THE

PARLIAMENTARY DEBATES

OFFICIAL REPORT

[Volume 7]

PROCEEDINGS AND DEBATES OF THE FIRST SESSION OF THE NATIONAL ASSEMBLY OF THE THIRD PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF GUYANA.

208th Sitting	14:00 hrs	Thursday, 1980-02-21

MEMBERS OF THE NATIONAL ASSEMBLY (63)

Speaker

Cde. Sase Narain, O.R., J.P., Speaker

Members of the Government – People's National Congress (46)

Prime Minister (1)

Cde. L.F.S. Burnham, O.E., S.C.,
Prime Minister (Absent)

Deputy Prime Minister (1)

Cde. P. A. Reid,
Deputy Prime Minister and Minister of
National Development

Senior Ministers (11)

Cde. H.D. Hoyte, S.C.,
Minister of Economic Development and Co-operatives (Absent – on leave)

Cde. S.S. Naraine, A.A.,
Minister of Works and Transport (Absent)

Cde. B. Ramsaroop,
Minister of Parliamentary Affairs and Leader of the House

Cde. C. V. Mingo,
Minister of Home Affairs (Absent)

*Cde. H. Green,
Minister of Health, Housing and Labour (Absent)

*Cde. H.O. Jack,
Minister of Energy and Natural Resources (Absent)

*Cde. F.E. Hope,
Minister of Finance (Absent)

*Cde. G. B. Kennard, C.C.H.,
Minister of Agriculture (Absent)

*Cde. M. Shahabuddeen, C.C.H., S.C.,
Attorney General and Minister of Justice

*Cde. R.E. Jackson,
Minister of Foreign Affairs (Absent)

*Cde. J.A. Tyndall, A.A.,
Minister of Trade and Consumer Protection (Absent)

*Non-elected Ministers

Ministers (2)

Cde. O.E. Clarke,
Minister – Regional
(East Berbice/Corentyne) (Absent)

Cde. C.A. Nascimento,
Minister, Office of the Prime Minister (Absent)

Ministers of State (10)

Cde. F.U.A Carmichael
Minister of State – Regional (Rupununi) (Absent)

Cde. P. Duncan, J.P.,
Minister of State, Ministry of
Economic Development and Co-operatives

Cde. K.B. Bancroft, J.P.,
Minister of State – Regional
(Mazaruni/Potaro) (Absent)

Cde. J.P. Chowritmootoo, J.P.,
Minister of State – Regional
(Essequibo Coast/West Demerara) (Absent)

Cde. J.R. Thomas,
Minister of State, Ministry of Education,
Social Development and Culture

Cde. R.H.O. Corbin,
Minister of State for Youth and Sport,
Ministry of National Development

Cde. S. Prashad,
Minister of State - Regional
(East Demerara/West Coast Berbice)

Cde. R.C. Van Sluytman, M.P.,
Minister of State,
Ministry of Agriculture

*Cde. F.U.A. Campbell, M.P.,
Minister of State for Information,
Ministry of National Development (Absent)

*Cde. H. Rashid,
Minister of State,
Office of the Prime Minister

Parliamentary Secretaries (6)

Cde. M.M. Ackman, C.C.H.,
Parliamentary Secretary, Office of the
Prime Minister, and Government Chief Whip

Cde. E.L. Ambrose,
Parliamentary Secretary, Ministry of Agriculture

Cde. M. Corrica,
Parliamentary Secretary,
Ministry of Education, Social Development and Culture (Absent)

Cde. E.M. Bynoe,
Parliamentary Secretary, Ministry of Trade and
Consumer Protection. (Absent)

Cde. C.E. Wright, J.P.,
Parliamentary Secretary, Ministry of Economic
Development and Co-operatives

Cde. J.G. Ramson,
Parliamentary Secretary,
Ministry of Works and Transport

Other Members (15)

Cde.	W.G. Carrington, C.C.H.	(Absent)
Cde.	S.M. Field-Ridley	(Absent)
Cde.	E.H.A. Fowler	
Cde.	J. Gill	
Cde.	W. Hussain	
Cde.	K.M.E. Jonas	(Absent)
Cde.	A. Salim	
Cde.	E.M. Stoby, J.P.	(Absent)
Cde.	S.H. Sukhu, M.S.	
Cde.	H.A. Taylor	(Absent)
Cde.	H.B. Walcott, J.P.	
Cde.	L.E. Williams	
Cde.	M. Zaheerruddeen	

Members of the Opposition (16)

(i) People's Progressive Party (14)

Leader of the Opposition (1)
Cde. C. Jagan,
Leader of the Opposition (Absent)

