National Assembly Debates

PROCEEDINGS AND DEBATES OF THE NATIONAL ASSEMBLY OF THE FIRST SESSION (2006-2008) OF THE NINTH PARLIAMENT OF GUYANA UNDER THE CONSTITUTION OF THE CO-OPERATIVE REPUBLIC OF GUYANA HELD IN THE PARLIAMENT CHAMBER, PUBLIC BUILDINGS, BRICKDAM, GEORGETOWN

58TH Sitting | 14:12h | Thursday 24 July 2008

MEMBERS OF THE NATIONAL ASSEMBLY (70)

Speaker (1)

The Hon Hari N Ramkarran SC, MP

Speaker of the National Assembly

Members of the Government (41)

People's Progressive Party/Civic (40)

The United Force (1)

The Hon Samuel A A Hinds MP *(AOL)*

(R# 10 - U Demerara/U Berbice)

Prime Minister and Minister of Public Works and Communications

The Hon Clement J Rohee MP

Minister of Home Affairs

The Hon Shaik K Z Baksh MP

Minister of Education

The Hon Dr Henry B Jeffrey MP - *(Absent)*

Minister of Foreign Trade and International Cooperation

The Hon Dr Leslie S Ramsammy MP

(R# 6 - E Berbice/Corentyne)

Minister of Health

The Hon Carolyn Rodrigues-Birkett MP
(R# 9 - U Takutu/U Esseq)
Minister of Foreign Affairs

*The Hon Dr Ashni Singh MP
Minister of Finance

The Hon Harry Narine Nawbatt MP
Minister of Housing and Water

The Hon Robert M Persaud MP
(R# 6 - E Berbice/Corentyne)
Minister of Agriculture

The Hon Dr Jennifer R A Westford MP
(R#7 - Cuyuni/Mazaruni)
Minister of the Public Service

The Hon Kellawan Lall MP
Minister of Local Government and Regional Development

*The Hon Doodnauth Singh SC, MP
Attorney General and Minister of Legal Affairs

The Hon Dr Frank C S Anthony MP
Minister of Culture, Youth and Sport

The Hon B H Robeson Benn MP
Minister of Transport and Hydraulics

**The Hon Manzoor Nadir MP
Minister of Labour

The Hon Priya D Manickchand MP
(R# 5 - Mahaica/Berbice)
Minister of Human Services and Social Security

The Hon Dr Desrey Fox MP - *(AOL)*
Minister in the Ministry of Education

The Hon Bheri S Ramsaran MD, MP
Minister in the Ministry of Health

*Non-elected Minister **Elected Member from TUF

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Minister in the Ministry of Finance
The Hon Manniram Prashad MP
Minister of Tourism, Industry and Commerce
*The Hon. Pauline Sukhai, M.P., Minister of Amerindian Affairs
Mr Donald Ramotar MP
The Hon Gail Teixeira MP
Mr Harripersaud Nokta MP
Mrs Indranie Chandarpal MP, Chief Whip - *(AOL)*
Ms Bibi S Shadick MP
(R# 3 – Essequibo Is/W Demerara)
Mr Mohamed Irfaan Ali MP
Mr Albert Atkinson JP, MP
(R# 8 - Potaro/Siparuni)
Mr Komal Chand CCH, JP, MP
(R# 3 - Essequibo Is/W Demerara)
Mr Bernard C DeSantos SC, MP
(R# 4 - Demerara/Mahaica)
Mrs Shirley V Edwards JP, MP
(R# 4 - Demerara/Mahaica)
Mr Mohamed F Khan JP, MP - *(Absent)*
(R# 2 - Pomeroon/Supenaam
Mr Odinga N Lumumba MP - *(AOL)*
Mr Moses V Nagamootoo JP, MP
Mr Mohabir A Nandlall MP
Mr Neendkumar JP, MP
(R# 4 - Demerara/Mahaica)
*** Mr Steve P Ninvalle MP - *(AOL)*
Parliamentary Secretary in the Ministry of Culture, Youth and Sport
Mr Parmanand P Persaud JP, MP
(R# 2 - Pomeroon/Supenaam)

Mrs Philomena Sahoye-Shury CCH, JP, MP
Parliamentary Secretary in the Ministry of Housing and Water

Mr Dharamkumar Seeraj MP
Mr Norman A Whittaker MP
(R# 1 - Barima/Waini)

Members of the Opposition (28)
(i) People's National Congress Reform 1-Guyana (22)

Mr Robert HO Corbin
Leader of the Opposition
Mr Winston S Murray CCH, MP
Mrs Clarissa S Riehl MP
Deputy Speaker of the National Assembly
Mr E Lance Carberry MP
Chief Whip
Mrs. Deborah J. Backer MP
Mr Anthony Vieira
Mr Basil Williams MP
Dr George A Norton MP
Mrs Volda A Lawrence MP - *(Absent)*
Mr Keith Scott MP
Miss Amna Ally MP - *(AOL)*
Mr James K McAllister MP
Mr Dave Danny MP - *(AOL)*
(R# 4 - Demerara/Mahaica)
Mr Aubrey C Norton MP - *(Absent)*
(R# 4 - Demerara/Mahaica)
Mr Ernest B Elliot MP - *(AOL)*
(R# 4 - Demerara/Mahaica)

Miss Judith David-Blair MP
(R# 7 - Cuyuni/Mazaruni)
Mr Mervyn Williams MP
(Re# 3 - Essequibo Is/W Demerara)
Ms Africo Selman MP
Dr John Austin MP
(R# 6 - East Berbice/Corentyne)
Ms Jennifer Wade MP
(R# 5 - Mahaica/Berbice)
Ms Vanessa Kissoon MP
(R# 10 - U Demerara/U Berbice)
Mr Desmond Fernandes MP
(Region No 1 – Barima/Waini)

(ii) Alliance For Change (5)
Mr Raphael G Trotman MP
Mr Khemraj Ramjattan MP
Mrs Sheila VA Holder MP
Ms Latchmin B Punalall, MP - *(AOL)*
(R# 4 - Demerara/Mahaica)
Mr David Patterson MP

(iii) Guyana Action Party/Rise Organise and Rebuild (1)
Mr Everall N Franklin MP - *(AOL)*

OFFICERS
Mr Sherlock E Isaacs
Clerk of the National Assembly
Mrs Lilawatie Coonjah
Deputy Clerk of the National Assembly

PRAYERS

[The Clerk** reads **the Prayer]

ANNOUNCEMENTS BY THE SPEAKER

Welcome to Caribbean Law Students

Honourable Members, I wish to welcome Caribbean Students from the University of Guyana in the Legislative Drafting Programme. I could not promise them what kind of afternoon we would have, but I told them that we would have interesting matters on the Order Paper. *[Applause]*

PRESENTATION OF PAPERS AND REPORTS ETC

By the *Minister of Finance:*

(i) Financial Paper No. 1of 2008 - Supplementary Estimates (Current and Capital) totalling $71,373,614 for the period 2008-04-03 to 2008-07-22

(ii) Financial Paper No. 2 of 2008 - Supplementary Estimates (Current and Capital) totalling $4,109,239,962 for the period ended 2008-12-31.

The Speaker: ... date, Honourable Member ...

Hon Dr Ashni K Singh: Mr Speaker, I beg to name the next Sitting, which I am advised is likely to be next week Thursday to be the date for consideration of these Financial Papers.

QUESTIONS ON NOTICE

Mrs Sheila VA Holder: Mr Speaker, I am standing.

1. DECENTRALISATION OF THE ISSUING OF PASSPORTS

The Speaker: The Honourable Member Mrs Holder

Mrs Sheila VA Holder: Will the Honourable Minister say why the system for issuing passports has not been decentralised to relieve citizens from the frustrations caused by the lengthy time they have to endure travelling to the City of Georgetown based Passport Office and awaiting for their applications to be processed?

The Speaker: The Honourable Minister of Home Affairs

Hon Clement J Rohee: Mr Speaker, this question has to do with the decentralisation of the machine readable passports, which was put in place of July last year. We are at the moment considering decentralising the passport system not necessarily at the local level, but more from the external level, because of the large numbers of persons who reside perhaps in North America .We are recognising also that the current centralised system which requires persons to leave various parts of the country to travel to Georgetown to the Central Passport Office to fulfil the requirements for machine readable passports is perhaps somewhat burdensome financially and otherwise for applicants. In recognition of that that we are introducing some innovative measures to deal exclusively with the persons who come outside from Georgetown so as to allow them to be dealt with expeditiously and at the same time to put a system in place in order to have them collect their passports. So while one phase is to present oneself to fulfil the application requirements, the other phase is to collect the Passport. So in both situations we try to expedite the process for those persons who may be travelling from outside of the city. We do not have any immediate plans for decentralising the passport issuance or collecting at the national level that is to say like the system we have in Berbice and Essequibo, because it could prove to be a rather not only expensive

exercise, but complex one and we have looked at what some of the other CARICOM Countries are doing in respect to the machine readable passports and what we found is that in a number of CARICOM Countries namely Trinidad and Tobago, some of the OECS Countries, Jamaica and the Bahamas, they found it necessary to maintain decentralised system. The decentralised system helps to address the question of identity theft; helps to deal with the question of thefts of passports and so forth. And so while we are a mere year away from the implementation of this project, actually 30th July of this year would have completed a year since that new machine readable passport is introduced in Guyana. I think when we discussed with the Chief Immigration Officer and Immigration Officials ... at some point in time we will have to move to the decentralisation, but at this point in time we are not contemplating moving to the decentralisation save and except to probably set up another issuing office somewhere in North America. Thank you.

