THE

PARLIAMENTARY DEBATES

OFFICIAL REPORT

IN THE FIRST SESSION OF THE SIXTH PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO WHICH OPENED ON JANUARY 12, 2001

SESSION 2001 **VOLUME 2**

HOUSE OF REPRESENTATIVES

Friday, June 08, 2001

The House met at 1.35 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received correspondence requesting leave of absence from today's sitting for the Member for Point Fortin (Mr. L. Achong) and the Member for Port of Spain South (Mr. E. Williams). Leave, which they have requested, is granted.

CONDOLENCES

(MR. WOODFORD MENTOR)
(MR. JOHN REGINALD FITZROY "ROY" RICHARDSON)

Mr. Speaker: Hon. Members, it is with sadness that we have learned of the passing of Mr. Woodford Mentor, the father of the Member for Ortoire/Mayaro. On behalf of the Members of this House, I wish to extend deepest condolences to the hon. Member and to the family and friends of Mr. Mentor. I have requested the Clerk to forward a letter of condolence on our behalf.

Also Members, it is with deep shock and sorrow that we have learned of the untimely passing of one of our former Members, Mr. John Richardson. Mr. John Richardson was a prominent lawyer in Point Fortin. He was also the second Vice-President of the Point Fortin Chamber of Commerce, a well-loved and respected citizen.

"Roy", as he was affectionately called, served this honourable House as an elected Member for Point Fortin from 1966 when he served as Deputy Speaker until 1971 during Dr. Eric Williams' regime. In 1972 he was appointed Leader of the Opposition. He subsequently appointed six Senators, one of whom is today the hon. Prime Minister of Trinidad and Tobago. He leaves to mourn his son, Lawrence, and a daughter, Eugenia.

On behalf of the House, I wish to convey sincerest condolences to his son and daughter, other relatives and friends. I have instructed the Clerk to forward a letter

of condolence to the family on our behalf. Are there any Members from either side who wish to extend any condolences?

The Minister of Integrated Planning and Development (Hon. John Humphrey): [*Desk thumping*] Mr. Speaker, it was with shock that we all learned of the tragic passing of Mr. John Reginald Fitzroy Richardson. That is the second Richardson who has died in tragic circumstances, both of whom were Members of this honourable House. He was affectionately known by all as "Roy", so we speak of Roy Richardson and we know we are speaking of the former Member for Point Fortin.

Mr. Richardson had served the House in many capacities. You have mentioned a few of them, Mr. Speaker, but, in addition to those that you mentioned, he had served the government, at the time that he was a Member of this honourable House, as Parliamentary Secretary in the Ministry of Local Government, and that was with effect from May 13, 1970. He was also appointed Parliamentary Secretary in the Ministry of Finance with effect from November 20, 1970. He was appointed Parliamentary Secretary in the Ministry of Planning and Development with effect from May 27, 1971 until January 21, 1972. He also represented the Parliament at many of the conferences that we have learned, with experience, Members of Parliament from time to time are called upon to attend—parliamentary conferences held in different parts of the world.

He being the type of individual that he was, the then Prime Minister appointed him and, of course, the House appointed him to chair a couple of select committees, both dealing with Private Bills for incorporating religious organizations, and I think that tells us about the quality of the individual. He chaired a Special Select Committee on a Private Bill entitled "An Act for the incorporation of Bethel Evangelistic Missions of Trinidad and Tobago". He served again as well on a committee on a Private Bill, "An Act to provide for the incorporation of a body to be known as the Incorporated Trustees of the Church of Our Lord Jesus Christ of the Apostolic Faith of Trinidad and Tobago".

Mr. Speaker, Roy Richardson died in very, very tragic circumstances and I think that that should bring home to all of us the possibility of the risk that we take in offering ourselves as representatives of the people of our country; and he was not the first. In fact, every time we come to the Parliament we are reminded by the portrait of Mr. Leo de Vignes who died as a result of what in fact occurred in this House. I think, Mr. Speaker, it would serve us well to ponder the realities of the lives that place us all in the risks that we face with those lives.

He has left a family and, Mr. Speaker, on behalf of the Government I would wish to offer deepest condolences to his bereaved family, to his many, many

friends and, in the constituency of Point Fortin, to his many supporters who we all know he had. May he rest with the Almighty in peace and enjoy eternal life. Thank you, Mr. Speaker. [*Desk thumping*]

Mr. Patrick Manning (*San Fernando East*): [*Desk thumping*] Mr. Speaker, two weeks ago I met in New York a gentleman whom I had not seen for 29 years. He is a Tanzanian and now holds the position of Ambassador Extraordinary and Plenipotentiary in the Tanzanian Mission in New York; however, 29 years ago he was a parliamentary secretary in the Tanzanian government. I met him in Malawi where I attended my very first Commonwealth Parliamentary Association conference in 1972.

When I met him in New York I was reminded of the delegation that attended that conference and that delegation, Mr. Speaker, included the Member for Point Fortin at the time, Mr. Roy Richardson. Little did I know that, just a week later, Mr. Richardson would come to my attention again, but in circumstances that are very tragic and circumstances that we hope will never repeat themselves.

Mr. Speaker, in travelling to Malawi with Mr. Richardson and participating in a conference with him, I got to know him a little better than would otherwise have been the case, had we not gone to that conference. I well remember the encouragement that I received from him at the time. I was a very young, inexperienced parliamentarian, unsure of himself. I got a lot of encouragement from him, not just in Malawi where, at the time, I presented a paper, but here in Trinidad and Tobago on our return because we struck up an empathy that subsisted unto this day.