Deputy Speaker (1)
Cde. Ram Karran,
Deputy Speaker

Other Members (12)

Cde. J. Jagan	(Absent)
Cde. Reepu Daman Persaud, J.P., Opposition Chief Whip	
Cde. Narbada Persaud	(Absent)
Cde. C. Collymore	(Absent)
Cde. S.F. Mohamed	
Cde. I. Basir	
Cde. C.C. Belgrave	(Absent)
Cde. R. Ally	
Cde. Dalchand, J.P.	
Cde. Dindayal	
Cde. H. Nokta	
Cde. P. Sukhai	(Absent)

(ii) Liberator Party (2)

Mr. M.F. Singh, J.P.	
Mr. M.A. Abraham	(Absent)

OFFICERS

Clerk of the National Assembly – Cde. F.A. Narain, A.A.
Deputy Clerk of the National Assembly – Cde. M.B. Henry

PRAYERS

2.07 p.m.

ANNOUNCEMENTS BY THE SPEAKER

Leave to Members

The Speaker: Leave has been granted to Cde. Hoyte, Cde. Bancroft and Cde. Chowritmootoo for today's Sitting.

PRESENTATION OF PAPERS AND REPORTS

The following Paper was laid:

> Reports (2) of the Hydropower Division of the Ministry of Energy and Natural Resources for the years 1973 and 1974, and 1975 and 1976.*[*The Minister of Parliamentary Affairs and Leader of the House on behalf of the Minister of Energy and Natural Resources.*]*

PUBLIC BUSINESS

BILL – SECOND AND THIRD READINGS

LEGAL PRACTITIONERS (AMENDMENT) BILL 1980

A Bill intituled:

> "An act to amend the Legal Practitioners Act to provide for the fusion of the branches of the legal profession and for connected purposes."*[*The Attorney General and Minister of Justice.*]*

The Attorney General and Minster of Justice (Cde. Shahabuddeen): Cde. Speaker, I beg to move the Second Reading of the Legal Practitioners (Amendment) Bill 1980. The Bill before the House is a long-awaited and badly- needed measure of reform.

The Speaker: Cde. Shahabuddeen, may I interrupt you for a minute. Cde. Leader of the House, I thought it was a regular practice that the Police put up barriers to prevent vehicles passing and disturbing the proceedings of this House.

The Minister of Parliamentary Affairs and Leader of the House (Cde. Ramsaroop): Your observation is accurate. I will investigate.

The Speaker: Why do I always have to be complaining? Every time we have a Sitting, we have to notify them. Instead of improvements, we are getting worse. Please proceed, Cde. Attorney General.

Cde. Shahabuddeen: I was opening by saying that the measure before the House today is a long awaited and badly needed one of the reform of the arrangements governing one of our most important professions in this country. It is addressed specifically to a certain feature of it which crept into our arrangements shortly after the British conquest in the year 1803.

As members will know, the British legal profession is divided into two branches, namely, the Barristers Branch and the Solicitors Branch. Very roughly, the Barristers Branch is concerned with advocacy. The Solicitors Branch is concerned with doing preparatory work relating to advocacy and other advisory purposes.

In two or three decades following the conquest, that division filtered into our own arrangements in this country and they seem to have crystallized into certain rules which were made in the year 1837, but this new arrangement proved to be unsatisfactory from almost the very beginning and doubts about its viability were expressed on several occasions.

I will just mention two or thereof these occasions on which the efficacy and suitability of these arrangements were questioned. First, there was a question raised very seriously by Mr. Justice Norton in the year 1870 and then in 1897 when a new law was passed regulating the affairs of the profession, Justice likewise questioned the suitability of this new dualism. Attorney General questioned it again in the first two decades of this century.

Nothing very much was done until the year 1971 when a new law was passed which sought in effect to recognize and regulate the fact that Solicitors had come and reached a position where they were now exercising functions which strictly speaking pertained to barristers and where correspondingly, barristers had come to be recognized as entitled to exercise functions which strictly speaking belonged to solicitors.

The arrangement did not work and it did not work for a number of reasons. It may be that the arrangement worked in England but even there, as we all know, the suitability was questioned, but even it was suitable to conditions in England, we here have to recognize that our conditions here in Guyana are very different indeed. We are a smaller society and in a smaller society our profession is correspondingly smaller and it would seem to follow as a matter of logic that the arrangement which grew out of the historic conditions in England were not necessarily going suitable for our very different society and economy.