Supplementary Question:

Mrs Sheila VA Holder: Will the Honourable Minister indicate what temporary measures his Ministry is prepared to put in place to alleviate the hardship of which I speak and to make the access of the passport far easier than it is at the moment, particularly for the people who have to come from the hinterland at a very costly

exercise, and also the circumstances existing where the passport office can go to the Regions on specific days? Have you considered those, Honourable Minister?

The Speaker: The Honourable Minister of Home Affairs

Hon Clement J Rohee: We have looked at all those things, Mr Speaker. The questions that the Honourable Member is asking are not questions that we have not considered, but I want to say to this Honourable House that the key to the success of the machine readable passports and the key to ensuring that there is no that there is no identity theft - further theft of passports - because we still have a large number of passports which were stolen from the Passport Office floating around. You would have seen an incident where not too long ago, two passports were found in the possession of persons who are unauthorised to be in possession of such passports. Our major focus at this point in time, Mr Speaker, is to ensure the safety and the security of the new machine readable passports and to ensure that the system that we have in place is not one that is open to tampering and is open to abuse so we have to maintain a rather tight system in place while gradually we look at the question of decentralisation. With respect to the innovative measures, this has to do with the numbering system that is in place and it has to do with the Immigration Officials themselves. Being out there and not only in the building, but being out there with the

persons who come from the far-flung areas to address their concerns on a personalised basis.

Supplementary Question:

Mr Aubrey C Norton: Mr Minister, could you tell this Honourable House if any work was done - research - to assess the pros and cons of decentralisation of passports issuance and what are the pros and cons and what factors will inform your decision, whether you will decentralise or not?

The Speaker: The Honourable Minister of Home Affairs

Hon Clement J Rohee: Mr Speaker, of course we looked at the pros and cons. We have not static in our thinking and we are looking at all those matters. In fact, we have looked at them, not only the pros and cons, but the cost factor as well, because when you look at the pros and cons every move you make or any new element of decentralisation has a cost factor attached to it. So we have indeed looked at the pros and cons. I am not in a position at this point in time to elaborate on those pros and cons. They could be subsequently submitted to the Honourable House along with what it would cost to establish decentralised offices in Essequibo, in Berbice and outside of Guyana.

Mr Aubrey C Norton: Mr Speaker, I was trying to get one of the pros and cons and to understand what factors will inform whatever decision is made and I would really wish if the Minister could just deal with that part of it for us

Hon Clement J Rohee: Mr Speaker, as I said we have looked at the experiences of other CARICOM Countries. Remember the machine readable passports and what is called the CARICOM passport, is not something that is peculiar to Guyana. Almost all Member States of CARICOM have introduced the machine readable passport which has certain CARICOM features. We have looked at the experiences of those countries in terms of looking at their pros and cons; you see maybe there is something that we can learn from their experiences when we are assessing the pros and cons of decentralisation. But since those countries, if I may dare say, Mr Speaker, have introduced or had introduced their machine readable passport system long before Guyana and they have not found it necessary even up to this point in time to decentralise then we need to be on guard. As I said before, while we are looking at those experiences, we will assess our own experiences and determine at what point in time we will move on them.

Supplementary Question:

Mr Aubrey C Norton: Could the Honourable Minister tells us the countries in the Caribbean that they would have looked at and what are the specific experiences of those countries that will impact on the decision that is made?

Hon Clement J Rohee: Apparently the Honourable Member, Mr Speaker, with due respect was not paying attention, when I first mentioned that we looked at the Bahamas, Trinidad and Tobago, Jamaica and the OECS countries. Thank you.

The Speaker: Is this the last question, Honourable Member?

Mr Aubrey C Norton: I asked having looked at those countries, what are the experiences of those that will impact on the decisions that will be made in Guyana? That is the question.

Hon Clement J Rohee: There are two fundamental experiences:
One experience is that make do as much as you can to maintain the integrity and the security of the system. That is one experience that we must learn from.
The second experience is that bearing in mind the peculiarities of each country and the Bahamas of course is different from Jamaica and Jamaica is different from the OECS. We obviously have to

look at those experiences bearing in mind the peculiarities of those countries and then see how we could make those adjustments depending on the time when we consider it necessary to do so.

Supplementary Question:

Mrs Sheila VA Holder: My final question is, will the Honourable Minister give us a kind of a timeframe of the possibility of a decision being made in this regard?

The Speaker: Is this a supplementary question, Mrs Holder?

Mrs Sheila VA Holder: Yes, it is. This is the last supplementary question on this main question, please.

Hon Clement J Rohee: Mr Speaker, I do not find it unusual that Members would be interested in a matter of this nature, because passport is in indeed a very important document for the purposes of identity. I cannot say with any certainty or with any definitiveness about a timeframe for decentralisation of the machine readable passports. I have learnt lessons from giving timeframes and deadlines and I do not think that it is advisable for me to do that in this Honourable House.

2. PERSONS RELEASED ON PAROLE

The Speaker: The Honourable Member Mrs Backer

Mrs Deborah J Backer: Thank you very much Mr Speaker.
Could the Honourable Minister of Home Affairs inform this National Assembly how many persons have been released on parole since the enactment of the Parole Act in 1991?

Hon Clement J Role: Since the enactment of the Parole Act in 1991, 115 persons were released on parole. The first person released in June 1993, while the last person was released on parole in June 2008.

Supplementary Question:

Mrs Deborah J Backer: I am trying to do some quick maths, Sir. Is the Minister aware that that figure of less than eight persons since the enactment of that Act, Mr Minister and if so are you satisfied that the Parole Act is being used efficiently and for the purposes of being enacted for?

The Speaker: The Honourable Minister of Home Affairs

Hon Clement J Rohee: Mr Speaker, the Parole Board is chaired by the distinguished Judge Oslen Small and I have the full

confidence in Justice Small as the Chairman of the Parole Board together with this other colleagues when they sit to adjudicate on matters that have been brought before them in terms of representation for persons to be released on parole. The Minister of Home Affairs receives the advice of the Parole Board and acts on that advice. There are cases where the Minister may wish to recommend to the Parole Board that more information be sought for example from the community where the person would have committed the crime, so that when that person is released on parole, and they go back to that community one would not find the residents of the community being upset about it. So I indeed have full confidence of the Parole Board. I do not think it would be wise to measure the utility or the efficacy of the Parole Board based on the number of persons which they have sent out on parole.

Supplementary Question:

Mrs Deborah J Backer: Honourable Minister, could you indicate to the Honourable House what percentage of inmates actually applied for parole, because you are telling us that in seventeen years 115 people were released, which is a grand total of about seven people per year? We know what is the number in the prisons so what percentage of people who are eligible for parole actually petitioned?

Hon Clement J Rohee: Mr Speaker, there is a process for applying for parole. The process could be triggered by two means:

(i) The closest relatives could petition the parole board for the matter to be brought to their attention and it be addressed; and

(ii) The Parole Board itself which is comprised of a number of persons with different qualifications, they would assess the persons or prisoners to determine who many of them would be eligible for parole.

Mr Speaker, I am not in a position to give any percentage to this Honourable House. I do not think that these questions could be measured on the basis of percentages; they are measured on the basis of processes. Thank you, Mr Speaker.

The Honourable Member Mrs Backer, you next question please:

3. OVERCROWDING IN PRISONS

Mrs Deborah J Backer: Could the Honourable Minister share with this National Assembly what immediate initiatives he proposed to take to alleviate the overcrowding in our prisons?

Hon Clement J Rohee: Well I have noticed the Courts have already started making an immediate initiative by granting bail.

Initiatives are taken at various levels such as within the Criminal Justice System, but in so far as the prison system is concerned, we have made representations to the Courts to address the slow processing of criminal matters through the Court System; it is rather agonising to see the lethargic pace with which the Criminal Justice System addresses questions of persons in prisons. For example, prisons from the interior take an inordinate amount of time for their cases to be heard. This is certainly something if it is addressed that could help to address the overcrowding in the prison system.

The other question with respect to overcrowding that we are looking at has to do with accommodation; expanding not necessarily the prison system by establishing new locations in addition to the five, but increasing the dormitory facilities. The estate of the prison system as it presently stands has the capacity for further accommodation facilities to be built and so if we want to talk about addressing the overcrowding; one is dealing with the accommodation issue and the other one has to do with faster delivery of the Criminal Justice System or on the part of the Criminal Justice System.

Supplementary Question:

Mrs Deborah J Backer: Mr Speaker, could the Honourable Minister say whether he and his government is prepared to

examine these various initiatives that are taken by other countries that suffer the same problem of overcrowding and I am specific Sir, I am asking if they would be prepared to look at this initiative. That initiative is as people approach the end of their sentence, to have a date and just send them home like perhaps two months before their time expire. So if I am sentenced for a year, at the end of ten months I behave good, you just send me home and that in itself as I come to the end of my prison term will have a substantive effect. If has been tried in other countries and it has worked and I am asking the Honourable Minister if his government and himself would be prepared to look at such forward-thinking initiatives to ease overcrowding in our prisons.