I saw Mr. Richardson last about a month ago in Point Fortin on the occasion of Borough Day and I had to remark to him how well he looked. He reminded me that he was, I think it was, 78 years old at the time, and that he really looked forward to many, many, many more years of life. Regrettably, Mr. Speaker, these things are not in our hands. They are in the hands of others, and today we find ourselves in the situation where we have to mourn his passing.

Mr. Speaker, I think that Mr. Roy Richardson would be best remembered for the period in 1972 when, in circumstances where the PNM had won 36 seats, there was no Opposition in Parliament and there was a perceived threat to the country's democracy, the system under which we operate being one that assumes the existence of a Government and an Opposition. Mr. Richardson is going to best be remembered for assuming the mantle of Opposition in 1972 and bringing back some credibility to the Parliament of Trinidad and Tobago in the context of the system of government that we operate. Even if, at that time, I did not fully

appreciate the significance, not just of the move but of his work between 1972 and 1976, that came home very forcefully to me in 1987. I was appointed Leader of the Opposition with only three of us in the Lower House. Between 1987 and 1990, Mr. Speaker, I understood very well what it meant to be a leader of a very small Opposition with a government that has an overwhelming majority. I think Mr. Richardson will be remembered most for that period of time for the actions he took in preserving the country's democracy and the parliamentary system under which we operate.

Mr. Speaker, I well remember again Mr. Richardson talking in the Parliament on almost every Bill—just had to do it. If he had to provide an effective Opposition, he had to do it. It was himself and, a little later on, the Member for Siparia, Dr. Horace Charles, both of whom teamed up and provided an Opposition at that time. Mr. Speaker, Mr. Roy Richardson has departed this life in very tragic circumstances. I can only hope that those in government today take note of the rising crime situation in the country, which has led to Mr. Richardson's death at this time. They should not let his death be in vain but let it be an occasion for action on the part of the authorities in whose hands executive authority resides. May the Lord have mercy on the soul of Mr. Roy Richardson. [*Desk thumping*]

Mr. Speaker: Hon. Members may we stand and observe a moment of silence.

The House of Representatives stood.

PAPER LAID

Annual audited financial statements of Taurus Services Limited for the financial year ended September 30, 2000. [*The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj)*]

To be referred to the Public Accounts (Enterprises) Committee.

1.50 p.m.

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Mr. Nathaniel Moore (Tobago East):

Tobago House of Assembly
(Dispute Resolution Commission—Recommendations)

25. In reference to the report of the Dispute Resolution Commission appointed under section 56 of the Tobago House of Assembly Act, No. 40 of 1996 and

dated September 14, 2000 which was approved by the House of Representatives on October 25, 2000:

(a) Would the Minister indicate and explain which of the seven (7) recommendations in the summary of the report have been implemented by the Government?

(b) For each of the recommendations still to be implemented (if any) would the hon. Minister:

(i) explain why it is not implemented;

(ii) say when it is scheduled for implementation?

(c) Since the triggering of the action of the Commission was particularly in reference to funding of the THA for the years 1998, 1998—1999 and 1999—2000, how much does the Government consider itself indebted to the Tobago House of Assembly for those years?

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I wish to move that the Government be permitted to answer question No. 25 in two weeks' time. Apart from question No. 25, the Government will answer questions Nos. 19 and 20 today.

Question, by leave, deferred.

Trinidad And Tobago Coast Guard (Stand By List)

19. Mr. Kenneth Valley (*Diego Martin Central)* asked the Prime Minister and Minister of National Security:

(a) Would the Minister kindly confirm whether the following persons whose names are listed on the "Stand By" list (Appendix III) in the hon. Minister's response to question No. 8, were, in fact, enlisted as part of the original intake on March 23, 2001 and assigned the Coast Guard identification numbers as indicated:

Coast Guard Number	Name
5944	John, Emerald
5945	Dougan, Andre
5970	Williams, Marvin
6015	Phillip, Colin
6018	Williams, Stevorn

(b) If the answer is in the affirmative for any of the above, could the Minister state the name of the person replaced?

The Prime Minister and Minister of National Security (Hon. Basdeo Panday): With respect to question No. 19, Mr. Speaker, the Commanding Officer of the Trinidad and Tobago Coast Guard has advised that all five recruits identified by the Member for Diego Martin Central passed the written entrance examination and advanced to the medical examination stage at which they were successful.

Of these five persons, however, the undermentioned three persons whose names appear on the Stand By list were, in fact, listed as part of the original intake on March 23, 2001 and should have been deleted from the Stand By list, but were inadvertently not deleted. Those persons were: Andre Dougan, Marvin Williams and Colin Phillip.

The other two candidates on the Stand By list, Emerald John and Stevorn Williams were replaced by Anson Charles and Gerard John.

Mr. Valley: Could I have a supplemental please, Mr. Speaker, on question No. 19? [*Interruption*] Thank you.

I wonder whether the hon. Prime Minister and Minister of National Security could inform the House if these persons replaced others, how were they recruited on the original date, March 23?

Hon. B. Panday: As the hon. Member is well aware, all this information is on files and comes from the Commanding Officer. I shall be willing to answer his question, if he would put it in writing, and I will get information from the Commanding Officer.