Cde. Speaker, the arrangement has proved expensive for litigants and time-wasting to the Courts. It has proved to be inconvenient in a number of respects. For one thing very serious problems arose over definitions. Questions arose as to where do you draw the line between the functions which could properly be discharged by barristers and functions which could properly be discharged by solicitors. A great deal of sterile jurisprudence has in fact evolved in the course of many debates which have eventuated over this arid question. But the point I think we would all subscribe to most readily was the point made by Sir Eric in the well known case of 1971, West Indian Reports, pages 1 to 8 in the Federal Supreme Court when he said words to the effect that, “Look here, you have certain rules which regulate the domestic affairs of your profession. Whether or not one branch or the other observes those rules strictly ought not to carry judicial consequences to the litigants. They ought not to be penalized by any failure of a barrister to observe those rules” and yet, regrettably, as we all know, there have been cases where litigants have suffered seriously because it was held in the Courts in case after case that something was done by a lawyer which technically he could not

do and only his could. That is hardly a condition to perpetuate in a society which is seriously seeking to equip itself for a future of efficiency and convenience.

And there is another sad area in which there has been a lot of useless debate and this concerns the question of discipline. Very briefly, Cde. Speaker, discipline of the profession is exercised in a dual fashion. Barristers, when acting as barristers can only be disciplined by the Full Court itself. Solicitors can be disciplined through alternative machinery which involves a Legal Practitioners Committee only when performing the functions of a Solicitor and this question as to whether a barrister was in any case performing the functions of a Solicitor and this question as to whether a barrister was in any case performing as a solicitor is one which is rather too unclear.

Like that we have had a tremendous waste of time and effort and talent in the Courts of this country in this profession. And that is another difficulty which we are seeking to overcome by the introduction of a Bill which I hope will be free of controversy.

I turn now to the regional experience in the neighbouring area and I would like to refer to the establishment of our arrangements for legal education in the West Indies. I would like to begin with this extract from the 1964 Report of the Wooding Committee on Legal Education, in which that Committee, having considered our arrangements, or lack of arrangements, for Legal Education expressed its opinion in these words. This is 1964. Said the Committee and I quote:

> "We are firmly of the opinion that no distinction ought in any respect to be made in the training of a legal practitioner whether he proposes afterwards to practice as a barrister or as a solicitor or as a member of a fused profession (hereafter referred to as a 'lawyer'). This break from custom we consider to be fully justified.
>
> In our view every practitioner ought to be thoroughly trained both in the theory and in the practice of his profession, and it should make no difference in which branch he intends to be active or otherwise to specialize."

The Speaker: Cde. Shahabuddeen, I find it difficult to listen to you and compete with the noise from traffic outside. I think I will adjourn or suspend the Sitting for 10 minutes to see if the situation can be rectified. We will have to suspend and if we cannot be rectified we will adjourn and come back another day.

Sitting suspended at 2:16 p.m.

2.31 p.m.

On resumption - -

Resumption on the Debate on the Legal Practitioners (Amendment) Bill 1980

Cde. Shahabuddeen: Cde. Speaker, if I may continue by reading the last sentence of the report, this paragraph continues with this:

> "In our view every practitioner ought to be thoroughly trained both in the theory and in the practice of his profession, and it should make no difference in which branch he intends to be active or otherwise to specialize."

As is well-known history, a Faculty of Law was established in the University of the West Indies and two law schools were established in the region, one in Jamaica and one in Trinidad and Tobago. The intention was that students at both institutions should follow a course of law and our schools have been basing their curricula on the idea that they are the one common scheme of legal education which would make no distinction. So, in a sense it could be said that the Council of Legal Education was designed with the view that at some time or the other in the future, the various participating territories would have a fusion of the branches of the legal profession. The first territory that brought this about was Jamaica in 1971. For that purpose, Jamaica was followed by Barbados which enacted the Legal Profession Act in 1972. Now, no other territory has followed. I may be wrong. I am subject to correction. We here have had it in mind for a number of reasons which I know. We have had cases in which students from our West Indian law schools who are good at drafting have been coming back to Guyana, wondering whether they are going to practise as solicitors or as barristers. Perhaps it is known that we have, in the interval, been in receipt of a number of protests from students of the law schools. Now I turn to the main feature of the Bill.

The Bill, Cde. Speaker seeks to provide for one single category of lawyers trained in Jamaica and Barbados. This new category will, of course, exist between barristers and solicitors. We are confident that arising out of this will come greater economy and efficiency in the work of the legal profession and the courts which they serve. We submit also that there are several other expenses that could be avoided. The existing position is that in certain cases the litigant has to retain two lawyers, namely, a solicitor and a barrister. In a new arrangement there will be no similar necessity, just one lawyer alone to act for him. Of course, if he wants to retain more than one lawyer, that is his business. There is need sometimes for more than one lawyer and, you know, here are cases of that. Wee will at some time, I hope, be abolishing an unlawful institution which has grown within our profession and which is known as the institution of the dummy. We hope that this will be good for all time. I am glad to say that there is support for this subsidiary aspect.

