managed by a Board of Trustees and according to Articles VI and VII, these are set out in the composition and functions of the Board respectively. The Board, therefore, is comprised as follows:

- (a) the Secretary General; (of the Caribbean Community);
- (b) the Vice-Chancellor of the University of the West Indies;
- (c) the President of the Insurance Association of the Caribbean;
- (d) the Chairman of the Association of Indigenous Banks of the Caribbean;
- (e) the President of the Caribbean Institute of Chartered Accountants;
- (f) the President of the Organization of Commonwealth Caribbean Bar Associations;
- (g) the Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community;
- (h) the President of the Caribbean Association of Industry and Commerce; and
- (i) the President of the Caribbean Congress of Labour.”

Under Article VI, the Board shall elect a chairman and vice-chairman from amongst its members who shall serve for a period of three years. The functions of the Board of Trustees are as follows:

- “(a) evaluate the performance of the Fund;
- (b) establish with the approval of the Members guidelines for prudential investment of the resources of the Fund;
- (c) establish, with the approval of the Members the financial regulations of the Fund;”

The Board of Trustees is required to review the adequacy of the Fund from time to time, not later than two years after the entry into force of the agreement and thereafter at least once within every succeeding biennial.

Turning to trustees, if a trustee resigns or dies, becomes bankrupt or otherwise insolvent, becomes unwilling or refuses to serve as a trustee, is convicted of an offence involving dishonesty or in the unanimous opinion of the other members of the board, becomes unfit or incapable to act as a trustee, the competent institution shall nominate a person of comparable status or experience to act in place of that trustee.

I now turn to the question of privileges and immunities. Article XI provides that the Fund shall possess full juridical personality and, in particular, capacity to contract, to acquire and to dispose of immovable and movable property and to institute legal proceedings. This Article also provides that the principal office of the Fund shall be located in Trinidad and Tobago and the Fund shall conclude an agreement with the Government of Trinidad and Tobago on the status, privileges and immunities of the Fund.

Article XII stipulates that in order to fulfil the functions with which they are entrusted, the Board of Trustees and Officers of the Fund shall be accorded the status, privileges and immunities normally granted to inter-governmental organizations and their officials, including immunity from legal process, inviolability of the archives of the Fund, appropriate treatment of official communications and exemptions from taxation and customs duties.

Madam President, this Bill seeks to give the force of law to an agreement by virtue of which Trinidad and Tobago has committed US \$29.73 million of taxpayers' resources to the Fund. It seeks to give a proper legal basis for the functioning and operation of the international organization, the CCJ Trust Fund that has been established as the entity for the management of the resources of the Trust Fund. It provides for the conferment of privileges and immunities necessary for the organization and its officials to carry out their work. It affords protection to the seal of the Fund.

It is to be noted that amendments to the Agreement require a special majority of members of the Fund to be effective. It requires a majority of three-quarters of the members. The period for withdrawal from the Agreement is tied to withdrawal from the Agreement establishing the CCJ.

Article XII provides in respect of the Fund for:

- (a) immunity from legal process of the Fund,
- (b) inviolability of the archives of the Fund,
- (c) exemption from taxation of the Fund, its assets and property, as well as its income and its operations and transactions,
- (d) exemptions from income tax on salaries and emoluments paid by the Fund to members of the Board of Officers.

Treatment of official communication of the Fund similar to that accorded to official communication from other Member States is also provided in respect of the Fund for:

- (a) exemption from the payment of income taxes, except for nationals or permanent residents;
- (b) exemption from immigration restrictions, alien registration requirements and national service obligations and similar facilities regarding exchange control restrictions as are granted to employees of comparable rank of members;
- (c) repatriation facilities in times of international crisis, no less favourable than those granted to the representatives, officials and employees of comparable rank of any other member.

In respect of the Trustees of the Fund, provision is also made for immunity from legal process in respect of the lawful discharge of the responsibilities under the agreement; also exemptions from immigration and restrictions and the grant of such facilities as would ensure the proper discharge of their functions.

In conclusion, the Fund has been operating in Trinidad and Tobago since the Vesting Deed was signed on July 04, 2003. The Fund and its officers enjoy privileges and immunities in Trinidad and Tobago, pursuant to the Privileges and Immunities Caribbean Court of Justice (CCJ) Regional Judicial and Legal Services Commission and the CCJ Trust Fund Order 2004 made by the President, under section 9(2) of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act and deemed to have come into effect on August 22, 2003.

In accordance with the stipulation contained in Article XI, paragraph 3 of the Revised Agreement, the Government of Trinidad and Tobago and the Trust Fund are in the process of concluding an agreement establishing the headquarters of the Caribbean Court of Justice Trust Fund in Trinidad and Tobago. As a host to the

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CCJ Trust Fund, the Government of Trinidad and Tobago is under an obligation, arising from its treaty commitments, to do its part to facilitate its success by helping to put in place the physical, institutional and legal infrastructure required for the association to achieve the goals as set for it.

This Bill represents a continuation of the institution-building process we have embarked on in the Caribbean Community by establishing a Caribbean Court of Justice that has the power to adjudicate on disputes touching on the interpretation and application of the Revised Treaty of Chaguaramas as well as a final court for civil and criminal appeals from those jurisdictions that accept its appellate jurisdiction.

I, therefore, unhesitatingly, recommend that hon. Members of this House, as did colleagues in the other place, support this Bill to provide for the implementation by the Government of Trinidad and Tobago of certain of the provisions of the Revised Agreement establishing the Caribbean Court of Justice Trust Fund and for related matters.

I beg to move.

*Question proposed.*

**Sen. Dr. Tim Gopeesingh:** Madam President, we in this Senate have a responsibility and a duty to safeguard, at all costs, and by any and every means available to us, the rights and freedoms of the citizens of this republic. At the onset, I want to indicate that this team, the six of us, will not support dangerous legislation in this Parliament, which seeks to undermine and compromise entrenched provisions in our Constitution, in favour of some so-called agreement that was signed and was not brought to this Parliament until recently, last year, on the Caribbean Court of Justice (CCJ) and now today under the Caribbean Court of Justice (CCJ) Trust Fund. It was signed by Caribbean leaders. We are being asked in this Parliament to lend support to a measure that the other side said, constitutes a symbol of independence.

Justice transcends nationalism, sovereignty and independence. We are talking about the CCJ and the CCJ Trust Fund. We are talking about a move by this Government to abolish appeals to the High Court in trade matters. We are talking about a Government that is seeking not to allow trade matters to reach the Privy Council which, over a period of time, we were accustomed to. It will reach and stop at the Caribbean Court of Justice. This is what this Bill is about. This is an attempt by an administration to abolish appeals, via trade matters, to the High Court. I will demonstrate that the High Court can only refer matters when they are



about to make a judgment for determination by the CCJ and show who will have the final say in trade matters. It will no longer be the rights of our citizens in this country to go from the High Court to the Court of Appeal and then to the Judicial Committee of the Privy Council in trade matters.

In an economic environment, where millions and billions of dollars are being spent, I wonder which private sector organization will feel comfortable to deal with trade matters in the Caribbean, when they know that the long road that they could have gone through—one strike at the High Court, two strikes at the Appeal Court and three strikes at the Privy Council—is now put to one strike through the Caribbean Court of Justice for all trade matters. I am proffering that this will undermine the confidence of the private sector and international organizations and conglomerates, in terms of investment in the Caribbean where, already, we have little or no investment in the Caribbean, particularly anything outside the energy sector.

Madam President, this Caribbean Court of Justice is to us a Trojan horse. It is being put out as a symbol of nationalism. It is put out as a symbol of Caribbean independence; the deepening and widening of the integration movement in Caricom. We must be totally independent and free from the colonial shackles. It is put out as a symbol of sovereignty. But, within the bars of the Caribbean Court of Justice, there lies the devastation of democracy, as we know it.

Madam President, it is our view that this will not be a Caribbean Court of Justice and, indeed, it will become a “Caribbean Court of Injustice”. The first argument that Government and others who want the Caribbean Court of Justice as a final court would have us believe is that the Privy Council is a colonial relic; that it is colonialism and that we need to reaffirm our inherent dignity and our worth as a people. They have brought the Caribbean Court of Justice wrapped up in this flag of sovereignty, trying to follow and embody the European Union.

### **3.30 p.m.**

**Sen. Dr. Saith:** Madam President, on a point of order, we have already debated the Caribbean Court of Justice Bill in the Senate and passed it. That is no longer before us. I am questioning the relevance of the Senator’s contribution.

**Madam President:** I, myself, was now going through the Bill thinking that maybe I misunderstood what the Bill was all about. The Bill is not about trade or the Caribbean Court of Justice (CCJ), it is about the Caribbean Court of Justice Trust Fund. So, could you please come back to the Bill?

**Sen. Dr. T. Gopeesingh:** Madam President, I had to give this preamble as a means of focusing my subsequent arguments in the context of the CCJ. You cannot argue the Caribbean Court of Justice Trust Fund without moving into the context of what it really is. The Caribbean Court of Justice Trust Fund is part of the Caribbean Court of Justice. [*Desk thumping*]

**Sen. Dumas:** Nonsense!

**Sen. Dr. T. Gopeesingh:** I would move on now to what Sen. Dr. Lenny Saith wants me to talk about. The Minister of Foreign Affairs should be cognizant of our views. The first issue is that this agreement with respect to the Caribbean Court of Justice Trust Fund—I heard the Minister say that it was signed on January 01, 2004. If this is September, 2006 and we are being asked now to rectify in the Senate, the expenditure that would have been incurred by this group of trustees, how much money has been spent since the signing of this agreement in January 2004 to the present time? Almost 30 months later, we are being asked to approve something with 30 months retroactivity. So, therefore, the hon. Minister of Foreign Affairs is now coming to ask us, to seek authority to spend money from the Consolidated Fund to support the Caribbean Court of Justice Trust Fund.