Trinidad and Tobago Coast Guard (Enlistment)

20. Mr. Kenneth Valley (*Diego Martin Central*) asked the Prime Minister and Minister of National Security:

(a) Would the Minister kindly state the date on which the following persons, whose names are listed as forming part of the original intake of 104 recruits in Appendix II of the reply to question No. 8, were enlisted into the Coast Guard:

1. Nigel Baptiste
2. Joel Boucaud

3. Marlon Cayonne
4. Anson Charles
5. Michael Edwards
6. Selwyn George
7. Edric Hargraves
8. Louis Martin
9. Ezekiel Fraser
10. Gerard John
11. Richard Millett
12. Claude Adams

(b) Would the Minister also indicate their coast guard numbers and the branch to which they were assigned?

(c) Further, if any of the above persons was not enlisted, could the Minister say why and also inform the House whether anyone has been designated as a replacement?

The Prime Minister and Minister of National Security (Hon. Basdeo Panday): With respect to question No. 20, the Commanding Officer of the Trinidad and Tobago Coast Guard has provided the following information, with respect to the 12 candidates identified by the Member for Diego Martin Central. Mr. Speaker, I shall call first the names, second, the date of enlistment, the regimental number assigned and the branch to which that person has been assigned.

Nigel Baptiste	10/5/2000 - 5933—Seaman
Joel Boucaud	Not listed, no regimental number assigned—Seaman
Marlon Cayonne	10/5/2000 - 5934—Seaman
Anson Charles	23/3/2001 - 5944—Seaman
Michael Edwards	10/5/2000 - 5935—Seaman
Selwyn George	10/11/1999 - 5931—Seaman
Edric Hargraves	10/5/2000 - 5936—Seaman
Louis Martin	Not listed, no number assigned—Seaman

Ezekiel Fraser	Not listed, no number assigned—Mechanic
Gerard John	Did not turn up for enlistment, no number assigned—mechanic
Richard Millett	Not enlisted, no number assigned—Writer
Claude Adams	10/5/2000 - 5932—Seaman

Of the 12 persons identified above, the undermentioned six persons were not enlisted for reasons stated against their names.

Joel Boucaud	Failed final screening, not replaced
Anson Charles	Left on his own request
Louis Martin	Failed final screening, not replaced
Ezekiel Fraser	Failed final screening, not replaced
Gerard John	Failed to report for enlistment on March 23, 2001
Richard Millett	Failed final screening, not replaced.

Perhaps, Mr. Speaker, I should be grateful to the Member for Diego Martin Central for his voluntary act of discovery in placing before this honourable House his evidence in the matter at issue. How intricate is the web one weaves when first one practises to deceive. Maybe the hon. Member for Diego Martin Central will now produce the evidence of his malevolent allegation against the Prime Minister.

Thank you.

Mr. Valley: Mr. Speaker, I think I have about two or three supplementals. The first one: The Prime Minister has just informed us that Gerard John failed to turn up, but in the answer to the first question he informed us that Gerard John was a replacement for Stevorn Williams. Gerard John was supposed to be a replacement for Stevorn Williams. In question No. 20 he is saying that he failed to turn up and he was not, in fact, recruited. I wonder whether the Prime Minister can explain.

Hon. B. Panday: If the Member can be kind enough to put his question in writing, I shall get the information from the Commanding Officer of the Coast Guard. [*Crosstalk*]

Mr. Valley: Mr. Speaker, the second supplemental: I wonder whether the Prime Minister could explain to the House how the following persons who were, in fact, from his information, recruited in the year 2000 and one in 1999, managed

to be shown on his list of recruits as coming in on March 23: Nigel Baptiste, whom he claimed was, in fact, recruited on May 10, 2000; Marlon Cayonne, May 10, 2000; Selwyn George who was recruited on November 10, 1999; Edric Hargraves, who was recruited on 10 May, 2000; Claude Adams, who was also recruited on 10 May, 2000?

I wonder whether the Prime Minister could explain how on the list that he provided of the 104 persons who were supposed to be recruited, why were they shown on this list as being recruited on March 23?

Hon. B. Panday: As the Member very well knows, the Minister of National Security does not run the day-to-day affairs of the Ministry of National Security—[*Interruption*]

Mr. Speaker: Order please!

Hon. B. Panday: —and the Coast Guard. If he is willing to put that in writing he will be provided with an answer which I shall obtain from the Commanding Officer of the Coast Guard.

Mr. Manning: In other words, Pontius Pilate.

Mr. Valley: No further supplementals, Mr. Speaker. [*Crosstalk*]

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, the Government—[*Interruption*] [*Desk thumping*]

Mr. Panday: I hope I will be able to return the compliment after your elections.

Mr. Bereaux: We have no beast of burden on this side.

Mr. Assam: Have you looked in a mirror? [*Laughter*]

Mr. Bereaux: We have no beast of burden; self-confessed, they rode on your back. I want to ride you when you go outside. [*Crosstalk*]

ARRANGEMENT OF BUSINESS

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, today the Government will do Bill No. 2 first and then Bills Nos. 1 and 3.

Mr. Speaker: I take it that Bill No. 2 is piloted by the Minister of Communications and Information Technology.

FREEDOM OF INFORMATION (AMDT.) BILL

Order for second reading read.

The Minister of Communication and Information Technology (Hon. Ralph Maraj): Mr. Speaker, I beg to move,

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

You will recall that this Act was assented to on November 4, 1999. Parts I and II of the Act were proclaimed on November 20, 2000 and April 30, 2001, respectively, and Part III will be proclaimed on June 30, 2001.

Through this Act, as you know, and the national community is aware, the Government is fulfilling its promise to deepen the democracy. We all know that democracy is a process and we must all do our best to deepen democracy, to promote transparency and accountability in Government affairs and to also encourage public participation in the formulation of national policy, given the view that good governance encompasses that. Of course, this Government is also very much committed to the participatory process of our democratic process.