There is another aspect to which I would refer and it is this. In a small legal profession such as the one we have, you may find cases in which you happen to have a lawyer who is a solicitor but who on re-examining the case may wish to take on an advocate's role but he is restricted. On the other hand, you may find there is a barrister who may wish to function more a as solicitor who would welcome this new arrangement. There would be greater scope for specialization in this respect. I might say: I am going to concentrate on this aspect of the

profession, or I am going to do a part of both from the wider area of a specialization which I anticipate this Bill will be opening up for us.

Now there are one or two other aspects to which I will refer. One relates to contracts for legal services as in other fields. As members will know, the position has been that there is no contract for legal services unless it is in writing. The Bill seeks to provide that an attorney-at-law shall be entitled to sue for and recover his fees for services rendered. It also seeks to place liabilities in respect of the conduct of cases in court. The existing position seems to be a little too unjust. It is the case in which a barrister when acting as a solicitor, was held liable in respect of any preliminary decisions affecting a case before the court. We think this should go. We have sought to institutionalise the new arrangements in one paragraph of the Bill. I want to put the position of the disciplinary committee in the new arrangements.

The disciplinary Committee will no longer have its jurisdiction set out by …….. because a Barrister will be entitled to act as a Solicitor if he wishes. There will be no Barristers and no Solicitors. We will have only attorneys-at law and the Committee could hear all cases and make reports. We have to look at the questions of alternative procedures, that is alternative procedure which will invite representations to be made on behalf of the public. One always moves directly before the High Court and if that disciplinary procedure seems inadequate, we will have to look again at clause 4 of the Bill.

2.40 p.m.

Now, with respect to education, the main professional qualifications will be the Legal Education Certificate of the Council of Legal education of the Commonwealth Caribbean, but we are seeking to incorporate provisions to enable two things to happen. To enable a foreigner, say a Britisher, having British qualifications, who might want to practice out of certain cause, we may say to that fellow: that is quite all right, provided your Government will allow our Guyanese to go to Britain to practise with our West Indian qualifications, by noting the West Indian Agreement. Another person might say: as I am going back to Canada, the Canadians allow me to practise with our qualifications. We will allow Canadians to practise here with their qualifications.

Since the agreement was singed certain difficulties have arisen, which, I think, are well known to the legally qualified and this period was extended once in 1972 by Order No. 4 of 1972. In 1972, the Council for Legal Education agreed to a second extension of these dates and our Guyanese signed the necessary agreement which has to be a binding agreement on the member territories. We have not found it convenient to extend that date in the clause of the agreement, since the year 1977. I think I should say that in the year 1976, Trinidad announced the enactment of legislation. Act No. 29 of 1976. What we are seeking to do is to invite the attention of the colleagues to section 4 at page 6 of the Bill. It relates to cases of hardship suffered by Guyanese by a provision of that kind.

Now, one or two other areas have been referred to. First, Silk. We are not proposing any radical changes in the position of silk, secondly, Robes, I think the House will want to hear what will happen in that area. A practical decision of the Government is to see at once that Attorneys-at-law will need to be robed. All members of their Associations will have to be robed. I think one can expect communication on this subject from the Chancellor. As I said, the Chancellor is pleased to go along with this suggestion I have just made. In that case, may I say that I can propose without question, that we have a form of transition period which would allow a solicitor to appear unrobed until he acquires his robe. One has to be reasonable. In fact, I expect there will be transition problems, in that and other areas, which we are hoping to solve. We do not know what the transition problems will be all we can do is make provision to resolve these transition problems. There are many professions in this country, the legal profession, the medical profession and the engineering profession, and it can be envisaged that ……. To request them in the …… but I do say that the legal profession is undoubtedly the one

…….... The government understands and is always ready to …… The government hopes that opportunities to widen the scope of the Solicitor's functions, which are presented at this time of change, will be seized and efforts will be made to make other provisions. The government also hopes that the new opportunities for the profession will enable professionals to function within the forum of Executive President.

Mr. M. F. Singh: Mr. Speaker, it gives me great pleasure indeed to support this Bill, which is before this House today. In fact, we think it is long overdue. The hon. Attorney General in his speech was very helpful. He very fully and very clearly summarized the position. I want to say that as far as I am concerned, as far as we are concerned, this is no controversy. I have said it clearly that we have no objection to this Bill. It meets with our acceptance.