Madam President, when the Caribbean Court of Justice Bill was brought to this House, this administration believed it had the majority needed to support the Bill but, thank God for the Privy Council. We have seen the rulings in the Privy Council; we have seen the judgments that are coming out; and we have seen the issue with the Maha Sabha radio licence. The local court did not mandate the Government to give any licence to the Maha Sabha; it asked for Cabinet to reconsider—

**Sen. Kangaloo:** Madam President, on a point of order, once again, the relevance of what the Senator is saying on the current Bill.

**Madam President:** That is what I am now querying. Senator, you are trying to get a lot of issues into this debate that really have no relevance to this Bill. Could you come back to the trust fund, please?

**Sen. Dr. T. Gopeesingh:** Madam President, we are being asked to give permission to this administration to remove money from the Consolidated Fund to pay for the Caribbean Court of Justice Trust Fund, which is the fund that looks after the Caribbean Court of Justice. So, are we asking for money to support something which we do not agree on? We are being asked to support legislation to give approximately 30 per cent of US \$100 million, which is approximately TT

\$200 million, to support a trust fund which is for the management of the Caribbean Court of Justice. We do not support the Caribbean Court of Justice, so we cannot support the trust fund that we are being asked to support. I am showing why we cannot support the Caribbean Court of Justice, because of incidents which have gone on in the past. [*Interruption*] I have made my point.

Madam President, the question of retaining the Privy Council versus bringing about this Caribbean Court of Justice, when the Caribbean Court of Justice Trust Fund agreement was negotiated, it was negotiated that Trinidad and Tobago would pay the largest share, and put the largest contribution into the trust fund, at the time when Trinidad and Tobago expected that the court would operate in the appellate jurisdiction as the final court of appeal for Trinidad and Tobago.

It is totally irresponsible for any government, and with due respect to my colleague, the Minister of Foreign Affairs, to ask us to approve an agreement that was predicated upon facts that have not materialized. So, if we are being asked to pay 30 per cent of our funds toward the Caribbean Court of Justice Trust Fund surely, today, when Trinidad and Tobago is no longer a part of the appellate jurisdiction of the court—only with respect to the original jurisdiction—we should renegotiate this agreement. So, we are being asked to pay 30 per cent, and that 30 per cent is supposed to cover the appellate jurisdiction for both criminal and civil matters and, so far, it is the final court for trade matters. We have not passed any legislation here to make it the final appellate court for criminal and civil matters.

As an appellate court, it would be for trade matters in the original jurisdiction and, therefore, there is no need for us to pay 29 per cent or whatever to the trust fund. We cannot support it on that ground. We cannot support this agreement because while it speaks about recognizing the critical role of the court in the administration of justice, and to promote and safeguard the independence, integrity and credibility of the court, and this court may prove to be unconstitutional, there is a matter already before the court to render the Act unconstitutional. So, we are being asked to contribute TT \$200 million in a trust fund to support a Caribbean Court of Justice which may be rendered unconstitutional pretty shortly. How are we going to recover our money when the Act would be rendered unconstitutional pretty shortly?

Madam President, the other point is that we are being asked to put in this 30 per cent or 29 per cent in a court that does not comply with the constitutional requirements of Trinidad and Tobago; a court which does not give independence of the Judiciary—I would explain that; and a court where persons do not have a

security of tenure of any safeguards that are expected for persons sitting in the Judiciary. There is no security of tenure for the judges and the president sitting in the Caribbean Court of Justice. We are being asked to support, financially, a situation where there is no security of tenure for judges.

The safeguard for all judiciaries worldwide, particularly the highest level, must be security of tenure for members of the judiciaries, so that there would be non-interference of judicial officers by the State. There must be complete separation of powers among the Judiciary, the Executive and the Legislature. With this Caribbean Court of Justice, where there is a lack of security of tenure for judges, there could be the possibility of the non-separation of powers and interference in the judicial process of the CCJ.

**Sen. Dumas:** Madam President, we had this debate already. He is revisiting a debate that this House has already gone through—the issue of the provisions and how people are appointed. If he wants to go there, he could bring a Private Members' Bill for an amendment to the Act.

**Madam President:** Senator, I was giving you a chance to see what direction you were going in. Now, this is the third time I have had to call you up as being irrelevant. As far as this Bill is concerned, we are not debating the court, we are debating the fund. I was giving you some leeway to see if you were going to build on your point, but you have gone into a debate that has already taken place in this House.

**Sen. Dr. T. Gopeesingh:** Madam President, the debate that is taking place in this House is the Caribbean Court of Justice Trust Fund, and I am talking about us having to give money to support the CCJ. So you want us to debate the trust fund without debating it in the context of the Caribbean Court of Justice. How can we do that?

**Madam President:** Senator, you are arguing across the floor.

**Sen. Dr. T. Gopeesingh:** They have made accusations that this debate occurred before. Okay, Madam President, the ruling is that I would have to argue this 30 per cent in the context of the CCJ, which I am saying that we cannot support, because of the issues that are relevant to what is happening with the CCJ at the moment.

Madam President, you have a situation where you are naming the president of an association—a president of an association of different bodies in the Caribbean—which comprises the trustees of this Caribbean Court of Justice Trust Fund. The presidents of some of these associations would not continue in office

over a definite period. These are usually elected positions. For instance, the Chairman of the Conference of Heads of the Judiciary of Member States is an elected position. That changes because it rotates.

Madam President, you have the President of the Caribbean Association of Industry and Commerce who is another member of the Board of Trustees, and who would spend that \$30 million. I am focusing. That person would also rotate.

You have the President of the Caribbean Congress of Labour and who also goes up from time to time. It falls to a different person. So, I am asking the Minister of Foreign Affairs to indicate, when these persons are appointed, what happens when they no longer hold that office, because they are rotated possibly on a yearly basis or a two-year basis or a three-year basis. Do you want to answer now?

**Sen. Gift:** Madam President, thank you. I want to make the point here because this seems to have escaped the other side in the other place when this Bill was debated. What we are seeing here is an institutional linkage with the Caribbean Court of Justice Trust Fund, and the established regional institutions across the region. We are not talking here about appointments at the personal level, because we assume that these institutions, as they are listed here, would continue to exist even after the people would have passed on or moved on. So, we ought not to regard this as a personal connection, but as an institutional linkage via such places as the University of the West Indies and the Caricom Secretariat, et cetera. Thank you.

**Sen. Dr. T. Gopeesingh:** I just want to go on further so that you would be able to clarify this matter further for us. What I am saying is that there is no time frame for the appointment of any of these individuals; in other words, its influx, because these individuals who are presidents of the relevant associations could be removed or rotated on a yearly basis. These are persons who are going to change. You need to have a provision in this legislation that would allow for the successor or the chairman or the president to come on, because in Article VI of this Bill it says:

“Where a trustee—

- (a) resigns or dies;
- (b) becomes bankrupt or otherwise insolvent;
- (c) becomes unwilling or refuses to serve as a trustee;
- (d) is convicted of an offence involving dishonesty; or
- (e) in the unanimous opinion of the other members of the Board, becomes unfit or incapable to act as such...”

What we are saying is that there must be a provision to include where the office holder changes, the incumbent office holder would be the person to sit on the Board of Trustees. This is with respect to Article VI of the agreement, which deals with the composition and removal of trustees. In the same Article VI, paragraph 4 says:

“Where an institution fails to nominate a trustee in accordance with paragraph 3 or an institution mentioned in paragraph 1 ceases to exist, the Secretary-General may designate a person or persons, as the case may require...”

Again, there should be some degree of time frame. Let us suppose the Caribbean Association of Industry and Commerce (CAIC) put in a president, and that president has changed, does he fit in after one week, one month or one year? Where there is a failure to nominate a trustee, what do we do? There should be some time frame given for the institution to nominate, and failure to do so within a particular period of time—whether it is one month or three months as the case may be—of the notification, then the Secretary-General would kick in. In this legislation, there is no time frame where presidents of associations or chairmen of associations, having been appointed as trustees and having demitted office as president or chairmen should fill in with a subsequent person, and you do not have a time frame when that person has to come on board and start. [*Interruption*] I just wanted to bring that point to the Minister’s attention.

Madam President, I find it most strange that we set up a board of trustees to administer this fund for US \$100 million and in paragraph 12 it states:

“The Trustees:

- (a) shall be immune from all legal process in respect of the lawful discharge of their responsibilities under this Agreement.”

I want to ask: Who would determine what is lawful? Certainly, it is going to be a court of law. So, I do not understand the immunity being given from all legal processes. If the trustees have acted illegally, it would be a court that would determine the legality or illegality and, therefore, you cannot give them blanket immunity. That also needs to be reconsidered. [*Desk thumping*]

Madam President, we are being asked to spend TT \$200 million so that we can effect justice at the highest level, and what this administration is saying is that we must support the Caribbean Court of Justice, as the final court for trade matters. We are paying this US \$30 million to the highest level of the judicial process when our lowest levels in the judicial system are crying for money to be spent. Am I being irrelevant?

Madam President, there are 40 Magistrates' Courts in Trinidad and Tobago that need money. We have a situation where lawyers have to go in the country's second largest Magistrates' Court in San Fernando, and it is in a dilapidated state. We are putting money towards the highest level and the lowest level is suffering. Things are so bad that the San Fernando City Corporation was forced to condemn the San Fernando Magistrates' Court recently as being unsafe for human occupation.

It was the Chief Justice, Sat Sharma, who described the Magistracy as archaic. He pointed out in his inaugural speech, at the opening of the law term that what passes for justice in the Magistrates' Court is, in his opinion, a serious blot on the administration of justice and it is a stinging indictment on every arm of the State. This is in the context where you have the courts dealing with thousands of citizens' issues.