Hon Clement J Rohee: Mr Speaker, we have even gone past considering, in fact indeed we have been granting special remissions to prisoners long before their sentence is over.

The Speaker: The Honourable Member Mr Mervyn Williams

4. TRAINING OF LABOUR INSPECTORS TO DETECT ABUSES SUFFERED BY CHILDREN

Mr Mervyn Williams: Mr Speaker, could the Honourable Minister of Labour tell this National Assembly -

How many Labour Inspectors currently in the employ of the Ministry of Labour are trained to detect abuses suffered by children and young persons in the labour force and to say what remedies are in place to deal with such abuses?

Hon Manzoor Nadir: Mr Speaker, the Ministry ... *[Interruption]*

The Speaker: Could you pause for one second Honourable Member? *[Pause]* I have been advised that you have a question divided in many sub parts; you should ask the question inclusive of all the sub-parts so that the Minister will give one answer to the main issue as well as the sub parts at one time.

Mr Mervyn Williams: Very well, Sir. I will take the question from the top again, Sir.

The Speaker: Yes.

Mr Mervyn Williams: Could the Honourable Minister of Labour tell this National Assembly -

(i) How many Labour Inspectors currently in the employ of the Ministry of Labour are trained to detect abuses suffered by children and young persons in the labour force?

(ii) Say what remedies are in place to deal with such abuses?

(iii) Give an outline of the training received by Labour Officers in the area of child labour?

(iv) Give the number of batches and number of officers who benefited from such training?

(v) The frequency of refresher courses provided for these officers?

(vi) Give the number of cases of child labour identified and treated by the Ministry for the years 1993 to 2007?

(vii) Say how many persons/entities were prosecuted for employing under age children and how many prosecutors were successful for the years 1993 to 2007?

Hon Manzoor Nadir: First, with respect to the training of Labour Inspectors, in fact it is Labour Occupational Safety and Health

Officers, all of our officers are trained to deal with all aspects of labour, occupational safety and health.

In particular under sub-question (i) the Ministry has currently eighteen such officers all of whom have responsibilities to address the issue of child labour. We inspect worksites to make sure that child labour is not used and this is a continuous process.
In terms of the employment of young persons and we speaking here of persons between the ages of fifteen and eighteen, the Act stipulates the conditions under which such persons can work. Our officers are trained to do such monitoring.

Sub- question (ii) of the question before us - When reports are received or inspections of worksites revealed that there are employment of children under the age of fifteen years, the employer is immediately instructed to desist, the child is removed and the services of the School Welfare Division and the Child Protection Unit of Ministry of Labour, Human Services and Social Security are engaged to re-engage that child in the education system and to assist with ensuring that that child has a good opportunity to continue his or her education.

Sub-question (iii) - Officers are educated about the laws under which young persons can work. They are sensitised about dealing

with such matters and again as in (ii) that process would be engaged once such persons are found.

With respect to Sub-question (iv) eight of our eighteen officers presently employed were trained by the ILO to identify child labour issues and generally to give effect to ILO Conventions 138 and 182 which were ratified by the State. The other officers have been educated and sensitised in our own in-house education programme.

Sub-question (v) - At lest twice per year we do engage in revisiting some of these laws, but every single month all of our officers do in-house training programmes with all of the laws which the Labour Occupational Safety and Health Officers have to monitor.

Sub-question (vi) - The issue here, not many cases have been reported and our records were destroyed in the fire of July 2001, but I can say if we tie questions (vi) and (vii) together that two employers were taken to court in 2006 ... *[Interruption: ' So much?' "Yes, so much"]* but both cases were dismissed, because the witnesses including the children had left the jurisdiction and did not attend court.

Five reports of child labour were investigated in 2007. There was merit around one of those cases and we failed to have a successful

prosecution, because we could not verify the child's age by a birth certificate. Thank you.

Supplementary Question:

The Speaker: The Honourable Member Mr Williams

Mr Mervyn Williams: Honourable Minister, you mentioned eight persons being trained by the ILO in the areas of ILO Conventions 138 and 182, could the Honourable Minister say whether his Ministry and the Government intends to have re-laid in this National Assembly the employment of children and young persons Bill in this Ninth Parliament having regard to the fact that it was passed in the Eighth Parliament and signed by His Excellency the President.

Hon Manzoor Nadir: Mr Speaker, we do have Chapter 99:01 the Employment of Women, Young Persons and Children Act, and Act that goes back to 1933 in Guyana and has been subsequently amended over the many years with significant amendments coming in 1973 and amendments in 1999. Yes, in the Eighth Parliament there were some amendments proposed and we are once again looking at re-tabling those amendments in this current Parliament. Thank you.

Supplementary Question:

The Speaker: The Honourable Member Mr Mervyn Williams

Mr Mervyn Williams: This I the final supplementary question - Could the Honourable Minister tell the National Assembly how many work places are examined monthly by the eighteen labour officers or inspectors and could the Honourable Minister tell us how many places of employment were inspected over the last twelve months?

Hon Manzoor Nadir: Mr Speaker, I can give you perhaps the last ten years, but an average we do per week is close to sixty labour inspections which will roughly be over 250 per month. Our target for 2008 is the inspection of 4,000 workplaces, which would double what we did in 2007.

The Speaker: Honourable Member the next question please

5. MECHANISMS IN PLACE TO ADDRESS AND COMBAT THE SCOURAGE OF CHILD LABOUR IN GUYANA

Mr Mervyn Williams: Mr Speaker, could the Honourable Minister of Labour tell this National Assembly what collaborative

mechanisms are in place among the Ministries of Labour, Human Services and Education to address and combat the scourge of child labour in Guyana?

Hon Manzoor Nadir: Mr Speaker, I do not know about the scourge of child labour in Guyana. I know that we have some cultural issues to deal with and we do have a number of our children who for whatever reason leave school at an early age. The Ministry of Labour, Human Services and Social Security as I mentioned earlier in part (ii) of the first question, we do significant collaboration between the Ministry both in the Child Protection area of the Human Services part of the Ministry and the Ministry of Education through the School Welfare Unit and we intend to intensify this programme. That is why a few years ago, both the Ministry of Education and the Ministry of Labour did sign on to a United States Department of labour programme for child labour, education and eradication in Guyana.

Supplementary Question:

Mr Mervyn Williams: Is the Honourable Minister aware that his colleague the Honourable Minister of Education has reported in the media not so long ago as saying that fifty percent of the children in Orealla do not attend school, but rather work in the farms - that is child labour in its essence, because they do not go to school. I

wish for the benefit of the Minister of Agriculture say that child labour is defined as such work which by its very nature and circumstances is like to harm the health safety and morals of children or worst form of hazards faced by children at work. Could the Honourable Minister of Labour say if he is aware of the fifty percent of the children of Orealla not going to school and working in their farms and could the Honourable Minister say if he is so aware what measures have been taken by the Ministry of Labour to curb this practice?

Hon Manzoor Nadir: Mr Speaker, what the Honourable Member quoted in terms of employment which would endanger the health, the morals of children falls under Category 4 of the worst forms of child labour under Convention 182 of the ILO. The other parts of that Convention deals with the issue of slavery and drug trafficking.

In Orealla, I do not have the specific data with respect to the number of children who are not in school and are working in farms and we have to be very careful when we define the issues of the worst form of child labour and child doing chores.

The Convention that we signed to speaks to the issue of the worst forms of child labour. We would be very happy and we are going to be engaging in a massive education programme, because we do believe that the place for our children and we define a child as anyone under fifteen. Our Constitution says everyone up to the

age of fifteen should be in school - the Education Act - and even our Employment of Young Persons Act defines it as fifteen years. Anybody less than that should not be working, but we have launched some massive programmes to educate all of our people that the best opportunity that they can give their children for success in this life is a good quality education and that is the programme we are on right now. A campaign has started just over a month ago and shortly in collaboration with the ILO and the European Union, we are hopeful that by mid September, we are going to launch another phase of a campaign to ensure that our children, those who are defined as under the age of fifteen stay in school.

Supplementary Question:

Mr Mervyn Williams: Could the Honourable Minister say whether children not going to school during school hours and working in their parents' farms are defined as chores or whether it is defined as child labour?

Hon Manzoor Nadir: Mr Speaker, any parent who takes their children out of school to put them to any form of work, we are going to fight against. *[Pause]*

Proceed Honourable Member.

6. POLICIES TO DEAL WITH CHILDREN WHO ARE THE VICTIMS OF THE WORST FORM OF CHILD LABOUR

Mr Mervyn Williams: Could the Honourable Minister of Labour tell this National Assembly what policies are in place to deal with children who are victims of the worst forms of child labour as defined by the International Labour Organisation including post trauma counselling?

Hon Manzoor Nadir: Mr Speaker, in his first question, sub-question (ii) I did answer that and if we find anyone engaged in child labour or even the worst forms of child labour, the services of the child protection unit and the Ministry of Education will be engaged. These include the issue of professional counselling.

Supplementary Question:

Mr Mervyn Williams: Does the Honourable Minister feel confident that having regard to his
response to the first question about the rate of success in prosecution that the policy he alluded to is a workable and practicable one?

Hon Manzoor Nadir: Yes.

Mr Mervyn Williams: Thank you, Sir.

15:00H

The Speaker: Honourable Members, according to Standing Order No. 22, Questions On Notice should be raised at a time appointed by Standing Order No. 13 and the time allowed for such questions and answers shall not exceed forty minutes; that time has elapsed so we will have to put the rest of the questions for the next sitting . *[Pause]*

I apologise, just let me clarify that.