This morning, I spoke with the President of the Bar Association and he assured me that the Bar Association had no objection to this Bill before this honourable House. So, both sections of the profession have accepted the placing of this Bill before the House. It gives a very great pleasure to support this Bill.

The institution, the Regional Council of Legal Education, and the University of the West Indies have already produced that brand of lawyer who is really solicitor and barrister in the courts. We are committed to change in our system, but let me make it clear that even though we will change our system from the system of barristers and solicitors as it operates in England, the point I am making is that, what is good for England is not necessarily good for Guyana, as it is not necessarily good for Scotland, where I think there is an entirely different type of structure for solicitors and barristers.

2.55 p.m.

In Scotland, rather than the system of lawyers and solicitors as it exists in England and in different parts of the Commonwealth, I understand the system is different. There are three or four solicitors to service other parts, and we know that in England there are millions of people. In Guyana there are very few solicitors and a greater number of barristers. At least, throughout the years that was the position but sometime ago the number began to decrease because it is not as easy for barristers as it used to be.

I am aware that to qualify in the U.K. one has to attend and rightly so, a University, and be trained in both branches and make provisions, but at the present moment we have many more barristers and solicitors and as a result of this, we have a situation of what my hon. and learned Friend referred to as dummy solicitors who merely put their signatures to paper and litigants have to pay extra fees. In England, there are millions of people; we have got less than a million people, and it must be a real hardship on the legal side. There is the necessity to pay for two rather than one lawyer in some cases. The proceedings sometimes deem that two lawyers be engaged. In one case, two lawyers were forced on a litigant. You must have a solicitor, you must have a barrister. As I stated before, we welcome this change. Hereafter, the litigant in Guyana will pay a bill that shows that only one lawyer was retained, you will have the one, and only one lawyer. If you want more than one lawyer, you can have more than one. The hon. Attorney General referred to the fact that there have been different problems during this transitional period. We will have to see them as they arise and I am glad to see that there is provision in the Bill for us to resolve those problems. In addition to the directions by the Attorney General, I am sure that the hon. the Chancellor will contribute to the solution of my problems.

The new section 9 says that every person whose name is enrolled on the Court Roll shall be known as an attorney-at-law and shall be subject to all such liabilities as attached by law to a barrister and a solicitor prior to the coming into operation of the Legal Practitioners (Amendment) Act 1980, and, without prejudice to the generality of the foregoing, be liable for any negligence committed by him when practicing law save in respect of the conduct of any case in court and in respect of any preliminary decision affecting the way the case is to be conducted when it comes to hearing. I would like to have an assurance about the position of a lawyer who does not sign any preliminary paper in connection with a case in the event of a suit for malpractice where a litigant can proceed against a lawyer. Would that lawyer who did not sign in the first instance be entitled to immunity? Can a litigant take a lawyer to court for negligence in spite of the fact that the lawyer did not sign those papers, that another lawyer signed them? What would be the position where he did not go into the case at the beginning; he went in when the case was being conducted in court. He might not be a Senior Counsel, just an experienced lawyer who makes a specialty of that particular field.

I do not see anywhere in this Bill any reference to Senior Counsel. Perhaps the Attorney-General is in a position to say in relation to Senior Counsel generally, having regard to the general pattern and the new scheme of things, what will be the effects since they are not mentioned here. What would be the position of an additional lawyer in a case where he would never have appeared during the conduct of the case.

In the case that deals with reciprocity, I am reminded of the case of English doctors in America who were afraid to practice their profession because of the question of reciprocity.

Mr. Speaker, as I said, we think that this Bill is long overdue and we welcome it.

3.05 p.m.

Cde. Ram Karran (The Deputy Speaker): It is not always that I stand on the same side of my friend Mr. Feilden Singh and we on this side of the House have no objection to the passing of this Bill into legislation. Nevertheless, there are a few questions that laymen, unlike Mr. Singh, would like to pose to the hon. the Attorney General.

I am very glad my friend has mentioned this aspect, that whereas in the past solicitors were liable to be sued, barristers were not. The situation is now being changed and barristers, henceforth, can be sued. Of course, the finer details are known by Mr. Feilden Singh and it would be interesting to have them inspected by the hon. Attorney General. One point that seems to bother me is the question of reciprocity. My friend tells the House that a person qualified in practice in the courts of law in his own country will be able to practice in our courts, provided that there is reciprocity, that is, that persons qualified to practice in our courts are allowed to practice in the courts of the other country. It exists in other disciplines, in the medical profession, in the engineering profession, but the legal profession is different. It all goes back to the struggle by colonial territories for Independence and it can be traced back to India. That is one instance. Another instance was in Kenya, where the repressive action of the British administration required juniors to English barristers to appear in the court to defend Jomo Kenyatta in the famous case of the uprising in Kenya and where a very eminent lawyer, incidentally was held prisoner in his own country. Another example was the case of Fred Bowman and Nazrudeen, who were on a very serious criminal charge. The lawyer in that case had been to Ghana, and he had been to the U.S.A., but he was not successful in defending Jomo Kenyatta. Nevertheless, the eminent British barrister was admitted to practice in these courts.