At present, the Magistrates' Courts have almost 400,000 cases before them, but there are only 40 magistrates—approximately 10,000 cases per magistrate and the courts are in dilapidated conditions. We are being asked—that money should be given for improving the system where the ordinary man and the poor person would be able to get justice quickly, but we are being asked to put \$200 million into a fund and we are not even getting anything for it.

In 16 months, the Caribbean Court of Justice has heard four matters. The only countries that have joined the CCJ, major countries, are Barbados and Guyana. They had one matter each, but we are being asked to pay \$200 million to support an institution that has heard only four cases in 16 months.

Madam President, the whole Caribbean sends up a maximum of about 20 or 22 cases to the Privy Council. The State does not have to bear any cost for that. You are asking us to support a situation where the Magistrates' Courts are failing; the High Court is failing. You have persons—just as we have in Parliament here, the computerized transcription taking place—the High Courts do not have any computerized transcriptions and people have to take notes in writing. Sometimes, in the Appeal Court, there is none there as well, and we are being asked to spend \$200 million to support a system that is not going to benefit us and give us the type of justice that we need. We have cases where there are delays in hearing and this is totally unacceptable. We need more High Court judges and magistrates.

Madam President, I just want to give you a situation. There is an attorney—we are not going to call any name—who was tried for allegedly trying to bribe a police officer to drop a case in 1995. It is almost 10 years, since the date of that alleged offence, and that matter was not heard. So, here it is we are going to put

\$200 million to support the Caribbean Court of Justice Trust Fund, and a person in Trinidad and Tobago is taking 10 years to get the justice that he deserves. Do you see the point? That is why I was putting it in the context of the CCJ all the time.

The Magistrates' Court is a poor man's court and statistically, the Magistracy, not the High Court and the Court of Appeal, is the backbone of the Judiciary system. How many persons have reached the Privy Council? In the entire Caribbean, 20 persons have reached the Privy Council and here you have 400,000 cases in the Magistrates' Court which cannot be determined, but you want to pump money in the Caribbean Court of Justice Trust Fund for esoteric reasons, because you have a cabal of Caribbean leaders who want to say that they want to break away from the shackles of colonialism.

Madam President, the perception of the administration of justice by the public at large, is determined by the quality of justice dispensed by magistrates, because this is where the masses of the people go for justice. Magistrates are overburdened; they are overworked and underpaid. The system is collapsing under the sheer weight of the volume of cases. It has been malfunctioning for quite some time now, and the main casualties are the thousands of poor and vulnerable persons who turn up at the Magistracy for the protection of justice, but we want to protect justice at the highest level, when we do not have a case. We are being asked to support legislation to pay TT \$200 million when there is not even a matter from Trinidad and Tobago.

The large majority of people in this country, their journey for justice ends, in the first instance, with the Magistracy and, in few cases, the High Court. You see, we must make our points. These are important issues that we have to deal with. With respect to the Caribbean Court of Justice Trust Fund, we are the largest contributor. Our taxpayers have to foot the bill for capital and operating budget. What we are paying is more than the collective percentage contributions of: Antigua, Barbuda, Belize, Grenada, Guyana, Haiti, Montserrat, St. Kitts/Nevis, St. Lucia, St. Vincent and the Grenadines and Suriname. Jamaica and Barbados are the only two major contributors contributing 27 per cent and 13 per cent respectively. They had cases heard recently. We are contributing 29.73 per cent.

The Minister gave the areas of contribution: Antigua and Barbuda, 2.11 per cent; Barbados, 12 per cent; Belize, 3 per cent; Dominica, 2 per cent; Grenada, 2 per cent; Guyana, 8 per cent; Haiti, 1 per cent; Montserrat, 0.4 per cent; St. Kitts and Nevis, 2 per cent; St. Lucia, 2 per cent; and St. Vincent and the Grenadines, 2 per cent. So, here it is, Trinidad and Tobago continues to support the Caribbean in



the quest for looking after justice, but we really have no role in the system. There is no law in Trinidad and Tobago which states that we have to go to the Caribbean Court of Justice for criminal matters and civil matters. We are putting up much more—30 per cent more than all these countries put together, which I have just indicated—and the Caribbean Court of Justice would make no difference or impact on the delivery of justice to the average citizen of Trinidad and Tobago, whose cases seldom go beyond the Court of Appeal. So, if we have money to spend for justice, should we not be spending this money in the Magistracy and the Judiciary?

Madam President, the time has come where this Government must no longer treat us as if we do not have any brainpower. They treat us with scant courtesy, and they treat the citizens with scant courtesy. They are coming now, 30 months later, to ask us to support payment of TT \$200 million to support something which we are not a part of. It is the same formula that is being utilized for Caricom countries, payments to Caricom that are being utilized here now for the Caribbean Court of Justice Trust Fund.

When we look at a critical analysis of the reports and technical data and so forth for the automaticity of financing for Caricom—the Minister of Foreign Affairs would know that it is the same method of financing that they are using for the Caribbean Court of Justice Trust Fund. There are a number of issues that were taken into consideration for the automaticity of financing in the Caricom region, mainly, the gross domestic product, the GNP; the vulnerability of these countries; and the OECS countries that are less developed and, therefore, they are being made to pay less money, and the major developed countries like Trinidad and Tobago, Barbados and Jamaica are being asked to foot the bill. Nothing is wrong with that, because we have to help our Caricom neighbours, but you are asking us to put money into something where we are benefiting not one iota; we are not benefiting at all.

Madam President, so we are taking another \$200 million from Trinidad and Tobago. I know that money is no problem—\$38 billion to be spent in one year—but a little accumulates all the time. If we pay this for nothing, and we pay that for nothing, we would end up paying the \$38 billion for nothing, which we are doing at the moment.

I am saying that on this side we are very strong. We cannot support this legislation to allow Trinidad and Tobago, as a member of this grouping, the 14 members, to be able to pay this US \$30 million. The other issue is that this is going to be revised every two years. If this was signed—the Minister of Foreign

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Affairs must answer this as well—in 2004, and this was the formula that was used and US \$100 million was supposed to be spent—we are now in 2006—two years later that is being reviewed by a committee—we want to know now how much money we are going to be asked to pay in 2006 or 2007? So, we are being continually asked to pay money for things that we are not getting the reward for.

I want to conclude by indicating that it is very difficult for us, bearing in mind my statements on a number of these issues, to support this legislation.

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

**Sen. Prof. Kenneth Ramchand:** Madam President, thank you. I belong to a generation that was motivated by the federal dream. This dream gave reality and meaning to the lives of many of us, and it made us do our work in the world with joy and hope.

As diehard federalists, I am a supporter of the integration movement and the Caricom Single Market and Economy (CSME). As far as I understand it, the Caricom single market and single economy exists to foster regional integration. You would notice that I did not say “single market and economy”, but I say “single market and single economy” and, of the two, the single economy is the crucial one.

In establishing the single market and single economy—

**Madam President:** Senator, I am just asking: Are we debating the single market?

**Sen. Prof. K. Ramchand:** Yes.

**Madam President:** We are debating a trust fund.

**Sen. Prof. K. Ramchand:** We are debating a trust fund whose purpose is to help establish the CSME.

**Madam President:** I am going to let you continue and I am going to listen.

**Sen. Prof. K. Ramchand:** So, Madam President, I am supportive of all the measures, including the establishing of the Caribbean Court of Justice Trust Fund. I am supportive of all measures that would enhance the integration movement and the CSME. Now, one of the measures—there are many different measures and there are many different aims—is the exercise of power, and the establishment of social, political and legal controls is one dimension and, therefore, one cannot object to the establishment of the Caribbean Court of Justice Trust Fund. [*Desk thumping*] It is going to cost US \$30 million, and I am sure that this contribution would have some kind of effect on the integration movement.

Madam President, if the purpose of the trust fund is to enhance the purposes of the CSME, it is not irrelevant to refer briefly to other measures that we may need to implement. So, I am supporting this particular measure but, in passing, I would just like to refer to one or two other measures. I have a very simple proposal for our consideration.

I believe that the establishment of the CSME of a meaningful single market and single economy would be greatly enhanced if other Member States could be helped to achieve the economic standard that is required for them to be proper members of the CSME. So, if we are serious about the CSME—and by the time you think that I am irrelevant I would be finished—we should set up a technical committee to make recommendations to the Heads of Government about the ways and means to bring about as a matter of urgency—the use of solar and wind energy in the CSME countries—as a way of lifting off these depressed economies and the burdens they suffer as countries and as individuals, as a result of the energy crisis.

**Madam President:** Okay, come back to the Bill.

**Sen. Prof. K. Ramchand:** So, indeed, I do support the Caribbean Court of Justice Trust Fund. I am sure that it would assist in a small way in promoting the idea of the CSME and the principle of integration. But, as I said, serious consideration should be given to measures that would help to create the integration movement from the bottom up, and to make a difference to the material life of a larger number of persons than the Caribbean Court of Justice Trust Fund would make.

Thank you. [*Desk thumping*]

**Sen. Angela Cropper:** Madam President, thank you. I rise to add my word of support for the legislation to implement the Caribbean Court of Justice Trust Fund and, like Sen. Prof. Ramchand, I find it necessary to say how much satisfaction it gives me to be able to express my support for this, not only because I missed the debate on the Caribbean Court of Justice itself that we had some time ago in the Chamber, but because of my gratification on seeing these concepts of the Caribbean Court of Justice and the CSME and so forth come to fruition in this Caribbean region, having worked on them at the inception of these ideas in the Caribbean Community Secretariat in the 1980s and early 1990s. So, it really gives me great pleasure to be able to stand in this Parliament and support these ideas coming to fruition.