Mr Raphael GC Trotman: Mr Speaker with respect and by way of clarification, if a Member moves a motion that that Standing Order be suspended ... *[Interruption]*

The Speaker: Just one moment Honourable Member. *[Pause]* If the questions are not answered they have to be resubmitted ... no, no, the Minister will have to submit the answer in writing.

The outstanding questions are required to be answered by the Minister in writing.

Mr Winston S Murray: Mr Speaker, the Members who raised the questions on notice are not the ones who are responsible for preparing the Order Paper and therefore bear no responsibility that the time allocated for answering the questions is insufficient. It seems to me and since they wanted oral answers, they are being placed at a disadvantaged position by such a course where they are now going to be slotted to have their questions answered in writing whereas their preference was to have them answered orally

The Speaker: Mr Murray, since for quite a while now the Order Paper is constructed on the basis of the flow of work into the Parliament. Once matters come they go on the Order Paper at the time that they are ripe to get on the Order Paper. So if you have forty questions coming, as soon as they are ripe to go on the Order Paper they go. We do not calculate that it will take forty minutes to answer five questions and put only five. We do not adopt that function at all.

Mr Raphael GC Trotman: May I Mr Speaker crave your indulgence?

The Speaker: Yes, Honourable Member

Mr Raphael GC Trotman: Thank you. I am referring to the Standing Order to which you referred: It says that *the Minister*

shall immediately submit the written answer. I am prepared to accept that written answer now. *[Applause]*

Hon Manzoor Nadir: I am prepared to give it now.

The Speaker: You are not the only person who has questions to answer, Mr Nadir.

Mr Raphael GC Trotman: If we are to stick strictly to the Standing Orders, we cannot aprobate and reprobate, it has to be on both sides.

The Speaker: It usually has to be constructed with some generosity.

Mr Raphael GC Trotman: Well then let me ask the question.

The Speaker: *Immediately* has to mean as soon as possible. It could not mean anything else.

[In accordance with Standing Order No. 22 (8), Questions Nos. 7, 8 9 and 10 were directed to be postponed to the next Sitting]

INTRODUCTION OF BILLS

Presentation and First Readings

1. FISCAL ENACTMENTS (AMENDMENT) BILL 2008 - Bill No. 14 of 2008

By the *Minister of Finance*

2. MONEY TRANSER AGENCIES (LICENSING) BILL 2008 - Bill No. 15/2008

By the *Minister of Finance*

PUBLIC BUSINESS

(i) GOVERNMENT BUSINESS

BILLS - Second Readings

The Speaker: Honourable Members, we will proceed with the Court of Appeal Bill 2008 – Bill No 12/2008

5. COURT OF APPEAL (AMENDMENT) BILL 2008 - Bill No. 12/2008 published on 11 July 2008

A Bill intituled, an Act to amend the Court of Appeal Act to provide for

The Honourable Attorney General and Minister of Legal Affairs

Hon Doodnauth Singh: May it please you Mr Speaker, in the evolution of the Criminal Justice System in Guyana in 1978, an amendment was enacted, whereby The Director Public Prosecutions, following an acquittal and indictment was entitled to refer to the Court of Appeal - Points of Law that had arisen in the trial and which the court might consider and give its opinion on.

This amendment conferred a new jurisdiction on the court and was considered for the first time by the Court of Appeal of Guyana, in the Director of Public Prosecutions Reference No. 1 of 1980 which was reported in 1980 – Twenty Nine West Indian Reports on Page 94.

Prior to that there was no entitlement to challenge any type of ruling in the High Court. That section also entitled the Director Public Prosecutions, Reference No. 2 of 1980 and which is reported in 1981 – Twenty Nine West Indian Reports on Page 154.

Mr Speaker, those two decisions emanated from an indictment of the Director Public Prosecutions to refer Points of Law for the Appellant Courts determination, but had no bearing or significance on the acquittal, which would have taken place. Perhaps at that

time it was felt that an attempt to have a retrial would jeopardise the accused person in a situation as what has been described as double jeopardy.

However, in Dominica that situation did arise. Mr Patrick John, a former Prime Minister and others were charged for an attempt to overthrow the Government of Dame Eugenia Charles. The trail was conducted before Justice Mr. Horace Mitchell and he upheld a submission of no-case and the accused persons were discharged.

There was an amendment in the Dominica legislation, which entitled a challenge to such a ruling and as a result, there was a challenge and there was an appeal and that matter is referred to as John and others and the Director Public Prosecutions for Dominica 1982 – Thirty One West Indian Reports, on Page 150.

The issue was raised and the appeal was allowed and a retrial was ordered, that retrial did not proceed immediately as an appeal was lodged in their Lordships Privy Council, but I want to cite a passage from the Justice Robottom of Jamaica, who was giving a judgement in the matter and this what he said:

> *There are many Statutes which gave a right to appeal, by a way of case stated on the ground that the determination is erroneous in law. If not, infrequently happens that the Magistrates come to the decisions, which no reasonable bench could have come to. In such a case the High Court on appeal can interfere. If wrong principles are applied in making this decision or in accepting, or rejecting evidence which raised questions of law,*

they can hardly be any room for depute, when it is said that the wrongful admission and or the wrongful exclusion of evidence, raised questions of law, which in a Court of Appeal can lead to the squashing of a conviction.

I have already indicted the Court's view that the trail judge wrongly excluded the passport form and the diary. This wrongful exclusion of evidence in our view raised a Point of Law and the sufficient ground for the right of appeal of the DPP unless it can other wise be shown that the amendment is unconstitutional, void and of no effect.

There was a challenge to that ruling of the Appellant Court and Their Lordships in the Privy Council, agreed with the Appellant Court of the Eastern Caribbean States and Patrick John, former Prime Minister, who was out on bail, pending the appeal, Their Lordships in the Privy Council said he should be immediately re-arrested, but bail should be considered if it is appropriate.

The Privy Council stated that the provision in the amendment and the relevant Act did not constitute an infringement of the fundamental right enshrined in the Constitution nor did it infringe universal declaration rights.

Mr. Speaker, I am familiar with this judgement and the facts of this case, because first hand, I prosecuted Mr. John and he was found guilty and sentence to a term of imprisonment and that appeal was upheld.

Mr. Speaker, perhaps I should draw to your attention certain passages in the judgements of Their Lordships, but since I am not

in the Appellant Court, perhaps I will only make a brief reference to it.

The Bill that we are seeking to introduce, I have read in the newspapers that my learned friends on the other side feel that certain areas, which are questionable.

One of the fundamental issues that arise, is the issue of double jeopardy, it has always been a hollowed principle of the common law that a person who has been acquitted, ought not to be put in jeopardy again.

However, those issues were raised as result of the amendment both in Bermuda, in the case of Justice Rahaman Smith and the Queen - Privy Council Appeal No. 44 of 1999 and in the Trinidad court as well in State versus Brad Boyce, Privy Council Appeal No. 51 of 2004 and I wish to make reference to what Their Lordships in the Privy Council said with respect to the concept of constitutionality and the principle of double jeopardy.

It is therefore not sufficient that the law at the time of the Constitution gave one a right to be immune from further proceedings after an acquittal by a jury.

Section 4 entrench fundamental human rights and freedoms and the question is therefore whether the old common law rule, which prevented the prosecution from appealing against an acquittal form part of due process in its narrower sense as a fundamental right or freedom. Their Lordships do not think that they did. They would accept that the broad principle that a person who has been widely

convicted or acquitted in proceeding which have run their course should not be liable to be tried again for the same offence.

It is a fundamental principle of fairness; it is recognized as such in many Constitutions, for example the Constitution of Jamaica, an International Human Rights instrument. See, for example, the United Nations International Covenant and civil and political rights and the European Convention for the protection of Human Rights and Fundamental Freedoms. But they do not think that the principle is entirely without expectations and they certainly do not think that it is infringed by the Prosecutions having the right to appeal against an acquittal.

The possibility of such an appeal is accommodated in the qualifications of the principles, save as may be stipulated in all the Caribbean Constitutions to which Their Lordships are referred:

- Jamaica;
- Barbados;
- The Bahamas;
- Grenada;
- Dominica;
- St. Lucia;
- St Vincent and the Grenades;
- Guyana;
- Antigua and Barbuda;
- Belize;

- Anguilla;
- Christopher Nevis;
- Turks and Caicos;

as well as the international instruments which Their Lordships have mentioned.

Mr. Speaker, with that back drop I will now make reference to Bill which is before us.

It is *intituled Bill No. 12 of 2008, COURT OF APPEAL (AMENDMENT) BILL 2008.*

Sir, it is described in this way:

> *An Act to amend the Court of Appeal Act, to provide for appeals by the Director of Public Prosecutions to the Court of Appeal and the Caribbean Court of Justice and for connected matters.*

The Principal Act which is the Court of Appeal Act Cap 3:01, the amendment is by an insertion. The Principal Act is hereby amended by inserting immediately after Section 34 the following parts:

APPEALS BY THE DIRECTOR OF PUBLIC PROSECUTIONS

Definition: 34A — *In this Part "respondent" means the person whose acquittal or whose sentence is the subject of an appeal by the Director of Public Prosecutions.*

34B. (1) Notwithstanding Section 33 …

That is of the Court of Appeal Act

… the Director of Public Prosecutions may appeal under this Part to the Court of Appeal -

(a) Against a judgement or verdict of acquittal of an accursed person in proceedings by indictment in the High Court when the judgment or verdict is the result of -

(i) A decision by the trial judge to uphold a submission that there is no case to answer or withdraw the case from the jury, on any ground of appeal which involves a question of law or evidence;

The previous provision relating to amendments referred only to the question of law, but we have included in this amendment with respect to evidence.