The Act gives the public the right, with exceptions, of course, to access government-held information. The implementation of the Act challenges the principles of confidentiality and secrecy, which are the traditional hallmarks of the public service, as you know. These formed the base upon which we approached public information in the past, and the paradigm, therefore, is being shifted from secrecy to openness and transparency.

The public has a right to know how the Government and public officials conduct their business, and they are, in fact, accountable to the people. Its underlying purpose is the public good or as Brutus would have said in Julius Caesar, "the general good". [*Interruption*]

Mr. Manning: Is that all that Brutus did?

Hon. R. Maraj: No, he did other things, but he was a very good orator as well. The Bill, as you know, Mr. Speaker, seeks to amend sections 3 and 25 of the Act. These are two sections dealing with the definition of the "Minister". In section 3 it seeks to define that the Minister who is responsible, really, is the Minister of Communications and Information Technology and in section 25, because of security reasons, it seeks to define unequivocally that the Minister who we are referring to is, in fact, the Minister of National Security.

It has become very important for us to make this amendment, because as you know, the Government has realigned portfolios in an attempt to get greater cohesion and focus. This has been very, very necessary. When the Bill was, in fact, passed in 1999, Wade Mark was the Minister responsible for the public service, as you would recall.

As you know, Mr. Speaker, the entire Cabinet has been realigned and now there is a new Minister. We are seeking, through this amendment, to ensure through clause 3 that the Minister of Communications and Information Technology is the one responsible for all these issues that relate to him.

2.05 p.m.

With respect to the matter of the amendment concerned, the certification for national security documents should be applied. Section 25(2) states, and I quote:

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

Section 25(3) requires that the Minister issue a certificate certifying that the document is an exempt one. All these issues have to deal, naturally, with the Minister of National Security. In all practicality, the only Minister who will be able to make this determination is the Minister of National Security. He would have the requisite knowledge and information and he alone will be in a position to make such a judgment and, accordingly, the object of this amendment is to allow decisions concerning sensitive documents to be dealt with by the Minister of National Security himself.

Therefore, Mr. Speaker, this really is the purpose of these amendments to sections 3 and 25 of the Act which was passed in 1999. As the Government moves into the future, realignments are done, new decisions are made, and I have no doubt, Mr. Speaker, that these amendments would find approval by both sides of the House.

Mr. Speaker, I beg to move.

Question proposed.

Mr. Fitzgerald Hinds *(Laventille East/Morvant)*: Thank you very much hon. Members. What appears before us today for debate appears on the face of it to be rather simple amendments to a Bill that was debated and passed in this

honourable Chamber since 1999. Since that time, and particularly in the last general election, I recall hearing the Member for Couva North, the Prime Minister, and the Member for Couva South, the new deputy political leader—notwithstanding the discomforts of the Prime Minister—I remember them and other Members on the other side speaking very loudly to the national community about the fact that they had passed this very important piece of legislation, the Freedom of Information Act, which allowed members of the public to access information to enhance accountability of public officials.

It was about a month ago, before the proceedings of this House had to be disrupted for good reason, I filed a question in this House asking the Government to indicate all the legislation that it had passed but was not yet proclaimed, and the answer to that question from the hon. Attorney General, the Member for Couva South, was revealing indeed. I do not know if it was carried in the media, but if it was, the public would have seen that that piece of legislation and many other pieces of legislation passed by this Government were all about words and window dressing, and no effort was given to them and, therefore, the boasts that they would have heard from the platforms did not become real.

We learned in answer to that question, and the Minister said today, that part of the Bill was proclaimed in April of this year and the other part is yet to be proclaimed. Since we are talking about accountability, we, as public officials must also account to members of the public and I am sure—because I was not supposed to be speaking on this Bill. We had expected that the Member for Diego Martin West would have been speaking on this Bill, but unfortunately, the Member for Diego Martin West is not here and the public of Trinidad and Tobago would like to know why not. So in the spirit of accountability, that is a matter that the Minister who piloted this piece of legislation, the Prime Minister, and the Attorney General should attempt to answer. They must account to the people, and the taxpayers who pay our salaries and who put us here to speak on their behalf. They would want to know why the Member for Diego Martin West is not here today, and I would like to know that too, and until that question is properly answered—

Mr. Speaker: Take your seat.

Mr. F. Hinds:—we have serious problems.

[*Mr. Hinds walks out the Chamber*]

Mr. Speaker: Take your seat. [*Interruption*] Who is next please?

Hon. Members, let me call to the attention of the House that the Member appears to be questioning a ruling of this honourable House at the last sitting at which Members were here. The Speaker attempted to caution the Member, and while I was on my feet, I instructed him to take his seat so that I could caution him and the Member chose to walk out of this honourable House while I was on my feet. Here again is another demonstration of disrespect for the Chair, and having done so, I am suspending that Member from the rest of today's sitting under Standing Order 43(3) whereby he has shown disrespect and disregard for the Speaker while he was on his feet and, therefore, that Member should take leave of this Chamber forthwith.

The Member for Laventille East/Morvant has been suspended from the rest of today's sitting as a result of his disrespect for the Chair, the Speaker being on his feet.

The Minister of Communications and Information Technology (Hon. Ralph Maraj): Mr. Speaker, I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

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

House resumed.

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

INDICTABLE OFFENCES (PRELIMINARY ENQUIRY) (AMDT.) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

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

Mr. Speaker, the main purpose of this Bill is, as it says, to amend the Indictable Offences (Preliminary Enquiry) Act in order to address some of the

difficulties which we have had in implementing the amendment to the Indictable Offences (Preliminary Enquiry) Act of 1994.