However, we heard Sen. Dr. Gopeesingh express very contrary ideas, not only about the trust fund, but also about the Caribbean Court of Justice upon which this fund is contingent. While I think it is easy to repudiate all of the arguments that he

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has put forward, I think what is more important for us to do in this Parliament here, and on the part of our Government, is to recognize that there is a divided opinion about this matter, not only here in Parliament, but also in the country. [*Desk thumping*]

Whereas I feel that it is possible and, indeed, very desirable that the philosophical framework that underpins, not only the CSME, but also the Caribbean Court of Justice as an instrument of the CSME, I think it is vital that we, as a Parliament, and also the Government, should take the responsibility for making sure that our citizens are well educated about the need for a Caricom single market and single economy.

We have heard earlier in this afternoon's session, when we were debating the Law Revision Act, Sen. Prof. Deosaran talked about the need for public education about the laws and the legal framework of the country as a whole. I think that it is even more imperative, given the implications of the CSME that Trinidad and Tobago citizens and, indeed, citizens of all the Member States of the Caribbean Community are really educated about what this means; what the implications are going to be; and the respective advantages and disadvantages of any single Member State.

One hears a lot of uninformed opinions outside from ordinary citizens who did not have the opportunity and the exposure to the rationale for many of these things, or the benefit of any public education programme. We hear much opinion about the way in which we are giving away the resources of Trinidad and Tobago citizens to the rest of the region. [*Desk thumping*] I believe that the time has come for us to recognize that we, as a Member State of the Caribbean Community, have to contribute also to the education of the rest of the region about understanding what this means and the Caribbean destiny about which Sen. Prof. Ramchand has spoken.

This is not the first time that other colleagues and I in the Senate here on the Independent Benches have spoken about the need for public education on one thing or the other. I remember the first time I spoke in this Senate, in February 2005, on the amendment to the Offences Against the Persons Act, when we introduced the misdemeanour of stalking—as I recall, Sen. Seetahal, S.C. talked and then I did about the need for public education to follow in a systematic and routine way for the legislation that was being passed in the Parliament. Since then, just as a test, I have been keeping my eyes out for anything that I could see that seeks to educate the people of Trinidad and Tobago about that particular Bill, or any other Bill that we have passed in this Parliament.

Apart now from what the live broadcast of these proceedings might achieve, I think there is need for really a lot more education than what we are doing right now. [*Desk thumping*] I would hope that the Minister of Public Administration and Information and Minister of Energy and Energy Industries would take this seriously on board, not only for this Bill that we are debating now and the CSME as a whole, but for all the Bills that the Parliament has passed.

I think we are really in a modern era, and if we are really seeking to make this country into a developed country, whatever that means, I think that one of the things that it does have to mean is a very educated citizenry. Sen. Prof. Deosaran put it in terms of information being the oxygen of the democracy and, if so, then I think we would probably all need life support soon, unless we really do something radical to improve the information base and the information that is being made available to citizens of the country.

I would like to say in supporting this Bill that I think it is really imperative, given the CSME, the Caribbean Court of Justice and the implications of these institutions, that we actually embark on a very structured and systematic programme of education for the Caribbean Community, the CSME and the Caribbean Court of Justice for the people of Trinidad and Tobago.

Thank you. [*Desk thumping*]

**Madam President:** Is there anybody else?

**Sen. Dr. Shastri Moonan:** Madam President, I would like to direct myself to the Bill that is now before us. At least, I would not infringe Standing Order 35 of what I am now learning on relevance.

Madam President, the first important point is that in Article XII, there is juridical personality which is given to the operation by the executive officer. One cannot exclude in legislation the common law. The functions of the trustees have been laid down from time immemorial under the law of equity, which is part of the law of the land and, at the same time, you are giving juridical personality, as if then I am arguing in court and it is convenient for me to persuade the particular judicial officer who is presiding over the case in the area of company law.

The legislation itself that was drafted is fundamentally flawed, because you need to know exactly what you are doing before the court of law. Even before that, there is the appointment of an executive officer. I would be pleased if I could have some silence on the other side. [*Interruption*] I can speak louder, but I do not want to make unnecessary noise.

Madam President, a judicial officer is then appointed under the function of the board in Article XII and that judicial officer has unrestricted powers under Article X. I am not trying to send negative messages to the other side, but it was known, not too long ago, not in this jurisdiction, where you had long term capital management and over US \$4 billion disappeared overnight. That was one instance. Somebody or some group has that \$4 billion, but not the people who were entitled to it under the trust fund. You are giving juridical personality to the trust fund. What then is the stopgap measure after the executive officer is appointed? You would see that the executive officer has unrestricted powers under Article XV, and he could disappear overnight with that money.

It is my considered opinion that before the Bill becomes law, it should be amended to have checks and balances on the operation of that fund for the benefit of the people for whom it is designed, rather than after the event, like in long term capital management. This is the name of the fund which was in excess of US \$4 billion which disappears overnight. What then could they have done? Nothing was done. We should learn from experience. The legislation that is before this House needs close amendment for checks and balances.

Madam President, this is my contribution, and I hope that for the people in the region this would be taken into consideration. [*Desk thumping*]

**Sen. Dr. Jennifer Kernahan:** Madam President, thank you for the opportunity to talk on this Bill before us today, the Caribbean Court of Justice Trust Fund Bill, 2006. Madam President, I am sure that we all would agree here today that the administration of justice in a fair, impartial manner to the poor and to the rich is a cornerstone of any civilized society. Justice must be accessible to the poor as well as to the rich, and it must be timely and relevant.

Madam President, another cornerstone of any civilized society is the rule of law; equality of treatment before the law; and respect for the rule of law by the rich and poor. I think in any society where there are thinking intelligent people, we would know when we have erected these cornerstones—when there is a sense of justice among the ordinary people and the underprivileged and so forth; when most people feel a sense of security and comfort in their environment where their rights are respected and protected; and where they themselves would feel a sense of responsibility toward their society in terms of obeying the laws of the society. So, I believe that it is our job in this honourable House that whatever we do here should help to advance these principles and to advance the whole question of the rule of law and the administration of justice.

I get the distinct feeling here, today, as we look at this Bill before us that somehow this Government has lost its perspective. Somebody is not monitoring the screen of Trinidad and Tobago and, therefore, the issues that should be maximized on our screen are, in fact, minimized and the issues that should be at the bottom of the screen are, in fact, maximized. Somebody is sleeping on the job. I draw this analogy to this issue of the Caribbean Court of Justice Trust Fund that is before us, because this is an issue which should be at the bottom of the screen. There are issues which should be maximized and which we should be taking a very serious look at in this country, and they are being minimized.

We are here to debate this trust fund and this was based on the establishment of the Caribbean Court of Justice by 12 Caribbean states which agreed to this judicial tribunal in February 2001. We are being asked today to establish some sort of financial viability for the Caribbean Court of Justice.

Madam President, in the schedule to this Bill before us, there is more or less a preamble and it says here *inter alia*, that the states are cognizant that the court is indispensable for the good governance of the Caribbean Community. They recognize that efficient administration of justice in the territories is important and they talked about the structured and efficient functioning of the CSME. It also talks about the efficiency and effectiveness and the independence of the court and the independence and integrity of the court.

Madam President, while I agree that these principles are laudable, and they are very good principles, it seems to me that there are many of us in Trinidad and Tobago who have great difficulty in making this leap of faith to postulating and talking about these principles and financing of good governance in the Caribbean and so forth, when we have a difficulty achieving such consensus in our society to have good governance in Trinidad and Tobago. How do you make that leap? We are talking about good principles, integrity, the independence of Caricom and the Caribbean Court of Justice, and we do not have it in our own backyard. [*Desk thumping*] We find it difficult to make that leap. Apparently, like good samaritans, this Government is the major proponent of this idea; both ideologically and financially.

Madam President, when we look at these propositions and these ideals and so forth in this Bill I, along with another million or two Trinidadians, am concerned about the efficiency and the effectiveness of our court here in Trinidad and Tobago. We are concerned about the independence of the Judiciary and the integrity and credibility of our courts.

Madam President, the holy Bible says, love thy neighbour as thyself. It certainly did not say to love thy neighbour more than thyself. I believe that this administration needs another spiritual guru because he is misleading them. [*Desk thumping*]

What is the cost of loving our neighbours more than ourselves as evidenced by this Bill before us? The cost is tremendous. It is over \$200 million that we are talking about here. That is the cost for two years and none of the cases that have come before the court have come from Trinidad and Tobago. So, we love our neighbours so much that we are prepared to pay over \$200 million to support a court that does not even have to deal with any cases coming from our jurisdiction.

There is tremendous social and psychological cost. There is emotional cost; there is political cost; and the cost to us in our society is brutal and unacceptable. I am saying that this tremendous love that we are displaying for our neighbours is actually endangering our security and our lives.

I would like to quote from an article written by Mr. Anand Ramlogan on Sunday, December 05, 2004. The heading is: "Prioritizing expenditure". In this article, he talked about the issues that he would like to see prioritized. He talked about the issues that he would like to see maximized on our screen in Trinidad and Tobago. I know my colleague here mentioned some of these issues, and I would not go into them. He also talked to the fact that the justice system for the majority of the poor, the dispossessed and the ordinary citizens in this country starts and stops at the level of the Magistracy. So, if you want to talk about improving the justice system and the administration of justice for the vast majority of the people of this country, then deal with the Magistracy. This is the point that we have to take note of.

**Madam President:** I am sorry, but I have to interrupt you, Senator. We have to take the tea break now. I hope that when we return you would get back to the Bill. I have allowed you eight minutes of preamble.

The sitting is suspended for tea and we would resume at 5.00 p.m.

**4.30 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed.*

**Sen. Dr. J. Kernahan:** Madam President, when we took the tea break, I was speaking to the opportunity cost of the moneys that were pumped in and will continue to be pumped into the Caribbean Court of Justice (CCJ) Trust Fund. I just want to quote Anand Ramlogan once again in an editorial in the *Guardian* of Friday, May 19, 2006 where he put it very nicely and I quote:



"Given the sad state of our magistracy investing whatever money the government can spare for the justice system into the CCJ is like a family sending a car with a malfunctioning engine for a paint job with its savings."