We are limited with respect to representation in court. We cannot go beyond the Appeal Court. This is a very small committee but the arguments about that have been heard over and over. By contrast in India, the Court of Appeal all these years has been sending cases to the Privy Council, for many years after Independence, and even after Independence into Republican status.

The whole world has turned upside down. What is the situation? Are we going to be deprived of experts in particular fields of law. We often think carefully when we have to retain a lawyer, one in whom we have confidence, to defend us but now we are going into all these various systems of reciprocity. Today, in the world as it is, where there is daily raised a question of human rights, we have developed world specialists in the legal profession. The hon. Attorney General is himself a practitioner and a knowledgeable specialist and he ought to know that the Guyanese people, particularly at this time of the country’s history ought not to be deprived of the special skills they may wish to retain. Are we saying, therefore, that in these limited reciprocal arrangements where we can bring lawyers only from certain countries, that we could be denied the lawyers of our choice? We are very young in this business of legal training and I think that we ought not to deny the Guyanese people the benefits of wider knowledge and experience should the services of these lawyers become necessary.

*[*Cde. Ram Karran continues*]*

3.15 p.m.

Only recently I read in the newspaper that there were American lawyers, not practicing in Courts but they are barristers. They are experts in that field and they are experts in the trade mark business. There are experts in every possible field but particularly those in relation to human rights ought not to be debarred from entering the Courts of this country with a view to defending their clients.

Cde. Shahbuddeen (replying): Cde. Speaker, I do wish to express my indebtedness to both speakers for the remarks which they have made. Before I proceed to respond as briefly as I can to the impressive and very practical questions which they have raised, may I state that I am proceeding, I hope safely, on the assumption that we are dealing with the Bill subject to certain typographical amendments which. I think, the Secretariat has circulated. I do not think the Chair made reference to them at the beginning. The usual thing is that you make reference to nay such typographical mistakes, Cde. Speaker.

The Speaker: I will do that at Committee stage.

Cde. Shahbuddeen: May I say in response to my hon. and learned Friend Mr. Fielden Singh, that the assurance of continuing co-operation and consultation between the Bar and Government, which he seeks, is very fully and very freely given. There is no question about this. None at all.

Secondly, I do wish to acknowledge my indebtedness to him and when we come to the Committee stage I want to refer specifically to two Amendments which I am putting forward and adopting on his initiative.

He referred to the question of liability in terms in which this matter has be enunciated in section 9 (b) as set out in the Schedule. I think he had in mind a situation concerning a senior lawyer who would commence his involvement in the case for the first time when it reaches Court. He has no preliminary involvement in it. He had nothing to do with the preparatory step. Junior Counsel may be handling it, but, when it reaches the Court, Junior Counsel turns to Senior Counsel and says, “I need your help.”

The position there is the same as what my learned friend said it was, that the Senior Counsel who comes to a case for the first time to the forum itself would be entitled to immunity reserved for advocates in section (9). The immunity referred to is the immunity which preliminary and is not an immunity which when a lawyer actually goes to Court. The two things are separate.

I come to the question of reciprocity which was raised by my hon. Friend.

The Speaker: I think Mr. Singh also dealt with the question of silk or Senior Counsel.

Cde. Shahabuddeen: I have it very much in mind but I thought I might make a reference to it again. Thank you very much, Cde. Speaker.

The position o f reciprocity is this. Cde. Speaker, the way we have dealt with that subject in this Bill is not peculiar to us. If colleagues would examine the legislation on fusion which has been enacted in Jamaica and Barbados, colleagues will find that, apart from stylistic variations, the substantial position is the same as it is in the same because all these territories being

participating territories in the regional education system are bound by the regional Agreement relating to legal education.

Under that Agreement, all participating territories are primarily bound to admit only West Indian law graduates. That, however, is subject to a qualification. You can admit people with other qualifications but only within certain parameters which are set by article 5 of the Agreement establishing the Council of Legal Education which Agreement can be found in the Council of Legal Education Act, Chapter 4:04, and Article 5 of that Agreement to which we are subject says this – I think I had better read it:

> "The Government of each of the participating territories undertakes that it will recognize that any person holding a Legal Education Certificate fulfills the requirements for practice in its territory so far as institutional training and education are concerned and that (subject to the transitional provisions hereinafter contained and to any reciprocal arrangements that any of the said territories may hereafter make with any other country) no person shall be admitted to practice in that territory who does not hold such certificate."