When someone is charged for a serious criminal offence, there must be a preliminary enquiry by an examining magistrate. The accused person who appears before the magistrate is entitled to cross-examine witnesses, and the magistrate is entitled at the end of the prosecution's case to determine whether there is sufficient evidence for the accused person to be put on trial. Under the Indictable Offences (Preliminary Enquiry) Act, the accused person is entitled to give evidence and to call witnesses, and after the person is committed, he is then indicted and there is a trial before a judge and jury.

Mr. Speaker, there has been much debate as to whether preliminary enquiries should be abolished or not, and what has happened is that over the years there has been a raging debate in respect of that issue. In 1994, a previous administration decided to amend the Preliminary Enquiries Act, and the amendment provided for the magistrate to be able to do what is called paper committals, that is to say, if the accused person and his lawyer agreed—on the basis of the written statements which the police took, which are known as depositions—that the magistrate could commit accused persons to stand trial without having a full hearing before the magistrate.

Mr. Speaker, what has happened is that that amendment has not worked. It has not worked because under the legislation, when an accused person is served with a statement, or, the attorneys are served with the statements, they would first say that they agree that it should be a paper committal and then the accused person gets all the statements, the lawyer gets all the statements and then the legislation permits that the accused person or his lawyer could change his mind. Having got all the prosecution's statements, the accused person and his lawyer can then fully cross-examine the state witnesses and then call their own witnesses.

What this Bill attempts to do is try to prevent that from happening, so the Bill in effect says, if the accused person makes up his mind through his lawyers to be able to have a preliminary enquiry with the statements, then the accused person would not be able to change his mind and then have the cross-examination.

So the Bill provides two methods whereby a magistrate may commit an accused person on the basis of a paper committal. The first method is to make an order of committal without consideration of the statements. However, the magistrate cannot follow this method where the accused is not represented by counsel or where the counsel for the accused wishes to make a no-case submission.

Mr. Speaker, the first method that the Bill allows is for the magistrate to have all the statements and he can decide that he is going to make a committal order without reviewing all the statements.

2.20 p.m.

In those circumstances a lawyer would represent an accused person and the lawyer, obviously, would not wish to make a no-case submission. In those circumstances where the person is represented and the lawyer does not wish to make a no-case submission, then it would be decided that on that basis the magistrate could go ahead. If the accused person is not represented the magistrate cannot commit without a consideration of the statement. The second method is to consider the statement and allow both parties to make submissions and to even permit cross-examination.

I should also mention that the difficulties of this matter were recently drawn to the attention of the Court of Appeal. The Court of Appeal in the case of the *Director of Public Prosecutions v. Magistrate Thomas Felix*; Court of Appeal, No. 9 of 2000, indicated that there were deficiencies in the Act and that it should be corrected by amending the Act. What we are really doing with this piece of legislation is trying to produce a workable system of paper committal by amending the Act.

If one looks at the Bill one would see—Before we look at the Bill I think I should say something about the whole question of preliminary enquiries. In fairness to what has been happening throughout the Commonwealth, there is the feeling that preliminary enquiries in criminal matters are matters which Government should consider abolishing and the feeling is that you have two sets of hearings; one before the magistrate and one before the judge. Those of us who are familiar with the Grand Jury system in America would know that before someone is put on trial, before he is put in jeopardy, there has to be a hearing in which the person would be able to test the evidence. Although some countries in the Commonwealth have abolished preliminary enquiries, they are regarded as great safeguards to protect the rights of accused persons.

We in Trinidad and Tobago have been advised—I should say that there have been two reports that asked the Government to consider the abolition of preliminary enquiries. In 1996, as Attorney General, I commissioned Justice Deyalsingh to do a review of the criminal justice system with special reference to preliminary enquiries; and one of the recommendations he made was that Government should consider total abolition of preliminary enquiries.

Quite recently in the Mackay report on the administration of justice, the report found that the present system of preliminary enquiries is seriously deficient and recommended that paper committal be used generally.

At this stage the Government has opted to strike a balance and provide for preliminary enquiries and also to give to accused persons and their lawyers the right to decide whether they would want to have a paper committal or not; and if they are not going to have a paper committal, the magistrate would still be entitled to use the statements which are given by the police as evidence-in-chief of the witness, and the accused person would be entitled to cross-examine the witnesses who gave those statements. So we are trying to strike a balance in order to save time and also to protect the rights of accused persons.

If one goes through the Bill one would see that clause 1 provides the short title to the Bill. Clause 2 refers to the Indictable Offences (Preliminary Enquiry) Act that is being amended; and in clause 3, in relation to the amendment that we are facilitating and that I have just talked about, by effecting certain amendments. Mr. Speaker, there are going to be certain amendments at the committee stage, but may I read what they would state.

Under clause 3(2) we are inserting the following new subclause after the proposed clause 16C(9):

> "(10) Where the accused and his attorney at law accept the written statements given by the prosecution, the accused and his attorney at law shall sign Part A and Part B respectively of the form set out in the Third Schedule."

Mr. Speaker, it would be recalled that I submitted that when the statements are delivered under the present system, they still provide a machinery whereby the accused person or his lawyer can change his mind. What we want to do is to get the accused person and the lawyer to sign that he has accepted the written statements, pursuant to the section. So even if the person changes his lawyer, the fact of the matter is that the police would have served the statements and he would have accepted the statements, therefore he would not want to have a full enquiry.