Madam President, I want to also make the point that opportunity cost is the total decay of the penal system in this country. As we speak in this honourable Senate, the prison is on fire and has been so for a number of weeks. Prisoners have revolted; prisoners have attacked prison officers, and it is total chaos in the penal system. Anyone who is actually not asleep on the job, looking at what is happening in our country and having had the proper issues maximized, would have seen that coming. I have an article here, an editorial in the *Trinidad Guardian* of Friday, May 19, 2006 in which—we are in September—a prediction was made exactly which speaks to the situation that we find ourselves in.

The article spoke of the need for penal system reform, which implies financial support; upgrading technology; training officers; better salaries; better rehabilitative programmes and so forth. That is how you get justice for your people; that is how your people are going to feel that they are benefiting from the oil wealth and the moneys that are coming from a depleting resource, when you pump those moneys into the areas where they are going to feel it, in the first instance.

In the absence of this foresight to upgrade one's penal system, there is this article which states; and I quote:

"Sooner rather than later, if the situation is left to continue to decay prisoners are going to launch a full scale revolt against the conditions under which they are incarcerated. Moreover these angry and violent young men will be outside of the system at some point in their lives and guess who they would take it out on?"

This was in May; we are in September and this particular prediction has come to pass, because this Government sees a priority in the CCJ Trust Fund and does not see the necessity to pump that money where justice really matters to our people, our country, in the penal system, in the rehabilitation and reform of prisoners.

I am saying, forget the pomp and the ceremony; forget the trappings of the CCJ; forget these monuments to your inflated egos and deal with what is necessary to make our land a better and safer place to live. This is what we are saying. [*Desk thumping*]

Madam President, you have to pump that money into upgrading your international image also. We are being severely criticized by international bodies who are very upset with respect to the conditions under which we house prisoners and so forth. Human rights issues are involved here. How are you going to deal with human rights issues in the Caribbean and there is a human rights problem in

your own backyard right there in Golden Grove? What is the point? It is pretentious; it is unnecessary and it is a burden to our people. They are not fooling anybody; everybody knows that they are just on superficial and make-do, and the realities of our people are escaping their attention totally. But they are not escaping the attention of the international community, because in this document before me which is called Excessive Enforcement, a call for Transformational Approach to the Caribbean Criminal Justice System, it says:

"Amnesty International has repeatedly expressed condemnation of the use of excessive force by law enforcement officers and has stated that prison conditions in Trinidad continue to violate the UN standards for minimum treatment of prisoners, as well as amounting to cruel, inhumane and degrading treatment."

So they could take us to our own court. We might end up in the CCJ on some of these issues of human rights abuses and so on. Whom are you trying to fool? What are you trying to do when you are not dealing with the situation in your own backyard and you are out there looking at—

**Sen. Joseph:** Madam President, on a point of order.

**Madam President:** On a point of order, Senator.

**Sen. Joseph:** Madam President, Standing Order 35(1).

**Madam President:** Relevance? Well, I have been waiting to see how the Senator was going to tie up the penal system. I know you are trying to say that money should go there, but Senator, really, that is not a suitable argument for this Bill. I really wish you would get back to the Trust Fund. Get into the substance of this Bill and let us debate the Bill.

**Sen. Dr. J. Kernahan:** Madam President, all the commentators, psychologists and sociologists in this country have been making the same observations about the way this Government is spending our resources and is dealing with our depleting resources. We are saying that the Caribbean Trust Fund is another of the resources they are wasting away. [*Desk thumping*] That is the point. They are wasting our resources with respect to this Caribbean Trust Fund. You can get up 10 million times, jump up and down, try to distract me and it will not take away from the truth, because I am speaking the truth and the whole of Trinidad, minus maybe, 36 Members of Parliament, recognize the truth. So jumping up and down would not help that.

Madam President, the opportunity cost of this Caribbean Trust Fund should be put into our communities. The opportunity cost is social and political; I made that point. I am saying that our communities are in chaos.

I was looking at British Broadcasting Corporation (BBC) last night and I saw hundreds of women in Haiti marching with masks over their faces, because these women had been raped in Haiti and there is no justice. There is a similar situation here, but our women are not coming out. Hundreds of women in this country are being raped at gunpoint because there is a parallel criminal justice system on the streets, and the Minister of National Security pretends not to know about it. We would ask those women to go to the CCJ for justice? [*Desk thumping*] They have to get justice right here in our country; they cannot go to the CCJ for justice.

So you put \$200 million in the CCJ for other people in the Caribbean to get justice and our women here cannot go to the court. As a citizen of this country, if you witness a crime in this country you could call 555, 666, 888, you dare not go to court because they would come and gun you down; they would kill you. This is the reality; so we have to put our money there. I am saying that the opportunity cost of the CCJ Trust Fund is too high. We cannot bear it. It is unbearable for the people of Trinidad and Tobago, and we have to do something about it. This is the plea that I am making here today. It is unfair to our people that we cannot get justice here; we are gunned down in the road. Prison officers are gunned down in the road if they are witnesses against prisoners and so on.

I am saying that this Caribbean Court of Justice Trust Fund is another example of flagrant mismanagement on the part of the Government; a flagrant waste of resources as building monuments to their ego. [*Desk thumping*] It does nothing for the people of Trinidad and Tobago. It does nothing for the justice system in Trinidad and Tobago. It does nothing for the criminal justice system in Trinidad and Tobago. Our communities need infrastructure: roads, water, electricity. People in Barrackpore have the place on fire. People in Beetham have to light the place afire to get a community centre and you are telling me that it is justified that you put \$200 million in the Caribbean Court of Justice.

Madam President, maximize the real issues. That is all I am saying to this Government. Minimize the side issues. We will agree with a criminal court of justice with this Caribbean Trust Fund when we have reached a certain cultural and political level of development in this country, where we feel safe with the level of justice meted out to the people. [*Desk thumping*] When we feel secure in the Judiciary; when we do not have the spectacle of chief justices being brought down into the mud, that is when we are going to feel safe about supporting something like this.

Right now, we do not feel safe; we feel it is political; we feel it is arbitrary and we feel that that money should be spent on transforming our systems here; bringing our systems up to scratch before we look at the bigger picture of the Caribbean Court of Justice, the Trust Fund and so on.

Madam President, I say maximize the protection of children. Look at the abuse of children, prevent it and put money into that. Put money into establishing the Children's Authority Act. Where is the money for the Children's Authority Act, when we can have these institutions to protect our children? Maybe, if we do that, we would be spared the spectacle of tiny innocents running about in their broken shelters, oblivious to their shattered security in their Ark of the Covenant.

I thank you, Madam President.

**Sen. Brother Noble Khan:** Madam President, I think, most likely we might get it from the hon. Minister when he makes his reply. I see in the structure of the Bill which is before us, there is provision for restructuring of the Fund. But what seems to me to be absent within it, even within the articles, et cetera, is the question of the accountability, the audit and the regulations. I think, our colleague Sen. Dr. Shastri Moonan had referred to that. I too, would like to hear something on that when the time comes.

Thank you.

**Sen. Raziah Ahmed:** Madam President, thank you for the opportunity to serve at this time. According to the Bill before us, the CCJ Trust Fund is a regional agency designed to ensure the efficient operations of the Caribbean Court of Justice on a financially sustainable basis and it is managed by a board of trustees and executive officer. In the schedule:

"The Parties to the Agreement Establishing the Caribbean Court of Justice..."

With respect to the Trust Fund, they have said some wonderful things in bold type; what they are cognizant of, what they are recognizing. The last highlighted item on that section reads:

"Determined to promote...the independence, integrity and credibility of the Court"

Therein lies the major flaw of the whole thing. If you have to develop a marketing agenda, which is what this last thing is, determined to promote its credibility, it means that there is doubt about the credibility of the institution of the Trust Fund. [*Desk thumping*] Yes, it does.

The Trust Fund has been instituted into law and having done so, the Revised Agreement comes to us and puts forward on the agenda, a determination to promote the independence, the integrity and the credibility of the court. If it is so good and wholesome, why do we now have to market the whole thing, market its credibility and its integrity?

I would like to look at Article IV, Resources of the Fund item 7, which speaks to the inadequacy in resources. If a review determines that the resources are inadequate, the members shall make additional contributions in the proportions reflected in the Annex.

Other persons have referenced the large portion that we have to put, so I would not deal with that. My question is: Should a member withdraw from funding this enterprise, who determines where the insufficient funds would come from? Would there be some kind of pro-rata redistribution of the annex listing? What happens when new members join? How would that annex table be adjusted? Should that inadequacy of the funds lead to disputes among the members, is there any provision for mediation?

Under Article VI—Composition of the Board of Trustees, item 4 reflects a major weakness in the legislation:

"Where an institution fails to nominate a trustee in accordance with paragraph 3 or an institution mentioned in paragraph 1 ceases to exist..."

That was the matter with who fills the vacancy—

"the Secretary General may designate a person or persons, as the case may require, to act as a trustee."

How do we arrive at a position where the Secretary General of the board of trustees gets to appoint persons when the institutions that are named in section 1 of Article VI, the Insurance Association of the Caribbean, the Caribbean Institute of Chartered Accountants; when these people have failed to make the necessary replacements, how does the Secretary General get to designate the names of those persons? In item 5 it goes on to say that the Secretary General may designate three or more of such persons. Is it anticipated that these institutions so named from (a) to (i), would fall short in filling the replacements and that the Secretary General would have this huge portfolio to deal with? Is this not a major weakness in the legislation before us?