(ii) A decision by the trial judge to uphold a submission that there is a defect in the depositions or he committal of the accused person for trial or the indictment;

This is an invocation.

(iii) *A decision by the trial judge to exclude material evidence sought to be adduced.*

That had previously been covered.

(iv) The trial judge's substantial misdirection of the jury in the course of the judge's

summation on the law or facts or on a mixed question of law or fact;

That would be an invocation as well.

Against the sentence passed on a person convicted by the High Court in proceeding on an indictment on the grounds that the sentence is one which the Court have no power to pass and the sentence is manifestly inadequate or wrong in principle.

We have extended and it sought to clarify and to establish the parameters whereby the Court of Appeal could be guided. When an appeal has been launched by the Director of Public Prosecutions and then we have set out the procedure and time for appealing in Section 34C and then the various matters - the type of offences whereby the rights of appeal will arise.

The right of appeal if conferred to the Director of Public Prosecutions by Section 34B shall be limited to the following offences and then appears as it were in a Schedule, the offences which have been indentified.

Section 34D provides for the power of the Court of Appeal upon acquittal and I did mention there is the concern that pending the appeal the person may be in custody. There is provision which requires that immediately prior to the discharge of the person that the notice must be given and as I brought attention to the Assembly in the case of Patrick John, who have been out after the discharge and the ruling of trail judge, Their Lordships in the Privy Council ordered that he be immediately rearrested and taken into custody.

Mr. Speaker, as a practitioner involved in the defence of persons through the Commonwealth Caribbean, I appreciate the concern, which has been expressed by members of my profession with respect of some of the issues, which have arisen in this Bill.

At the appropriate stage, Sir, I will have a proposal to make, but at this stage, I wish that the Bill be read for the Second time. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Member Mr Ramjattan, *[Pause]* no, no Mrs Riehl. Sorry my apologies. I do not know how I missed you in that very attractive –looking, red dress.

Mrs. Clarissa S Riehl: Thank you, Sir.

Mr. Speaker, there is an age old maxim on which the whole framework of our criminal judicial system hangs and it goes like this, *it is better that 100 guilty men go free than one innocent man is convicted.* All our laws and legal rules thus far premised as they are on the common law of England, which we have received into our laws here, were designed and worked to protect that one innocent man more than to penalised the guilty.

In any given society, Sir, the large majority of the citizenry generally obey the laws of their land, but there is always a level of criminality existing that does not see the light of day or so to reach

the courts. Guyana is no exception to that situation; the only difference here ... Guyana, as matter of fact, is a prime example and the only difference is that percentage or that measure of criminality here appears to be growing larger and larger.

Mr. Speaker, consider the scores of unsolved murders in our society within recent times. We know of the occurrence of this type of crime, because there is always the physical evidence of a dead body, but how many rapes are not being committed in our county and are being compromised even before charges are laid. How many robberies, burglaries and larcenies are not ever solved? So we are daily rubbing shoulders in our market place, mini-buses and at sophisticated forums with murderers, rapists, white and blue coloured robbers, but we do not know them, because their crimes go undetected and in some instances it is known, but goes ignored.

After digesting this situation, one could understand that maxim, because at least the 100 guilty men, let us state it factually …

The Speaker: … or women ...

Mrs. Clarissa S Riehl: Sir, yes, they would have undergone some measure of jeopardy before they were actually released, knowing the courts apply the rules. I heard the courts say over and over again, *I know you are guilty but I leave you to the higher authorities* and things like that, but because of the rules that we have, the guilty men go free, but as I said, at least they would have

suffered some measure of jeopardy, which may have helped to change their behaviour in the future, even though they were not convicted.

The answer, therefore, Sir, to the rampant criminality is not to tighten the screws against the few who are caught by bringing onerous and oppressive legislation such as this one we are debating today, but in widening the net. The way to widen the net is to enhance police investigated skills, employ and maintain a core of competent prosecutors, appoint strong judges and cease political interference at all levels of the criminal justice system. *[Applause]*

The Administration knows this prescription, but they have persistently baulked at it. I want to refer specifically to the state of the DPP's Chambers, the attrition rate of the criminal lawyers of the State and the inexperience that abounds there and I want to quote an excerpt from a very recent case from the Caribbean Court of Justice, I think this is either the first or second case we may have sent there.

This is a case from the Judgement delivered by the Honourable Justice Neil Batiste, the President of the Court and the very last paragraph, where the Judge was considering after granting upholding of the appeal, considering the possibilities of a retrial and this is what the Honourable Judge had to say:

> *(a) The only other question which arose was whether we ought to have ordered a retrial, we decided that that the course was not what*

the interest of justice required. In reaching that conclusion, we took in consideration inter alia the length of time over seven years, which had elapsed since the appellant was arrested. That is always taken.

(b) The opportunity which a retrial would give to the prosecution to correct the several mistakes, which were made in at the first trial.

And this is the point, the several mistakes that were made at the first trial and the opportunity at the retrial for the DPP to correct those mistakes. The fact is, I did not go into the judgement, but reading into the judgement, you would see the horrible mistakes that the prosecution may fail to tie up loose ends, all kinds of things, which the judge was very, very critical of and he said that he would not give them the opportunity to have a retrial and correct these mistakes.

So, Sir, where are we going? What area of criminal justice system do we need to rectify? Is it at the top, putting pressure and trying to intimate our judges that if they do not get secured convictions, they are liable to get an appeal? I do not understand. Instead of making sure that you have competent core of Prosecutors, to ensure that the person is convicted if the evidence is there.

Mr. Speaker, the DPP is a powerful functionary in our Criminal Judicial System, she and it is a she now, has dominion over all criminal cases in Guyana. She makes decisions to prosecute or not

to prosecute and to vest her now with a right of appeals on acquittals in the High Court is to make her all powerful, but to do it in such a compressive manner, on so many different grounds. (I think the Honourable Attorney General read those grounds) is nothing short of a vote of no confidence against the Judges of the High Court.

The DPP may excise his right of appeal not only on matters of no-case submission, like the Attorney General was telling us about the Caribbean case of Patrick John and the Prime Minister of Dominica. That was a no-case submission, one would have even tolerated if it was only a no-case submission that the judges, who do not want to have their summing-up tested at the Court Appeal would stop the case at the no-case submission and if you have a recurrence of that

you might even tolerate, but it goes on to say that the Appeal may be against the Trial Judge's substantial misdirection of the jury in the course judge's summation on the law or facts or on a mixed question of law and facts.

Mr. Speaker, this Section puzzled me considerably, because as a former prosecutor, I know that the facts are mainly laid by the prosecutor before the jury and it is entirely how the jury use those facts. As a matter of fact, the judge may express an opinion on the facts and he always has to admonished the jury that it is his opinion and if they do borrow that opinion or if adopted, it becomes their own.

But how, Sir, could an Appellant Court decide which set of facts a jury use to acquit an accused person? That has baffled me considerably, because when I look at that fourth ground on which the DPP may appeal, when it contains the judge's summation of facts, it really shocked me and I am still puzzled, perhaps the Attorney General when he stands up again, he would be able to tell me how that will work.

The DPP has said, may also appeal on the sentence of the judge and this would denude the judge. This is a judge of the High Court, we are speaking about, Sir, not a Magistrate who is a creature of Statue. A judge is a constitutional appointee and has discretion in sentencing. So you should not denude the judge of that discretion, because he may take into consideration post-trail mitigation, which is made sometimes by Order of Probation Reports, sometimes the defence council would tell him things. Generally, he would take all those factors into consideration before he gives his sentence.

So in fact, I do not know how this will work. I do not understand how the DPP can strip the judges of this particular discretion. If this administration, Sir, is so displeased with judges, many whom were appointed by them, then it should take another look at how it can improved the quality of the judges it appoints.

Guyana, for instance, Sir could perhaps take a page out of the book of the Americans and have a judge school. Americans at every level, judges have to go to school before they sit on the bench,

even though they are lawyers the have from the Circuit Court right up to the Supreme Court and I understand they have to go to judge school before they can sit on the bench and adjudicate.

I understand that in China also, judges have to go to judge school and there they even have to pass exams. We have called time and time again in this House, to have even a streaming of judges, so that you have judges who are more *au fait* with the criminal law, doing more criminal sessions.

You have judges who would do Family Court and they only streaming we had so far is the commercial court, because the government was given money for that. So there are not streaming, they are not making any invocative initiative to having this. I do not see why they can not collaborate with the rest of the CARICOM Countries to have a school for judges in the whole region, in much the same way as legal education training was developed and fashioned by President Burnham and others CARICOM leaders of his day the same legal education system of which many of us are now products.

Mr. Speaker, by far the most alarming aspect of this legislation, however, is its trust towards the erosion of the rights of a helpless citizen, who might have committed one of these indictable offences.