The proposed section 16C would provide for the admissibility of written statements as evidence in a preliminary enquiry if certain conditions were satisfied. Among the conditions specified are that the statement, if signed by the witness, be sworn before a Clerk of the Peace, a Justice of the Peace and served on the defence as soon as practicable before it is tendered in evidence.

Section 16C proposes that the magistrate may also call the maker of a written statement to attend the enquiry to give oral evidence and once the defence accepts service of the written statements, they are precluded from requesting a preliminary enquiry by way of oral evidence. The proposed 16D would provide for the filing of a copy of the written statement with the Clerk of the Peace for the proper identification of any document or object referred to in a written statement and for the procedure to admit a written statement in evidence.

Clause 4 seeks to insert a new section after section 17A. The proposed 17B would provide for the tendering into evidence of a written statement of an accused person and for its admission as evidence in the trial.

Clause 5 seeks to insert five new sections after section 23. The proposed 23A would allow the magistrate to commit the accused person for trial without considering the contents of the written statement tendered under section 16C unless the accused is unrepresented or counsel for the accused makes a no-case submission.

The proposed section 23B would provide for committal based on the written statement tendered in evidence. The proposed section would allow the accused to submit that a prima facie case was not made out and for a rebuttal by the prosecution. The accused person would be entitled to cross-examine any witness and thereafter the magistrate may either commit or discharge the accused based on the consideration of the evidence.

Section 23C would deem a statement admitted into evidence; and the proposed 23D would retain an accused person's right to cross-examine in a preliminary enquiry. Section 23E would make it a summary offence for the maker of a written statement which is tendered in evidence wilfully to make a false statement or a statement which he believes is not true.

2.30 p.m.

The proposed clause 23F would provide that section 55 and Part VI of the Summary Courts Act shall not apply to proceedings under this amendment. What section 55 of the Summary Courts Act says is that:

> "If, upon the hearing of any complaint, it appears to the Court that the case ought to be tried as an indictable offence, all further proceedings in the case as for a summary offence shall be stayed..."

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

Clauses 6 to 9 would do certain consequential amendments, and clause 10 seeks to amend section 39(1) of the parent Act in relation to the consequential amendments that we have made to this Act.

This Bill is trying to redress, or remedy, the deficiencies in respect of preliminary enquiries which have been held under the 1994 Act. It is also trying to strike a balance to permit the magistrate to make committal orders without considering the evidence, on condition that the accused person is represented by an attorney in those matters, and on condition that the accused person, through his lawyer, does not want to make a no-case submission.

In other cases, the magistrate would be able to regard the written statement as evidence-in-chief and the accused person, through his lawyers, would be able to cross-examine and the lawyers would be able to make a no-case submission in respect of those matters, and the magistrate would consider those submissions and make a determination of the issues.

Mr. Speaker, I beg to move.

Question proposed.

Mr. Nathaniel Moore *(Tobago East)*: Mr. Speaker, I do not want to pose that I have the technical knowledge of these legal matters, but in all these matters there is always the social part of it, and I am here to support any measure that would assist in the speeding up of the delivery of justice. I think it is common knowledge in this country that the wheels of justice roll much too slowly and the courts are clogged up with many matters which are unresolved. So I think any measure which is designed to speed up justice should gain our attention and approval. I note that this Bill seeks to do just that, especially in the matter of these preliminary hearings, and to save some time. So I think it is a measure which we can approve.

There is one small area that I notice—and I am, perhaps, subject to correction—that I believe is a loophole and might cause some problems. I do not know to what extent it might defeat the purpose of the Bill itself. Clause 3(3)(c) states:

> "the statement contains a declaration by the person who made the statement to the effect that it is true to the best of his knowledge and belief and that he made the statement knowing that, if it were tendered in evidence, he would be liable to prosecution if he wilfully stated in it anything which he knew to be false or did not believe to be true;"

I am speaking particularly of the word "wilfully". I see it appears also later on in the Bill at proposed section 23E where it says:

> "A person who, in a written statement admitted in evidence in a preliminary enquiry by virtue of section 16C, wilfully makes a statement material in the preliminary enquiry which he knows to be false or does not believe to be true commits an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for seven years."

The point I am making is that, to me, if the word "wilfully" were not here in each case, it would remove a loophole. I am wondering how we could prove that the statement was a wilful one. If there is some particular way—I do not know—in law, by which you could determine a wilful statement—perhaps there is some other way—if not, then I could see that always some defendant could say that the statement is not wilful and his representative can always try to make a case to say it is not a wilful statement and it might lead to the uselessness of this particular subclause.

I do not know what the Attorney General will think about this suggestion, but my suggestion is just to leave out the word "wilfully" in each case. It would prevent people from finding out whether it is wilful or not. If there is some way, then I would like it to be drawn to my attention, so I would know that I was really mistaken in making this observation.

Thank you, Mr. Speaker.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, may I offer my sincere congratulations to the hon. Member for Tobago East for holding the fort for the Opposition here today again. It seems as though by the act of providence he has to assume this very important role, and it must be a great tribute to him and to the people of Tobago that he has been able to detect a very important point in the Bill. I hope that my explanation would give him some comfort.

In order to explain that, I have to indicate to him that, if you look at clause 3, it is saying, normally a person would have to go and give evidence in the court and that is called "examination-in-chief" and the evidence is under oath. What this is saying is that if a statement is given to the police in a certain form, and the certain form would include that the statement is made in the form of a statutory declaration, which is under oath, this statement would then be tendered in evidence, so the person does not have to go in the witness box and repeat the whole thing.

2.40 p.m.