Article VII—Functions of the Board, which appoints an executive officer. What are the qualifications of this executive officer? What are we looking for? This executive officer is responsible for the capital and operating budget;

day-to-day operations; for hiring staff; for employing consultants and for furnishing quarterly reports of the fund's performance. We need to see the kind of qualifications that the executive officer of the fund must have, and there is need for some guarantees that there would be checks and balances.

Item (f) of Article VII:

"appoint an investment manager or managers to manage...the Fund."

My question is: What redress do we have for mismanagement on the part of the investment manager, and is the investment manager also subject to the immunities and privileges set out in the law? What fees are we willing to pay this investment manager?

The executive officer in Item (g), Article VII:

"approve the annual report on the performance of the Fund for transmission to the Members."

Article X: The Executive Officer shall generate a quarterly report on the performance of the Fund. A quarterly report on the performance is a standard sequence in time on performance. What I am concerned about in Article VIII is that "The board shall hold two regular meetings each year". So we have the Fund being reported on quarterly and the board meeting semi-annually. If there are problems with the performance of this Fund—and I want to reference a statement that was made by the hon. Sen. Douglas **Oraine** in Jamaica in speaking on the matters concerning the Fund and the CCJ establishment; that there are serious problems in the Caribbean arising from a lack of accountability throughout the society.

So to think that there could be mismanagement in a fund is not far-fetched at all, but if there are quarterly reports, there should be quarterly meetings of the board of trustees to deal with these reports. Because this is not a little money that is being managed, invested and hoping to fund a very expensive enterprise; it is a huge some of money of which we are contributing almost 30 per cent, and we need to ensure that there are regular meetings of the board of trustees, so that if there are poor performances or mismanagement of the fund, there would be quick time in which to react and not six or 12 months after the fact, to try to fix the problem. I have a concern with the fact that the board is only meeting twice per year.

With respect to the immunities in Article XII:

"The Fund shall enjoy immunity from every form of legal process."

In section 13 of Article XII:

"The immunities, exemptions and privileges provided in this Article are granted in the interests of the Fund. The Board may waive to such extent and upon such conditions as it may determine, the immunities, exemptions and privileges..."

So the law gives immunities to the people. The law has a provision that the trustees may waive the immunities, exemptions and privileges in section 13 and in section 14, the executive officer himself, would be subject to the same kind of waiver. The trustees have been granted immunities and the board of trustees is deciding for themselves that we must now waive it for certain of our members. Something is not right there. This is himself managing himself. This is himself accounting to himself. There must be some other mediator, arbitrator who is to determine whether the immunities have to be waived or not waived. It is like we are sitting on one side and we suddenly decide that we must get together and wave for some people or wave to some people.

Madam President, that is very peculiar in how we can give immunities; waive them and we decide when we are going to waive them or not waive them. As you are aware, as this Senate is aware, we stand fully opposed to the funding of the CCJ Trust Fund; we cannot support it; we will not support it; we do not believe that the legislation is sound and I want to thank you for this opportunity to say so.

**The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift):** Thank you, Madam President. We have had a lot of entertainment. Let me start by saying we would not be here today debating the CCJ Trust Fund Bill if we did not have a CCJ. And we would not have had a CCJ had we not had a United National Congress (UNC) headed by Mr. Panday. [*Desk thumping*] It was on the initiative of the then political leader and Prime Minister which sought the creation of the Caribbean Court of Justice. I see a number of colleagues on the other side thumping their desks rather heartily; they seem to be well fed and watered, but they seem also not to recall the antecedent of this.

When the CCJ was proposed by the UNC administration, the People's National Movement was in Opposition. Indeed, the location of the CCJ headquarters in Port of Spain was the subject of a discussion and understanding between Prime Minister Panday and the then Leader of the Opposition. The only way they would

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have become a member of the CCJ under the UNC, according to their proposition, was if the CCJ was headquartered in Port of Spain; and they consulted the Opposition at the time and we gave them our consent and approval that we wanted the CCJ.

Madam President, this is typical UNC. They go and they promote the Free Trade Area of the Americas (FTAA) and when they are out of office they repudiate it. They promoted the International Criminal Court and when they are in Opposition they repudiate it. They also repudiate the Crowne Plaza Accord. So this is part of their history; they do it apparently for entertainment of themselves. But I would tell you one thing, Madam President, when you are in this business of international diplomacy, nobody takes you seriously if you are not credible. So you can see that credibility means nothing to the UNC, and consequently, we hear them thumping their desks on the other side. But we are a serious administration and we keep to our word. [*Desk thumping*]

**5.30 p.m.**

That is why we command respect. That is why the People's National Movement under the illustrious Patrick Manning commands that international respect worldwide. We ought to appreciate this. But, let me use the opportunity to thank them nevertheless for their contributions, because I imagine they would have vented quite a bit of rancour within themselves. I am sure they feel more relaxed now, Madam President.

Madam President, mention was made that the CCJ is an experiment in nationalism, in independence, it could not be serious, but it was the same UNC that used these same arguments for the establishment of the CCJ. All of a sudden they have changed, it means nothing to them. But you see, again, this is the part of the political morality of their own in these matters, [*Laughter*] you can change with the wind. We do not do that in the People's National Movement, we are a serious body. And so they go on; they go on!

They talked about injustices; how much money is spent on the court? The distribution arrangement is in keeping with the provisions of the Caricom agreements, namely, that certain countries bear a certain percentage of the budget and this is a replication of that principle. It is not a question of we are misspending. Not at all. And indeed, we have always made the point that the health of the economies of Caricom membership is intimately intertwined with the health of the Trinidad and Tobago economy. So that when we come to their rescue, when we step up to the table to their rescue, we are literally rescuing and keeping in place employment insofar as our industries are concerned. So this is part of the philosophy that we are practising.



Mention was made of the insecurity of tenure of judges. I do not know where that came from because it seems to me that all the judges' tenures are very, very deeply enshrined in the provisions of the court.

**Sen. Dr. Gopeesingh:** Would you give way? One point. It is the chairman and the vice-chairman, the trustees are for three years, the others are not specified.

**Sen. The Hon. K. Gift:** The judges of the court can serve seven years, this is the court regulations and they can serve up to the age of 72 years, whichever comes earlier. So in fact, this means that if you have a judge appointed at the age of 30 and he does seven years, he can come back after a period of time and have a second stint on the court because he is not yet 72 years of age. That is the security of tenure. Mention was also made of the individuals. Again, they seem to want to personalise the composition of the board. We are talking here about institutions and indeed, I was glad to hear that our goodly friend Mrs. Ahmed mentioned the word "institution".

**Hon. Senators:** Sen. Ahmed.

**Sen. The Hon. K. Gift:** Sen. Ahmed, sorry. It is so clearly marked here. As I said earlier, we are talking about the institutional linkage of reputable regional institutions, the University of the West Indies, the Caricom Secretariat, the Caricom Council of Attorneys, et cetera. These institutions are there to stay. Caricom Council of Churches, they are here to stay and obviously while one does not live forever, we assume that the institution would continue and therefore its successorship is guaranteed. So I would not be bothered too much about that, Madam President.

Someone asked about the immunities of the trustees. There is nothing in the regulations that confers blanket immunity on the trustees; their immunity is only confined to their official functions. A trustee therefore cannot go down the road and break the laws of the host country. No, that is very clear in the regulations; that you must comply with and observe the laws of the host country. So the question of blanket immunity never arises.

Someone challenged the structure of the board. But, Madam President, when you look at the institutions that are named here, can anyone really challenge the integrity of a decision of an appointment made in conclave among the Secretary General of Caricom; the Vice-Chancellor of the University of the West Indies; the President of the Insurance Association of the Caribbean; the Chairman of the Association of the Indigenous Banks of the Caribbean; the President of the Caribbean Institute of Chartered Accountants; the President of the Organization of

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Commonwealth Caribbean Bar Associations; the Chairman of the Conference of Heads of the Judiciary of Member States of the Caribbean Community; the President of the Caribbean Association of Industry and Commerce; and the President of the Caribbean Congress of Labour?

These are serious institutions. I would not dare challenge the appointment of anyone by these people on the board, saying that they are not competent. And indeed, when you look at the structure here, it also conveys the impression that the board of trustees that they appointed is in good hands, is in competent hands and they also would know that there is a certain level of accountability and responsibility to the persons or the people who appointed them. So I would not be too troubled about that, Madam President.

Sen. Cropper mentioned the question of the need for more public education and public information. I certainly go along with that and I am sure that with the passage of time, that would be attended to.

Now, to the question of Trinidad and Tobago's contribution, as to whether it should be renegotiated or curtailed; Madam President, this is the Caribbean Court of Justice, it is one court. It is not at all related to any discount for anything; that is in another kind of court that we see in St. James, this is the Caribbean Court of Justice. [*Desk thumping*] You are in a whole court, so I wish we would remember that, not half a court.

Now, Sen. Ahmed talked about the question of waiver in Article XII, but if you read Article XII properly, you would see the way waiver operates in international organizations, it is a form of protection for the institution itself; for the host Government and for the image of the employees. The waiver we are talking about here, is in the case that we have a situation where, for example, some crime was committed and the host Government says, we need to have legal redress against this. They cannot cite immunity and say, well, we are exempt from that kind of intervention. The waiver is to allow the law to take its natural course. In a way it is a protection for all the parties; so you can rest comfortably on that, Senator.

Madam President, I think with these comments, I have exhausted my response notes and I therefore beg to move. [*Desk thumping*]

*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. Seetahal, S.C.:** I am in disagreement with line 5. Should it not be Article XII?

**Madam Chairman:** "Immunities set out in Article XI ..." They have XI there.

**Sen. Seetahal, S.C.:** If you look at the schedule, Article XII is immunities.

**Madam Chairman:** So this should be XII. Is it an error?

**Sen. Jeremie:** Yes, it is a typo.

*Question put and agreed to.*

*Clause 4 ordered to stand part of the Bill.*

*Clauses 5 and 6 ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed, That clause 7 stand part of the Bill.*

**Sen. Dr. Gopeesingh:** Madam Chairman, subclause (3). I just want to ask about clause 7(3). "Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of one thousand dollars ...", are Senators comfortable with that in terms of somebody using the seal of the Caribbean Trust Fund? And the other penalty is imprisonment for 12 months; so that is incongruous.