The gamut of offences covered is literally all the no-bail offences and I think the Attorney General listed them. I could list them again:

- Murder
- Treason
- Manslaughter
- Piracy and hijacking
- Money laundering
- Robbery
- Drug offences
- Burglary

Yes, the whole gamut of the High Court and there is provision that the Honourable Minister by order may even add to that list. There is provision in the Bill for him to do that.

So this essentially means that the accused remains incarcerate until he is able to have his day in court at a trial by a jury of his peers, because of the inbuilt sloth in our Criminal Justice System this process takes an average of between three to five years. First of all, the police arrest you, prepare their case, you go through endless reports in the Magistrate's Court before it reach the stage of a Preliminary Inquiry. All this time for these types of offences the accursed is in custody.

After you through several months and perhaps years having the conclusion of the preliminary inquiry, you have to wait a number of months and years before your name is put on the list. Look at how many years Mark Benschop spent in prison - six years - before he was actually ... he did not have his day in court the second time around.

So, Sir, the system is slothful. I am sure the Government will tell you, because of all the constraints they have. So should the accused be acquitted, he would now have to remain in custody if the DPP chooses to appeal. Although Clause 34C (4) does speak of the possibility of bail, the Honourable Attorney General referred to that, but this begs the question - bail for what offence? And I do not know the cases which the Attorney General spoke of, I know it was a no-case submission; the matter did not reach the jury, in the case of Patrick John, it never reached the jury.

But we are talking now about bail - bail for what? I do not understand.

- I am incarnated here;
- I am an accused;
- I was acquitted by a jury of my peers;
- I had this charge hanging over my head;
- I was placed by the Judge in the hands of the jury;
- The minute the jury brings in the verdict of not guilty; the jury has said to me that I am now not guilty;
- I am acquitted.

I do not think it is only formality that the judge pronounces the sentence or to say whether you are free to go. I have know of situation where the accused ran out of the box so fast the moment the jury brought in the verdict and we had to say come back, come back, there are little things to do - to brush up because he was so happy that he just jumped out of the box and started out.

So the verdict essentially brings a question; what offence is this man going to hold him on bail for and therein lies constitutional conundrum in this case. Because although Article 144 (5) appears to give the Government the go ahead to file for acquittal and I would to read what Article 144 (5) says. The Attorney General did not stipulate it.

Article 144 (5) preserves the right of a retrial on ultra vires convene, as well as ultra vires acquit that is how I read it here, because Article 144 (5) says:

> *No person who shows that he has been tried by a competent court for a criminal offence and either convicted or acquitted shall again be tried for that offence or another criminal offence of which he could have been convicted at the trial for that offence, save upon the order of a Superior Court in the course of appeal proceeding relating to the conviction or acquittal.*

So, I think in building our Constitution is the right of the DPP to appeal, I think there is a right, the same thing goes in the Magistrate's Court, because when you are acquitted in the Magistrate's Court the DPP can appeal the Full Court by that time they cannot find him back to charge him if the Full Court say well he is wrong, you should have charged him back.

The problem is that Article 144 (5) does appear to support the bringing of this legislation, but in my humble opinion, Sir, Article 144 (5) seems to collide with Article 139, which speaks of the protection of the right of personal liberty and the list of cases and

situations, which may cause a citizen to be deprived of his personal liberty does not appear to extend to persons who have been acquitted of a criminal offence yet remains in prison at behest of the State.

As I said, this is where we had asked for this matter to be stayed, while we looked at all of these provisions to see whether there is any constitutional error going on here. Because I read through the situations in which in cases persons could be deprived of his personal liberty and it does not seem to extend to this situation of notwithstanding what the Attorney General said about the Patrick John situation. I do not even know what the Dominican Constitution says whether it is on par with us.

Perhaps Sir, here in lies the reason why Attorney Generals of the past forty- two years since we have been an independent and a sovereign State with a written Constitution have never moved in this direction.

I also wish to read an excerpt from a book which was written by Dr Selwyn. Ryan and it concerns the life and times of HOB Wooding the celebrated Chief Justice of Trinidad and Tobago after whom the Hugh Wooding Law School is named. The book is titled The Pursuit of Honour – The Life and Times of HOB Wooding and on the aspect of Constitution of fundamental rights, this is what the eminent judge had to say:

> *Since the fundamental character of the rights and freedoms if the word 'fundamental' is not*

meaningless is should admit of no abrogation or abridgement by future legislation or no inconsistency of violation by previous legislation except and only except during a state of emergency.

It would appear here that there is some attempt to abridge the constitutional right of the citizen by coming in this way. As I said, maybe in the wisdom of some of our past Attorney Generals, I am not meaning to say that our Attorney General here do not have wisdom, but I think that we have a situation where I can not understand this legislation. I really cannot.

Mr. Speaker, there is another aspect which I would like to bring to attention of this Honourable House. This Legislation contains no date when it will come into effect. We have to assume therefore that whence the President's assent and I think it has to be gazetted, it becomes the law to be implemented forthwith. I submit that such a scenario is bound to offend or infringe important principles of the certainty of law.

This is with particular reference for those citizens already locked in the criminal justice system; those charged awaiting preliminary inquiries or awaiting trial. This would be a veritable bombshell for those persons. The principle of certainty is that a man must know what is the state of the law, not only before, but even when he offends. He must know what stages he has to go through, as to the jeopardy facing him at every level; he must know and understand it; even as I said, when he takes the step to offend.

A man in prison awaiting trial will now be faced with a possibility of not two tiers anymore - not the Magistrate's Court PI and the High Court Trial before a jury of his peers; he will have to consider that if he is acquitted by a panel of jurors that his matter may now be appealed by the DPP while he remains in custody, because even though the bail provision is there, it is not a wholesale provision. It says that the Court of Appeal, may in some instances grant Bail. So he may have to wait there, while the DPP appeals. We know, as I said Sir, again the sloth in our judicial system. So he has to wait there and if that is not bad enough, if the DPP does not succeed at the Appeal Court level, she may want to appeal to the CCJ, because this man sitting waiting; his citizen of Guyana, ho has rights even though they are suspended, because he is in prison, may now find himself with a four tier system and with all the concomitant expenses that go along with that. So I really cannot understand how the State is treating with this matter.

Sir, I find this Bill onerous and oppressive and I believe it is repugnant to our Constitution in its present state. I note that the Attorney General said he might want to make a statement later on, but in its present state I do not think that we could lend our support to it. As a postscript, it is nothing short of ironic, but we are still open to discussing and to looking over and to see whether this Bill could be salvaged in any way. As I said, as a postscript, I find it ironic and the Honourable Attorney General himself stated it, that he whose considerable reputation was built as a criminal lawyer

was built on his ability to have acquittals in the High Court and that he should be the one piloting this Bill, in this Honourable Parliament. *[Laughter]* Yes, he has built a considerable and formidable reputation as a criminal lawyer. I know of the time, because we worked together, when Mr Doodnauth Singh had sometimes two and three cases at the same time going before different Judges; he rushes to one to cross examine; he ruses to the other to give his ... he knows the time so much so that the Judges were saying to him, Mr Singh you have to have junior and of course he did have in the end, got himself a junior. So I find it very ironic that he has been the one to pilot this Bill.

Sir, we are opened to have interceding any way whether we could salvage this Bill, because we understand sometimes, as I said that there are weak Judges, who behave in a way that they do not want their summing-up to be tested and that sort of thing. We have some sympathies towards this situation, but we do not... I personally have heard the wholesale - the whole gamut - of grounds on which the DPP can... which I feel must be intimidating to our High Court Judges. Thank you Sir. *[Applause]*

The Speaker: Thank you Honourable Member.

The Honourable Member Mr Ramjattan

Mr Khemraj Ramjattan: Mr Speaker, some time ago, in this august Assembly, I had argued a case on a Motion I think, brought

by Honourable Member Mrs Deborah Backer, if I am not mistaken, I think it was her, yes; that there must be in place a Law Reform Commission in this Country.

- Expert advice on the need and priority for changes in our Law.
- Expert advice on what changes have been occurring around the common-law World, from which we can extract, as we seen fit.
- Expert advice as to what may be appealing but, troublesome so that we can avoid unmeritorious and adoption of them, could have been forthcoming from such a Law Reform Commission.

But no, the Government through its Attorney General was very adamant, no, no, to a Law Reform Commission.

Setting up of such an institution, which is necessary to archive the reasons why we pass the laws we do, so that we can have institutional memory to fall back on, would have been a great credit for this Country, especially in this important field of criminal law and *c*riminal justice. As you would appreciate Mr Speaker, most of our criminal laws and our Criminal Justice System, is in a mess and such a mess as it is in, can only be cleansed through the efforts of a Law Reform Commission's Research, where at a very serious level points of policy and points of principle, points of pros and cons of a law can be argued and

debated before the deliberation comes here and before we legislate in this National Assembly.

This latest piece of legislation - the Court of Appeal (Amendment) Bill 2008 - which the Government has introduced with the purpose of continuing its Criminal Justice Reform, I want to state and very emphatically so, would only add to that mess and may very well be a recipe for disaster.

Mr Speaker, this Government feels that its only obligation is to legislate, because that mandate has been granted to it and to legislate to further fortify the position of the State. It fails to appreciate that the other obligation it has, is to pass laws, which must improve the lives and the *lot* of its Citizens and to fortify the system, which will give a greater justice to such citizens.