If in that statement which can implicate persons, it is found that a person wilfully told an untruth or stated anything which he knew to be false or did not believe to be true, the witness can be prosecuted. There may be persons who give statements to the police and in some matters they may make an error, but it may not be done wilfully or deliberately. It may be because they honestly thought that it was raining at the time, or it was not raining, or wet at the time, or on a particular day, three cars were passing and the accused was in the second car, when in truth and in fact he was in the first car. There would be persons who would make errors. The criminal sanction is not to punish people who make errors, innocently, but to punish those who deliberately, knowing that it is untrue, make false statements, or do not have any basis to make the statement, but are making the statements.

The hon. Member can take it from me that in criminal law, in order to prove somebody has committed an offence along this line, it has to be proven that the person wilfully and recklessly made a false statement not caring whether it was true or untrue. That is the reason for having "wilful" in these matters, in order to ensure that persons who cooperate with the police and give statements do not end up before the court if they innocently make errors. This is intended to send a signal that the person is swearing or making a declaration. A statement must contain a declaration by the person who made it, to the effect that it is true to the best of his knowledge and belief, and he made the statement knowing that if it were tendered in evidence, he would be liable to prosecution if he wilfully stated anything he knew to be false, or did not believe to be true. I hope that satisfies the honourable Member for Tobago East.

With respect to the delays in the administration of justice, we on this side of the House share his concerns and are quite aware of the impact of justice delayed is justice denied. These are matters in which no government has total control. The way the system operates is that you have the judicial, executive and legislative arms. Having regard to some of the important principles which protect the independence of the judiciary, sometimes, it is not possible to take steps which the Government thinks it should take. Some of these matters are left entirely for members of the judiciary and the magistracy. What we can do as a government and a parliament if we see that the law needs reform or any area in which the court is having difficulty, we, as parliamentarians can change them.

The PNM administration in 1994, passed this law. It has not worked well. As a matter of fact, I have been told that there have been only three paper committals

since 1994. Here it is a law was passed in 1994 in order to have paper committals, but from then to now there were only three. It was expected that there would have been more. By not having paper committals there would have been delays in the administration of justice. We hope that if we plug these loopholes in the law, there would be a more expeditious system in the magistrates' courts. Lawyers and accused persons would know that if they decide to have statements from the police, in order to have a paper committal, they cannot change their minds and take the statements from the police and then decide to have a full cross-examination or hearing.

I beg to move.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

Clause 3.

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

Mr. Maharaj: Mr. Chairman, I beg to move that clause 3 be amended as follows:

1. In the proposed section 16C, in subsection (9)—
   (a) delete the words "or on behalf of the accused" and substitute the words "the accused and his attorney at law";
   (b) after the words "23A or 23B" add the words "and the Magistrate shall proceed to conduct the enquiry in accordance with section 23A or 23B".
2. Insert the following new subsection after the proposed section 16C (9):
   "(10) Where the accused and his attorney at law accepts the written statements given by the prosecution, the accused and his attorney at law shall sign Part A and Part B respectively of the form set out in the Third Schedule."
3. In the proposed section 16D, insert after subsection (7) the following new subsections:

"(8) The written statements admitted into evidence by the Magistrate under section 16C(1) are deemed to be the evidence in chief of each witness for the purpose of section 23A or 23B.

(9) Notwithstanding this section, an accused person is entitled to submit to the Magistrate that any part of a statement is inadmissible in evidence."

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 5 be amended as follows:

In the proposed section 23B—

(a) in subsection (2), after the words "otherwise directs" and "he directs" insert the words "the prosecutor" in both cases; and

(b) in subsection (4), delete the words "After the statement has been admitted" and substitute the words "After all the evidence including the written statements on behalf of the prosecution have been admitted and subject to the right of the accused under section 23D."

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 to 10 ordered to stand part of the Bill.

Clause 11.

Question proposed, That clause 11 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to move that clause 11 be amended by renumbering as clause 12.

Question put and agreed to.

Clause 11, as amended, ordered to stand part of the Bill.

New Clause 11.

Mr. Maharaj: Mr. Chairman, I propose a new clause 11 which reads as follows:

Insert after clause 10, the following new clause:

11. The Act is amended by inserting after the Second Schedule the following new Schedule:

"Section 16C

THIRD SCHEDULE

ACCEPTANCE OF WRITTEN STATEMENTS

Complaint No…..... of 20…..

…… (Complainant)

Against

…… (Accused person) on the charge

of ….……. (State offence briefly).

PART A

I ……..…… (name) of ……..…… (address) the accused person accept the written statements of the prosecution given to me this …… day of ……, 20……., pursuant to section 16C of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

……

(Signature of accused person)

PART B

I ……... (name) of ..……..…… (address) attorney at law for ……..……. (name of the accused person) accept the written statements of the prosecution given to me this …….. day of ……, 20……, pursuant to section 16C of the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01

…….

(Signature of attorney at law)"

New clause 11 read the first time.

Question proposed, That the new clause be read a second time.

Question put and agreed to.

Question proposed, That the new clause be added to the Bill.

Question put and agreed to.New clause 11 added to the Bill.

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

House resumed.

Bill reported, with amendments; read the third time and passed.

2.50 p.m.

COMPANIES (AMDT.) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That a Bill to amend the Companies Act, No. 35 of 1995, be now read a second time.

This Bill seeks to expand the definition of "shareholder" in section 107 of the Companies Act to include a person referred to in section 114(3) and (11) of the Securities Industry Act, 1995, as the owner of securities.