**Madam Chairman:** "... or to both such fine and imprisonment."

**Sen. Dr. Gopeesingh:** Probably you may want to lift the financial penalty.

**Madam Chairman:** Any comment on this, Minister? Sen. Seetahal, you wanted to say something?

**Sen. Seetahal, S.C.:** I have two comments and one of them is related to that, clause 7(3), but it is a slightly different comment. It is not normal to put it as it is stated here. It is usual to say, "is liable on summary conviction to a fine of one thousand dollars and to imprisonment for twelve months." Because under the Interpretation Act—

**Sen. Jeremie:** It is included.

**Sen. Seetahal, S.C.:**—“or” is included. So it is that.

**Madam Chairman:** So you take off "or" and put "and"?

**Sen. Seetahal, S.C.:** No, you take off the fourth line from the word "or". And in relation to the increased fine, you could increase it to \$2,000 or \$3,000. But it is not normal to say "a fine of one thousand dollars or to imprisonment for twelve months or to both such fine and imprisonment." I do not know if there is some reason, but whatever it is beats me, because it is not consistent with section 68 of the Interpretation Act as I understand it.

**Madam Chairman:** What is the agreement?

**Sen. Jeremie:** We can amend it.

**Madam Chairman:** What about the suggestion that the fine should be increased to \$2,000 or \$3,000—

**Sen. Jeremie:** No, that I think is what the policy position would be—

**Sen. Gift:** Across the board, that is what I understand.

**Madam Chairman:** Across the board?

**Sen. Gift:** Yes.

**Sen. Jeremie:** No. With respect to the legal point, we are prepared to—because it would be consistent with other legislation or drafting style and the section of the Interpretation Act.

**Madam Chairman:** So, how should it read?

**Sen. Jeremie:** That "or" should come out and “and” would be disjunctive.

**Madam Chairman:** And then you would delete from "or to imprisonment"?

**Sen. Jeremie:** It would be “... or to a fine of one thousand dollars and to imprisonment for twelve months.”

**Sen. Seetahal, S.C.:** Full stop.

**Sen. Jeremie:** Full Stop.

**Sen. Seetahal, S.C.:** But what about the \$1,000, that was the next question?

**Sen. Jeremie:** The Minister advises that on that policy question, he is comfortable with the sanction.

**Sen. Seetahal, S.C.:** It is just what Sen. Dr. Gopeesingh was saying, if you are going to imprisonment, twelve months, the \$1,000—it is usually in our law, \$1,000 or six months, that is how it is. That is the usual kind of alternative. So, maybe \$2,000 or \$3,000 or something. Maybe US \$1,000. I am just joking. I do not know if that is what they meant.

**Sen. Jeremie:** On this matter, I know that with the \$1,000, the usual sanction would be six months, but if this is a statue which is intended to have regional effect, I would not wish to do something here in Trinidad which is inconsistent with that which is done elsewhere.

**Sen. Seetahal, S.C.:** Well, is it like Guyanese \$1,000, Jamaican \$1,000, Barbadian \$1,000, TT \$1,000? Is that so? I find that is very strange.

**Sen. Jeremie:** I cannot say. [*Crosstalk*]

**Sen. Seetahal, S.C.:** In any case, what I am saying, if this is local, this is not part of the agreement, we can do what we want with it. So I do not see that that would be an issue, you know what I mean. This is not part of the agreement then. So we could say \$2,000 and let it make sense. [*Interruption and crosstalk*] So this is just the law.

**Sen. Jeremie:** The Ministry has a policy position and it is \$1,000.

**Sen. Gift:** I would leave it at \$1,000.

**Madam Chairman:** The Minister says it is a policy decision; we would leave it at \$1,000.

**Sen. Seetahal, S.C.:** Yes, but you see the policy decision, Madam Chairman, with all due respect, is inexplicable because nobody can tell me whether it is Guyanese \$1,000, Barbadian \$1,000, \$1,000 whatever. And I can understand some kind of—

**Sen. Jeremie:** TT \$1,000 here, for us, locally; \$1,000 TT, that is what the Minister is saying.

**Sen. Seetahal, S.C.:** He is talking about a policy which means it must be—

**Sen. Dr. Gopeesingh:** It is a policy—

**Sen. Seetahal, S.C.:** Yes.

**Sen. Dr. Gopeesingh:** And the other governments, what has their legislation brought forward?

**Sen. Gift:** I would assume that the legislation that they have would be \$1,000 of their currency.

**Sen. Dr. Gopeesingh:** Well, Guyanese \$1,000?

**Sen. Gift:** In Guyana, I would imagine yes. Because the Trinidad and Tobago dollar is not legal tender in any other country. So we are dealing here with Trinidad and Tobago currency.

**Sen. Dr. Gopeesingh:** But you are saying that you assume that it may be \$1,000?

**Sen. Gift:** I have not seen any wording, Madam Chairman, with any equivalency articulation. I have not seen that.

**Sen. Seetahal, S.C.:** You see, it does not matter. What the Minister seems to say because other people have \$1,000, we should have it. But my point is not that we could die with the \$1,000, Madam Chairman, but I do not think it is a good enough answer, I do not think it is respectful, in my respectful view, to say it is a policy decision and stop there. I know from reading Guyanese law, that penalties are not Guyanese \$1,000 and TT \$1,000, they might be \$500,000 or \$200,000; I am familiar with their law. So all I am asking is, is there some reason and should we not be consistent with our own legislation and say \$2,000 or twelve months? That is it.

**Sen. Jeremie:** Well, it is a regional institution which is domiciled in Trinidad and Tobago. The Minister's position on policy is not a rationale; I do not think it could be described as disrespectful either. What is the difference between \$1,000 and \$2,000?

**Sen. Seetahal, S.C.:** I think the difference between \$1,000 and \$2,000 is that it is consistent with what we normally have. In our legislation, the Litter Act penalty is \$1,000 or six months. In other pieces of legislation we have \$2,000 or \$3,000 or 12 months, such as the Summary Offences Act. That is my point really.

**Sen. Jeremie:** We are not violently opposed to—the Minister's point is \$1,000 or 12 months, he said that is informed by a policy position which applies across the board.

**Sen. Dr. Gopeesingh:** He said, he assumes.

**Sen. Jeremie:** He says that it is informed by a policy position which applies across the board. It is not a legal point—*[Interruption]*

**Hon. Senator:** He still has to justify because he said he assumes.

**Sen. Prof. Ramchand:** How can you work out that it applies across the board and we do not have—

**Sen. Jeremie:** Well, yes.

**Sen. Dr. Gopeesingh:** Is it equivalent?

**Sen. Prof. Ramchand:** When we say \$1,000 and Jamaica says \$1,000 is it something different?

**Sen. Jeremie:** Is it the will of the Senate that we should increase it to \$2,000?

**Madam Chairman:** Let me put it. I will put the present one— [*Interruption*]

**Sen. Seetahal, S.C.:** Let us make no problem. Let us put it to \$2,000 and make it reasonable.

**Sen. Gift:** If colleagues are pressing for an increase, I have no problem with that, Madam Chairman.

**Madam Chairman:** All right. So you agree then that we go to \$2,000?

**Sen. Seetahal, S.C.:** So it would be \$2,000 and—

**Madam Chairman:** Let me read the amended clause, then I would take a vote on it:

“Any person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.”

*Question put and agreed to.*

**Sen. Seetahal, S.C.:** Before we end 7(3), I just wanted to deal with 7(2). Just to ask a question, Madam Chairman, it is just for the practicalities. I see here a facsimile copy of the official seal shall be published in the *Gazette*. I just wanted to know why facsimile, that is my question. Rather than a photocopy, is there some reason that— [*Crosstalk*] Why must it be a facsimile copy? What this means, is that you have to fax a copy of the seal and then this is published in the *Gazette*. That is what it means literally. And my question is, why facsimile copy of the official seal, just a question, rather than a photocopy or something like that? I could not grasp why it was like that. I do not normally see this.

**Sen. Prof. Ramchand:** I do not think facsimile is related to FAX.

**Sen. Seetahal, S.C.:** It is, fax is short for facsimile.

**Sen. Gift:** No, no, no.

**Sen. Seetahal, S.C.:** I just want to know.

**Sen. Gift:** A facsimile is a signature on a seal that may not be the originally signed—

**Sen. Seetahal, S.C.:** So that is what you mean here?

**Sen. Gift:** Yes.

**Sen. Dr. Gopeesingh:** In the age of electronics, why do you specify—that could be sent by email—

**Sen. Seetahal, S.C.:** I just wanted to get it down in the record, thank you.

**Sen. Dr. Gopeesingh:**—electronic media as well. Why in the age of electronics do you specify facsimile when it could be sent by electronic processes as well? [*Crosstalk*]

**Hon. Senator:** It is retrograde legislation. They will laugh at us.

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clause 8 ordered to stand part of the Bill.*

*Schedule 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.*

**CARIBBEAN EXAMINATIONS COUNCIL  
(PRIVILEGES AND IMMUNITIES) BILL**

*Order for second reading read.*

**The Minister of Foreign Affairs (Sen. The Hon. Knowlson Gift):** Madam President, I beg to move,

That a Bill to give effect to the protocol on privileges and immunities of the Caribbean Examinations Council, be now read a second time.