So, pausing there, the interpretation which I suggest to this House is that by force of article 5 which is in the Agreement of Legal Education, Guyana as a participating territory, is bound to limit admission only to West Indians who possess the Legal Education Certificate issued by our Law Schools subject to caveats, subject to those qualifications, admission of people possessing other qualifications but only on a transitional basis which is set out in articles 6 and 7, admission of people possessing other qualifications but only on a reciprocal basis. So we cannot admit people with say English qualifications, or French qualifications or Indian or Canadian qualifications to practice in Guyana except that we do so on a reciprocal basis. We cannot do it otherwise.

But there are certain other aspects of my Friend's intervention I think deserve a little response and I think I would like to put it this way: that 14 years after independence it is time we come to accept the true implications of Independence, that we have to accept the fact that if we are independent the prima facie is that you should have in Guyana your own Courts of last resort. You should not want to say that you are Independent but still look over your shoulders to some other last Court, whether it is the Privy Council or the West Indian Court of Appeal. This is the sort of basic inconsistency which I think is easily observed. I cannot stand here as Leader of the Bar and accept too willingly any question that the Bar of Guyana is really short of nationals, for example, with the expertise or skill to do any of the cases the hon. Mr. Ram Karran was referring to. I do not think that was a compliment to the Bar and I do not agree with him. I think the Bar here has sufficient Barristers to handle any case that may arise.

May I ask the position as we have set it down in our Bill is substantially the same in Jamaica and in Barbados, the two countries I know of which have enacted legislation on fusion.

Now, a brief word on the question of fusion and I am indebted to my hon. and learned Friend for raising this question because obviously, it is one of the things which, on reflection, would be exercising the minds of people. This Bill does not deal with the appointment of Senior Counsel. This is because the power to make such appointments derives not from statute but from its prerogative of the executive.

Section 43 of the existing Act does refer to Senior Counsel. But this provision was inserted in 1937 only for the limited purpose of stipulating that a Barrister, on being appointed Senior Counsel, should not do solicitor's work. Since we are now removing the functional boundary between barristers and solicitors, that provision is no longer needed, and it is accordingly being repealed.

But may I say this was put in there in 1937 only because of the situation concerning an application from a member of the firm of Cameron and Shepherd for silk. That member was functioning in a firm of lawyers that included barristers and solicitors and that infringed a certain rule existing which says that we cannot award silk to a barrister if he is housed in the same building and is part of the same firm that employs barristers and solicitors. So, the Secretary of State suggested that we include in our Act that once a member was appointed to silk he cannot do solicitor's work and that is the rationale to section 43. And so you see section 43 is strictly limited to the functional boundary between barristers and solicitors and since we are removing that division of line between the two branches of the profession we are correspondingly removing section 43.

*[*Cde. Shahabuddeen (contd)*]*

But neither that provision nor any other provision in the existing Act purported to confer power to appoint silk. That power derived from outside of the Act, and was in fact exercised on several occasions before the enactment of section 43 in 1937. It will accordingly continue to be exercisable notwithstanding the repeal of that section.

3.25 p.m.

The position in Jamaica and Barbados is similar. The Legal Profession Act 1971 in Jamaica, like the Legal Profession Act 1972 of Barbados, makes no reference to Senior Counsel. In both territories appointments to the rank of Senior Counsel, by whatever name called, are to be made by the executive in exercise of the prerogative.

So the power to appoint Senior Counsel will continue to be available to the executive in Guyana.

The next question is what will be the position of those persons who have already been appointed Senior Counsel. These persons, on becoming attorneys-at-law, will retain their status as Senior Counsel. A further question is whether the existing designation of Senior Counsel will be retained. As at present advised, there is no intention to make any change.

Another question concerns the criteria which will govern the appointment of Senior Counsel in future. This matter has been the subject of considerable debate in Jamaica and, to a lesser extent, in Barbados. In Jamaica the problem has still not been resolved, and one consequence is that no Senior Counsel has been appointed since fusion was introduced there in 1971.

Briefly, the issues are these. Should appointments be limited in favor of the kind of lawyer who was eligible for it in the past, namely, lawyers who had distinguished themselves as advocates or as parliamentary counsel? Or should the category of eligibility be now extended to include attorneys-at-law who would in substance be confining themselves to work in their own chambers? In Barbados the latter category has apparently been made eligible. In Jamaica there is a debate, the main point being that in the case of a lawyer, who practices substantially in his own chambers, there is little opportunity for objective public assessment.