Part VIII of the Securities Industry Act, No. 32 of 1995 deals with the holding of financial securities, which are registered with the Securities and Exchange Commission by clearing agencies. Clearing agencies are natural or corporate persons that, inter alia, hold securities on behalf of true or beneficial owners or persons, acting on their behalf. For example, they may hold securities for the purpose of ensuring the repayment of debts as collateral. Section 114 of the Securities Industry Act provides generally for the disclosure of names, addresses and other relevant information with respect to the beneficial owners of securities of persons acting on their behalf by clearing agencies' issuers, that is, persons who issue securities; for example, banks and other companies listed on the Trinidad and Tobago Stock Exchange as well as by participants, that is, persons who represent the beneficial owners of securities. By section 114(3), the issuers of security demand from a clearing agency a list of names of all participants for whom the clearing agency holds securities of a class issued by the issuer. In addition, by section 114(5) "A participant that receives a notice sent pursuant to subsection (4)—"might furnish the clearing agency or the issuer with a list containing the names of the beneficial owners.

Mr. Speaker, the issuers, such as the banks, are reluctant to interpret the phrase "owner of securities" as including shareholders. Does the Securities Industry Act not speak of shareholders? The term is not defined in it at all and the Trinidad and Tobago Stock Exchange has set up a company known as the Trinidad and Tobago Central Depository Limited to operate as a clearing agency. The divergence of opinion with regard to the meaning of the phrase "owner of security" is impeding the start of operations of the clearing agencies and the introduction of automated trading at the Trinidad and Tobago Stock Exchange. The commencement of operations of the Trinidad and Tobago Central Depository Limited, and the automated trading are vital for the progress of the harmonization process among the stock exchanges of Barbados, the Bahamas, Jamaica, Santo Domingo and Trinidad and Tobago.

Apart from enabling this country to meet several of its sister nations in the region, the benefits resulting from the passage of the proposed amendments are that Trinidad and Tobago would be in compliance with the latest international standards in the area of global capital market regimes, and the investor attractiveness of a country shall be further enhanced. The other thing is that it deals with section 159 of the Companies Act, and this amendment seeks to repeal section 159 of the Companies Act to relieve persons in practice as auditors of companies on April 15, 1997, the date of commencement of the Act, from having to apply to the Minister to whom responsibility for the Registrar General's Department is assigned, that is the Minister of Legal Affairs, for authorization to be appointed as auditor of companies. The enactment of this amending clause would allow such persons to continue to practice as auditors of companies.

Mr. Speaker, if I may give a little background to the matter. Section 158(1) of the Companies Act stipulates:

"A person is eligible for appointment as auditor of a company only if he—

(a) is a practising member of a recognized supervisory body; and

(b) is eligible for appointment under the rules of that body."

Clause 158(3) states:

"…'recognized supervisory body' means the Institute of Chartered Accountants of Trinidad and Tobago and such other body as the President may, by Order, designate."

Clause 159(1) of the Bill provides inter alia, that:

"The Minister may, after consultation with the Institute of Chartered Accountants of Trinidad and Tobago, authorize…in writing, any person to be

appointed as an auditor of companies, if that person—(a) is in the opinion of the Minister suitably qualified for an appointment by reason of his knowledge and experience;"

provided that such appointment shall not be for a period exceeding one year at a time.

In addition, section 159(2) stipulates that a person who was in practice in Trinidad and Tobago on the commencement of the Act shall apply for authorization to be appointed as an auditor of companies under subsection (3) not later than 12 months after the commencement of this Act. The effect of section 159 seems to be that any person in practice as an auditor of companies at the date of the commencement of the Act, must apply to the Minister for authorization to act as auditor of companies and the Minister, if satisfied, shall issue his authorization. Conversely section 158 sets out unambiguous criteria which a person must meet in order to be eligible for appointment as an auditor of companies. It was because of this apparent conflict between sections 158 and 159 that the Registrar General decided to look into the matter.

Mr. Speaker, what we are doing, therefore, is amending the Act in order to relieve persons, intended to be protected by clause 159, from any obligation to apply to the Minister of Legal Affairs for authorization to act as auditors and allow them to continue to practise their profession. When the Companies Act came into force these persons would have been practising as auditors; they may not have had the formal qualifications, but they have been practising for years and it would be a grave injustice for them to be denied that entitlement. So this amendment would relieve such persons from the unintended hardship that section 159 has worked upon them. The clause as currently drafted, requires the input of the Institute of Chartered Accountants and the Minister, having no expertise of his own in the field of auditing, has to rely on that input which, for the reason previously indicated, is not available and is unfair to these persons.

The persons who are the object of section 159 are a minority who commenced the practice of the profession when academic and other qualification requirements were not as stringent as they are today. But they have practised for several years. They have proven themselves and the Government is of the view that they should not be denied that entitlement purely because they do not have formal training. These two sections are basically what this Bill is about.

Mr. Speaker, I beg to move.

Question proposed.

3.00 p.m.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

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

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

House resumed.

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

ADJOURNMENT

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that the House do now stand adjourned to June 29, 2001 at 1.30 p.m.

Mr. Speaker, the reason for that is that many ministers have very important commitments out of the country. We will treat June 29 as Private Members' Day.

Mr. Speaker: Before I put the adjournment, let me say that there are two Motions on the adjournment by the Member for Laventille East/Morvant. These, I believe, have been hanging on the Order Paper for a long time. The Member is not here again today; he has been suspended for the rest of today's sitting. What is the wish of the House? Should we leave these matters that are pending on the Order Paper, or should we let them lapse?

Hon. R. L. Maharaj. I think we should leave them on the Order Paper and give the Member the opportunity after his suspension—

Question put and agreed to.

House adjourned accordingly.

Adjourned at 3.05 p.m.