This amendment which seeks to provide for appeals by the DPP to the Court of Appeal and thereafter as of right to the Caribbean Court of Justice, will not improve the lives of lots of citizens. The lot of the accused will be made more horrifying and horrible, so too the lot of all those involved in the trial process

- The witnesses;
- The police;
- The jury;
- The Judge; and even
- The entire system

because of the inundation these appeals will have on it. This is readily foreseeable. So why bring this Amendment? I want to suggest it is utterly out of a massive ignorance, as to why the law is as it is presently on this area that has caused them to bring this Court of Appeal amendment.

This Government will argue that since the accused has the right to appeal his conviction why should not the State have the right to appeal the acquittal of the accused. The acquittal rates these days are obviously soaring but that is not due to the fact that the State does not have a right of appeal. And I warn that now that the State will be given that right of appeal, it would be foolhardy to conclude that there will be more convictions and lesser acquittals. More convictions will only happen when -

- There is an improved quality of the investigation of crime; and
- A high quality of prosecution at the trial thereafter;

Both these phases require a sustained effort at training the personnel keeping abreast with the advances of technologies to assist in detection

- having advocates at the trial process who apart from articulating in a manner to convince a jury must also be sharp enough to counter the stumbling blocks of any good defence council and what that defence council may legitimately mount.

- Improving and strengthening the three Ps -

  Policemen;

  Prosecutors and

  Prisons;

will realise what this Government should strive for and what the citizens want, a fair Criminal Justice System. This is the way forward. *[Interruption: 'You cannot forget the PPP; you missed the PPP.']* You missed it totally in the sense that you want to feel that you are strengthening the PPP/C but, what the PPP/C should be strengthening here is Prisons, Policemen and, as I said, Prosecutors.

Now, what we have here in these draconian provisions; there are several very dangerous themes, running through this Legislation, which must give cause for concern. I shall address them in due course, but I must state certain realities now; while we have the existing status quo in which acquittals by the jury was never subject to appeal. That is the ignorance that is being exhibited here. Why did we have for centuries that which are up to today, the status quo? In a hundred and more years of the common law jurisprudence, time immemorial as we lawyers say, the settled situation, the bedrock foundation of our Criminal Justice System has been that a jury's verdict of acquittal represented the limit of the power of the State to impose punishment upon a citizen. When the jury said, you are acquitted, that was the limit. No matter what

wrong the prosecutors and the State might have felt occurred during the course of that trial; those words *jury acquittal*, you cannot; it was the limit of punishment.

This was the perfect balance and counter balance between the powers and resources of the State and the relative weaknesses of the individual, the ordinary subject within a democratic State. It has always been so in Guyana and it should remain so. Right up to this point, our Appellate Courts could only hear appeals from persons convicted. The prosecution had no right of redress; however, strongly it held a view that an accused was wrongly acquitted. It had no right of redress, however strongly it felt that an injustice was done to the prosecution.

Indeed in 1978, as the Honourable Attorney General spoke about by Court Appeal (Amendment) 21/1978, only a reference to the Court of Appeal on a point of law, following an acquittal on indictment was permitted and in such a reference nothing adverse could happen to the accused who was so acquitted. He goes home, he is a free man, but assuming you feel as a prosecutor that, the Judge has committed some wrong, you can refer the matter to the Court of Appeal. In such a reference, nothing adverse could happen to the accused, who was acquitted. The reference only eliminated the point of law for a better application by the Judges and assizes for future. So the historic access that, a jury's verdict of acquittal remained in place, never shifted and as a result of this 1978 amendment which catered for a DPP's reference.

This legitimate, delicate balance between the powerful State and the puisne citizen was intact as regards the finality of the acquittal at a trial. This DPP's reference of 1978 could not say to have impugned the supremacy of the jury or in any way limited the accused's rights of appeal if he was convicted. However, this Bill seeks a blatant erosion of that jury supremacy. *[Applause]* But more than that it affects other venerated legal concepts, which are the hallmark of our system of criminal law and criminal justice such as:

- The presumption of innocence;
- The rule against double jeopardy and I will have a word to say about the cases my learned, senior and Attorney General mentioned. Even in my opinion,
- The independence of Judges and hence the doctrine of separation of powers; almost the entire gamut of constitutional doctrines are affected by such provisions as are in the present Bill... *[Interruption]*

The Speaker: Since you have such a long list to take us through Honourable Member, I think we will need some capacity to be able to digest it. *[Laughter]*

I would therefore strongly recommend that we take the suspension at this time for one hour. Thank you very much.

Mr Khemraj Ramjattan: Thank you very much.

16:00H - SUSPENSION OF SITTING

17:10H - RESUMPTION OF SITTING

The Speaker: Honourable Member Mr Ramjattan, you may proceed.

Mr Khemraj Ramjattan: Mr Speaker, as I was indicating, just before we took the break, this Bill seeks a blatant erosion of Jury Supremacy as I had mentioned. But not only that, it does more than that ... it affects other venerated legal concepts which are a hallmark of the system of our criminal law and criminal justice, such as:

- The presumption of innocence;
- The rule against double jeopardy; and even in my opinion,
- The independence of Judges and hence the doctrine of separation of powers.

This Bill is frightening and to use the words of a famous barrister who writes for the new *LAW JOURNAL*, John Cooper, QC from Bedford Rowe, concerning an amendment that the Blair administration in England, not very dissimilar to this, concerning investigative and prosecution abuse in England, in an article very well received by the Bar Association of England. This is what he

had to say on Page 80 of the NEW LAW JOURNAL the Edition of 18 January 2008:

> *Parliament, by eroding this Jury Supremacy is effectively breaking that unwritten pact between the State, Powerful State and the citizen; that the State would never challenge the judgement of the people.*

And later as he indicated in relation to this, where they wanted to allow appeals in relation to where there are abuses of prosecution and investigative abuse. What abuse of the process gives to the Criminal Law is a recognition, which should underpin any Democratic Criminal Justice System and that is, that the State is more powerful than the individual; that the criminal Law from Summary to Appellate Justice should recognise this imbalance and that if the State with all those power transgresses to such a serious degree, then the Criminal Law will intervene on behalf of the weaker party.

The Criminal Law has always intervened on behalf of the weaker party. Moreover, Mr Speaker, I want to state that the amendment in England was duly passed, but I want to state this that, in England there is the Supremacy of Parliament. In Guyana this Constitutional doctrine does not govern us. We have the Supremacy of the Constitution.

In various provisions of our written Constitution sacrosanct principles like;

- The rule against double jeopardy;

- Presumption of innocence; and
- Separation of powers;

are all explicitly, if not implicitly enshrined therein.

Article 144 (v) as quoted by my learned friend, Mrs Riehl, states the double jeopardy provision. Similarly in that Article 2- it is quite clearly stated the presumption of innocence. And these are explicitly provided for.

I also want to mention what we all learnt at Law School about juries and their importance. Juries as we know and I remember this; and I am certain those over there would remember this, from the Arnold Rampersaud trials; is that serious stumbling block, which every Government hates when such Governments begin to act dictatorially, elected or un- elected. *[Applause]* What is it that we are taught at Law School? It is that juries are a bulwark of liberty. Lord Devlin in his classic *TRIAL BY JURY* made a comment therein that must resonate resoundingly in

- This National Assembly;
- Our communities;
- The whole of Guyana now,

in view of this Bill and which comment gives a guide to unveiling the sinister purpose behind this Bill. This is what it says that comment of that great law lord:

> *The first object of any tyrant in white Hall...*

He was speaking about England here:

> *... would be to make Parliament, utterly subservient to his will and the next would be to over-throw or diminish trial by jury; for no tyrant could afford to leave a subject's freedom in the hands of twelve of his country men, so that trial by jury is more than an instrument of justice and more than one wheel of the Constitution. It is the lamp that shows that freedom lives.*
>
> *... Lord Devlin.*

This whittling away, this diminution of the value of the Supremacy of the Jury by virtue of what is being done here, in relation to acquittals, is but taking away that bulwark of our liberties. That which we have here is but an outing of that lamp that shows that freedom lives. This Bill seeks to do away with that particular constitutional balance between a puny citizen and the behemoth. State. All because of unpalatable outcomes at the Assizes in recent years - unpalatable outcomes that comes not, because you do not have the right to appeal acquittals, but as I mentioned earlier;

- The inefficiencies within the detective process;
- The collation of statements process;
- The prosecution process; and
- Right up to the trial process.

To walk away from this balance that has been with us from time immemorial, for hundreds and more years, which we have up till

today and to replace it with provisions of this Bill, is a monumental misstep. This Government by its nature and this is but an exhibition and public expression of that nature, feels that it knows best, but it does not know what it is playing with.

How does this provision breach some of the fundamental doctrines? An illustration comes very readily at hand and I want to illustrate this by an example that lawyers especially and ordinary people know. An accused is charged with any one of the offenses mentioned in Section 34C (v) of this Bill (say) murder - the main evidence is a confession statement, something that is very popular in that kind of trial these days and generally because of the attitude of policemen in oppressive circumstances and sometimes wholly out of torture. As is normally the case, this confession will be objected to at the trial. You can ask for that kind of experiences from both Mr De Santos and the Hon Attorney General. The Judge conducts his *voir dire* and as a trier of fact, rules that the confession is involuntarily made and throws the statement out. A no-case submission is made; the no-case submission is upheld and the judge then directs the jury to bring in a not-guilty verdict. The DPP now, unlike before, has the power to appeal the Judge's decision to exclude the confession. This does not only apply to confessions, but to dying declarations, *rest jestre*, a whole host of evidence - material evidence - which was sought to be produced by the prosecution.