I will start with the purpose of the Bill. The Bill before the honourable Senate is entitled the Caribbean Examinations—

**Sen. Dr. Gopeesingh:** Madam President, I think this is being sprung on us, the Caribbean Examinations Council. We were not told that this was going to be debated today and I find it very strange. I think there is something that is fundamentally wrong with this. We were told that the two Bills were going to be



debated, which we have already debated and this is being sprung on us at the moment. We are surprised, and I do not want to take part in this deliberation at all and I stand firm, and I think my colleagues will want to support that because this is the first time we are hearing that.

**Sen. Jeremie:** What is the purpose of an Order Paper?

**Sen. Dr. Saith:** It is on the Order Paper and it was my intention to have the Minister present the Bill and adjourn. I did not expect [*Interruption and crosstalk*]

**Sen. Jeremie:** The Order Paper sets the business for the day. That is the purpose of an Order Paper.

**Sen. Dr. Saith:** If however he needs to have the presentation made when he could reply, I am prepared to adjourn. But we still have half an hour of official time and I thought that we would use it.

**Sen. Dr. Gopeesingh:** I am sorry for my colleague opposite. I think this is an unpardonable sin committed on the Senate. It is not warranted. The Caribbean Examinations Council has a lot to be debated on it, [*Crosstalk*] but if you said that you want to introduce it and then adjourn, introduce it and we will debate it subsequently.

**Sen Jeremie:** I was about to clarify the purpose of an Order Paper.

**Madam President:** That is all right. Minister, go ahead. [*Crosstalk*]

**Sen. The Hon. K. Gift:** Thank you, Madam President. As you can see there is a lot of energy on this side. [*Laughter*] Let me begin with the purpose of the Bill. The Bill before this honourable Senate is entitled, the “Caribbean Examinations Council, (Privileges and Immunities) Act, 2006”. This Bill is intended to give domestic legal effect to the protocol on the privileges and immunities of the Caribbean Examinations Council, which we would refer to as the Protocol.

The Caribbean Examinations Council, which is the Council, was established in 1972 by an agreement signed by the Heads of Government of the Commonwealth Caribbean Countries in which Article VIII of the agreement provides as follows:

The legal capacity, privileges and immunities to be recognized and granted by participating Governments in connection with the Council shall be laid down in a Protocol to this agreement.

Following the adoption of the Protocol by the participating governments, Trinidad and Tobago signed a protocol on June 17, 1997. Madam President, all of the privileges and immunities to be granted to the council are available under Part 1 of Schedule 5 of the Privileges and Immunities (Diplomatic, Consular and

International Organizations) Act. However, under Part II of Schedule 5 of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act, members, officials and experts on mission on behalf of the Council are only afforded immunity from legal process, in respect of words spoken or written and all acts done by them in the course of the performance of their official duties.

**6.00 p.m.**

Madam President, other immunities and exemptions, such as inviolability of all papers, documents and materials related to the work of the Council and immunity from inspection and seizure of personal and official baggage, except in cases of *flagrante delicto*, are not included in the Fifth Schedule to the Act.

Since Part V of the Act is not wide enough to grant all of the privileges and immunities contained in the Protocol to the members, officials and experts on mission on behalf of the Council, it has become necessary to enact primary legislation to fulfil the obligation assumed by Trinidad and Tobago in respect of the privileges and immunities to be enjoyed by these persons.

Article XII(I) of the Protocol recognizes that the privileges and immunities granted therein are in the interest of the Council and not for the personal benefit of persons entitled thereto.

Articles IX and X provide for the privileges and immunities of the members and officials of the Council, while Article XI provides the same in respect of experts on mission on behalf of the Council.

It is important to understand that in granting privileges and immunities to the Caribbean Examinations Council and its officers, members and experts on mission, this Government is not compromising the sovereignty of the Republic of Trinidad and Tobago. In this regard, Article XII(3) of the Protocol specifically provides as follows:

“Without prejudice to the privileges and immunities accorded by this Protocol, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of participating Government parties to this Protocol and not interfere in the internal affairs of the territories concerned.”

The Protocol, according to Article XVI, shall enter into force on the deposit of the instruments of ratification by three-quarters of the participating governments. By August 2005, although 12 Member States had signed the Protocol, only five States: Grenada, Jamaica, St. Kitts and Nevis, St. Vincent and the Grenadines and Trinidad and Tobago had deposited instruments of ratification with the Caricom

Secretariat. Trinidad and Tobago's instrument of ratification was deposited with the Caricom Secretariat on August 08, 2005. The Protocol has, therefore, not yet entered into force.

The main provisions of the Bill are as follows: Clause 2 defines the terms "Caribbean Examinations Council Agreement" and the word "Council" used in the Bill.

Clause 3 provides for the grant of privileges and immunities for the Caribbean Examinations Council in Trinidad and Tobago. This clause stipulates that the Council shall be accorded inviolability of its premises and archives; exemption from taxes, customs duties and import or export duties and the right to dispatch or receive papers and correspondence by couriers in sealed bags. The Council shall enjoy immunity from legal process and from search, acquisition, confiscations, expropriation and other forms of interference whether legislative, administrative or judicial in respect of property, funds and assets. These privileges are consistent with the provisions of Part I of the Fifth Schedule of the Act.

Clause 4 provides for the privileges and immunities to be enjoyed by members of the Council. It provides that members of the Council shall enjoy, inter alia, immunity from legal process and personal arrest or detention and inviolability of papers, documents and materials related to the work of the Council. These immunities are in conformity with clause 1 of Part II of the Fifth Schedule of the Act. The immunity from inspection and seizure of personal and official baggage shall not, of course, extend to cases of *flagrante delicto*.

Clauses 5 and 6 provide for the privileges and immunities to be enjoyed by the officials of the Council and experts on mission on behalf of the Council. The immunity from legal process, in respect of words spoken or written or acts done in the course of the performance of official duties provided to the officials and experts on mission, is functional in character and consistent with clause 1 of Part II and Part III of the Fifth Schedule to the Act. The immunity from personal arrest or detention in relation to acts performed in the official capacity and the inviolability of official papers are also addressed in clauses 5 and 6 of the Bill.

Clause 7 confers legal capacity on the Council and provides that the Council shall possess the legal capacity necessary to carry out its functions and fulfil its purposes and, in particular, the capacity to—

- “(a) contract;
- (b) acquire and dispose of movable and immovable property; and
- (c) institute legal proceedings.”

Clause 8 provides for the settlement of disputes and requires the Council to make appropriate provisions for the proper settlement of—

- “(a) disputes arising out of contracts and other disputes of a private law character to which the Council is a party; and
- (b) disputes involving any member or official of the Council or an expert employed in missions on behalf of the Council who, by reason of his official position, enjoys immunity, if such immunity has not been waived by the Council or the Registrar, as the case may be.”

This provision is intended to ensure that nationals of Trinidad and Tobago doing business or otherwise associated with the Council, its members and officials or experts, are in no way disadvantaged by the immunities enjoyed by that body and those persons.

A list of amendments has been circulated to hon. Senators. The amendments involve the deletions of paragraph (c) of subclause (1) in clause 5 and paragraph (b) of subclause (1) of clause 6 and the consequential renumbering of those provisions. In addition, the words "facilitation in respect of its communications" in paragraph (e) of subclause (1) of clause 3 are to be deleted and replaced by the following words: "the right to dispatch or receive papers and correspondence by courier in sealed bags."

This amendment is proposed because once the organization, in this case the Caribbean Examinations Council, is given the right to communicate by courier in sealed bags, it is not necessary to confer on individual members, officials or experts, a similar privilege, because anytime such persons exercise this privilege to dispatch or receive papers and correspondence by courier in sealed bags, they would be either through or on behalf of the organization itself.

In conclusion, this Bill seeks to give domestic legal effect to the Protocol. It serves not only to clothe the Council with legal personality, but also to assist it to function efficiently and to fulfil the purposes envisaged for it in the 1972 agreement. As is the case of other international organizations operating in Trinidad and Tobago, the privileges and immunities contained in this Bill provide the Council with a certain minimum freedom of operation as well as legal security for its assets, offices, members and officials.

Madam President, it is to be noted that an order made pursuant to Part V of the Privileges and Immunities (Diplomatic, Consular and International Organizations) Act of Trinidad and Tobago, Chap. 17:01, would not be sufficient to confer privileges and immunities contained in the Protocol on the Caribbean Examinations Council, its members and officials of the Council as well as experts on mission on behalf of the Council.

This Bill is part of the process to give domestic legal effect to the Protocol on the privileges and immunities of the Caribbean Examinations Council called "The Protocol", by putting in place the legal infrastructure required for the Council to achieve the goals set for it. The Government of Trinidad and Tobago is demonstrating its commitment to do its part to facilitate the work of the Council. I, therefore, unhesitatingly recommend that the hon. Senators of this Senate support this Bill.

Madam President, I beg to move.

**Madam President:** I just wanted to draw your attention to the fact that what we have circulated here is the already amended version of the Bill.

**Sen. The Hon. K. Gift:** This Bill was passed in the House.

**Madam President:** What we have is the amended version. I thought I heard some reference to amendments. Sen. Dr. Gopeesingh.

**Sen. Dr. Gopeesingh:** He said amendments had been circulated. Those are the amendments that came from the Lower House.

**Sen. The Hon. K. Gift:** It is the amended Bill.

#### ADJOURNMENT

**The Minister of Public Administration and Information and Minister of Energy and Energy Industries (Sen. The Hon. Dr. Lenny Saith):** Madam President, I beg to move that the Senate be now adjourned to Tuesday, September 12, 2006 at 1.30 p.m.

At that time—the Bill would be circulated appropriately before—we would deal with the Supplemental Appropriation Bill which is now before the Lower House and would bring it up here on Tuesday. On completion of that, we would continue debate on this Bill. I am giving Sen. Dr. Gopeesingh enough time to prepare.

**Madam President:** Hon. Senators, are we taking this matter on the adjournment? [*Crosstalk*] [*Interruption*] No? [*Crosstalk*]

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6.12 p.m.*