Since this Bill does not deal with these aspects, there is no necessity for any definitive pronouncements on the question whether attorneys-at-law who confine themselves to practicing in their chambers will be regarded as eligible for appointment as Senior Counsel. A decision on this point can therefore be deferred until the new arrangements have been tested.

Meanwhile, but without prejudice to any decision on that issue, attorneys-at-law who distinguish themselves as advocates or as parliamentary counsel will be eligible for appointment as Senior Counsel.

Question put, and agreed to.

Bill read a Second time.

Assembly in Committee.

Correction of Typographical Errors

The Chairman: Before we begin the consideration of the clause, I wish to ask Members of the House to note the following corrections of typographical errors appearing in the Bill:

Clause 4(2) – For "of" in the second line substitute "or".

THE SCHEDULE

Section 2, item (c) – For "practice" in the definition of "practice law" substitute "practise".

Section 2, item (d) – After "or" insert "a".

Section 4 (1) – In the first line for "Courts" substitute "Court".

Section 4 (3) (a) – For "continue" in the third line substitute "continues".

Section 4A – (a) In subsection (1) for "measuring" in the seventh line substitute "meaning".

(b) In subsection (1) (c) for "practice" in the ninth line substitute "practise".

Section 11 – Open quotation marks before "a" and delete the quotation marks before "barrister".

Section 17 – Open quotation marks before "a" and delete the quotation marks before "barrister".

Consideration of the Clauses of the Bill

Clause 1.

Cde. Shahabuddeen: Cde. Chairman, I beg to move the amendment to this clause which stands in my name.

Amendment –

That the words, "such day as the Minister may appoint by order", be deleted and the following be substituted:

"3rd March, 1980",

put, and agreed to.

Clause 1, as amended, agreed to and ordered to stand part of the Bill.

Clause 2 to 4 agreed to and ordered to stand part of the Schedule.

Schedule .

Cde. Shahabuddeen: Cde. Chairman, I beg to propose the amendments to the Schedule which stand in my name. Two of these amendments really came from my learned and hon. Friend Mr. Singh and I am really indebted to him for the spirit of goodwill which he has shown. If it is agreeable to you, Cde. Chairman, and to the House, I propose to move the amendments as they refer to the different sections and to put in the whole Schedule at the end.

The Chairman: Yes, Cde. Attorney General.

Section 2, item (e) –

Cde. Shahabuddeen: Cde. Chairman, I beg to move the amendment to section 2, item (e) which stands in my name.

Amendment –

That the word “he” in the seventh line of the new subsection (3), the following be substituted:

“an attorney-at-law”,

put, and agreed to.

Section 4A (1) (b).

Cde. Shahbuddeen: Cde. Chairman, I beg to move the amendment to section 4A (1) (b) which stands in my name.

Amendment –

That for “subsection (1)”, the following words be substituted:

“this subsection”,

put, and agreed to.

Section 4B (1).

Cde. Shahabuddeen: Cde. Chairman, I beg to move the amendment to section 4B (1) which stands in my name.

Amendment –

(a) That for the article “the” appearing before the words “Legal Education Certificate”, the following be substituted:

“a”.

(b) That in paragraphs (a) and (b) for “subsection (1)” the following words be substituted:

“this subsection”,

put, and agreed to.

Section 5.

Cde. Shahbuddeen: Cde. Chairman, I beg to move the amendment to section 5 which stands in my name.

Amendment –

That after paragraph (b) in the second column the following be inserted: “ (c) Before the full stop at the end of paragraph (b) of the proviso insert ‘or other document’”,

put, and agreed to.

Cde. Shahbuddeen: Cde. Chairman, I beg to move that immediately above “Section 26”, the following be inserted:

(a) “Section 24(9)” in the first column, and

(b) “For ‘counsel’ substitute ‘an attorney-at-law’.” in the second column.

Amendment put, and agreed to.

First Schedule – at page 12.

Cde. Shahbuddeen: Cde. Chairman, I beg to move the amendment which stands in my name.

Amendment –

That for “of” in paragraph (c) in the second column, the following be substituted:

“by”,

put, and agreed to.

Second Schedule – at page 12.

Amendment –

That for “attorney-at-law”,

put, and agreed to.

Schedule, as amended, agreed to and ordered to stand part of the Bill.

Bill reported with amendments; as amended, considered; read the Third time and passed.

ADJOURNMENT

Resolved, “That this Assembly do now adjourn to a date to be fixed. *[*The Minister of Parliamentary Affairs and Leader of the House.*]*

Adjourned accordingly at 3.35 p.m.