This is what Section 34B (1) (iii) is saying, the Judges' discretion now, in holding inadmissible that bit of evidence can be questioned. Before only the Judges' discretion to hold admissible that evidence could have been questioned. So an accused convicted can contest his conviction. This whole balance is now changed; the whole jurisprudential axis on which our criminal justice process rested has now been removed. But more than that, what has happened now is that the accused has to remain in the lock ups pending the determination of this appeal.

Moreover that may not be the end of the wait, because if the Court Appeal of Guyana rules that the DPP's appeal was wholly unmeritorious, the DPP can further, as of right go to the Caribbean Court of Justice. Similarly even if the Judge in the case had ruled admissible the confession and the matter is sent to the jury and the jury comes out with a not-guilty verdict, which presently, in our State of the Law would entitle the accused to go free, the DPP has today or is being given this power today, to hold the accused up in the lock ups even when a jury has acquitted him on questions of fact. Although a jury has acquitted him mind you and what does the DPP tell the accused? Wait until the CCJ comes to that, makes its ruling. The DPP now has the power to appeal a Judge's summation. Worst than that, if the Judge's summation is found wanting by the CCJ, say five to six years after that man would have been acquitted by the jury, the poor accused has to go back whilst in jail for that murder charge and face a brand new trial

before another jury and judge. What is that? And then the cycle could be repeated and then it could be used for political purposes. A judge's discretion in excluding evidence to the benefit of the accused is now appealable and with the effect of adverse consequences to the accused. This shift of the axis is going to be monumental madness in our Criminal Justice System; this is tantamount to the State pouring scorn over its own Judges, who would have exercised their discretion, say to exclude that confession statement, a *rest jestre*, a dying declaration or material evidence or whatever categorisation they put to it; when it is pursuing a conviction at trial. This is but definitely an erosion of the independence of a Judge's adjudication in the *Criminal Justice System* which has this preferential balance in view of the power of this State and the weakness of the citizen. This Constitutional balance is being shifted. All too visible is the double jeopardy rule as I know it, being encroached upon too. A jury having found a citizen not-guilty after a summation and a jury's deliberation ... that should be the end of the matter ... To wiggle out of an Appellate procedure, which his Bill seeks to do that which will now realise a second trial after a first acquittal is but an abolition of this double jeopardy rule. I need not say that it also smacks to smithereens, the presumption of innocence, which is flung through the door.

I am certain Mr Speaker that the Honourable Attorney General is going to argue, probably in his rebuttal or some other Government

Parliamentarian that the DPP may not abuse her right of appeal; it could only be sparingly used, such an approach must be unacceptable. This power in the hands of an Officer, who in the constitutional construct as we know it is a member of the executive branch of Government can and most definitely be advised… that must be in a position of bias being in the executive branch of Government. It is important that we understand that indeed we are not so certain what it is will be in the mind of such a DPP. I want to urge Mr Speaker that what we have here, we cannot definitely be certain that it will be sparingly used or can we know the motivations of that executive constitutional holder. What manifestation will result in the right to appeal is that we can have an elongated period in prison of an accused person, who a jury might have found not guilty or an elongated period of trauma for a person who having been found guilty and an appeal by the DPP is put on bail. That trauma of an accused that is awaiting an appeal, even though he might go on bail, because there is a provision that, yes you can go on bail, results because the finality of the process is not being known to by the accused. That is the sword of Damocles that hangs over the heads of these accused. Mr Speaker, this constitutes oppressiveness; this constitutes down right torture and degrading punishment to any accused. If judges are not doing a proper job, because it would appear from this Bill:

- A decision of the judge to uphold a no-case submission;
- A decision of the judge on substantial misdirection;

- A decision of the judge to exclude material evidence;
- A decision of the judge to uphold a defect in the depositions;

It is on that pathway, the DPP can now bring the appeals but, if you are saying that you have so many judges that are breaching the law in relation to:

- No case submission;
- Material evidence;
- Material irregularity;
- Substantial misdirection; and
- A summation.

Then do not bring this to change the balance; have a continuing legal education for judges so that when the judges' rule that becomes final in relation to a criminal trial; whatever the submissions. But no, we want to give this right to the DPP and that is very dangerous. If we feel that the judges are not doing a good job, we have to ensure better appointments. Do not shift this long-standing balance.

I want to also make an additional point and that has to do with giving a sense of false security, a sense of false satisfaction that if we were to balance this thing, by giving the prosecution the right to appeal an acquittal that that will promote a better criminal justice, they are wrong, totally wrong. This kind of appeal procedure now that the DPP will have that the State will have, is

going to end up with a massive backlog and more frustration in the Court system. It is going to end up that way. Policeman, witnesses, all will become frustrated having to duplicate their testimony in another trial, simply because (let us say) the Court of Appeal ruled in favour that there was, but a wrong exclusion of a confession or some material evidence. This duplication for witnesses, we already have it, because largely matters on indictment must be done with witnesses giving evidence at what we call a preliminary inquiry; now witnesses have to give evidence at the trial and now a third time assuming the DPP wins the appeal and a second trial is ordered. All of these will undermine the process; all of these will undermine the confidence of the system and it will do no good for our criminal justice.

I want to also emphatically state that when you have judges upon questions of fact, having to determine issues at the trial that kind of determination as it relates to acquittal ought never to be appealable. Courts of Appeal are courts of review and are not so much placed to know what transpired in the trial, why the judge ruled as he did in relation to an acquittal and it would be hard for such a Court of Appeal to then come to the conclusion to determine these questions. This is a tried principle of law. Take another example, again a no-case submission is upheld, because of the manifest un-reliability of the prosecution evidence that is a discretion solely for that judge at Assizes; manifest un-reliability will be based on that judge that was appointed for that trial making

a determination of a question of fact. How could now, a DPP says I am ruling that that Judge on a question of fact, literally was wrong? How could the Court of Appeal in a sense, be in a position to know that the nuances of what transpired in the trial process, the witnesses demeanour, all of them, all those considerations being taken into account could then go making a determination.

Mr Speaker, this is but an interference of also judges' adjudication; that is an illustration of how you are interfering with a judge's adjudication in this process, because you do not like the judge's ruling, you got this right and you gone up and you appeal. The doctrine of separation of powers, states quite emphatically from all the jurisprudence on the subject that the independence of the judge on matters dealing with adjudication must not be encroached or interfered with. That is what, is the independence of the judiciary, now you do have here what you called on matters pertaining to a judges' adjudication on questions of law. We can appeal to the extent now that you can determine it when of course it deals with acquittals.

What is also extraordinarily draconian is this aspect of Section 34B (iv). The trial judge's substantial misdirection of the jury in the course of the judge's summation on the law and/or facts or a mixed question of law and facts ... This is amazing, so you put a judge and a jury; the judge ends up not admitting the evidence or giving a summation that probably led to a favourably decision of the accused, you now go and say no, you want another judge and you

appeal and you get another Judge. That is a form of forum-shopping; you are shopping for the judge… *[Interruption]*

The Speaker: Your time is up Honourable Member.

Mr Raphael GC Trotman: Mr Speaker I rise to ask that the Honourable Member be given fifteen minutes to conclude please.

Question put and agreed to

Motion carried.

The Speaker: Proceed, Honourable Member.

Mr Khemraj Ramjattan: This is why I argue the case that in adjudicating on matters within a trial like this, of a murder charge, of a treason charge, of hijacking and piracy, all of which, only recently we had conditionalities of no bail being attached to them - no bail. As I had indicated, it came about simply because of Chief Justice Ian Chang's ruling recently. We now have this legislature establishing that those offenses are now largely going to be non-bailable. What then could be more draconian, if it is not also indicating that you are pouring scorn on your own judges here? That is what you are doing. What we have is obviously the taking

away of the liberties of the subject and if I may say, the accused has liberties too.

I want to also make mention of another section which indicates that the Supreme Court Registrar, in accordance with the rules of court ... a report giving to the Judge's opinion of the case so as to whether they tend to the raising of the case that is Section 34 F.

This is an intriguing little section and it indicates here that what you call the Registrar could now be also a gate-keeper at Section 34 J (ii). It would appear to the Registrar that *a Notice of* Appeal against an acquittal, which purports to be on ground of appeal that involves a question of law alone; does not show a substantial ground for appeal. We have now the Registrar may refer the appeal to the Court of Appeal for summary determination. This is a brand new concept we are having. I have never heard of this. The Registrar in compiling the notes of evidence and the summation of the judge can now come to the conclusion that this appeal is frivolous and un-meritorious and she is going to send it up to the Court of Appeal, for what is called summary determination. That this could be inherent in this provision, Mr Speaker, the fact that the supporters of this Bill see that there could be an abuse of the process by the DPP. That is why they are saying that if in the mind of the Registrar of the Supreme Court, she feels or he feels, whosoever that person is that it has absolutely no merit or so, it is a weak case ... summary determination and it fast-tracks the process. Well we know notwithstanding short- caused list and fast track

provisions in our law, justice do not happen quickly and expeditiously and within a reasonable time. We are setting up a criminal justice frame work here by the *Appellate Jurisdiction* being widened to even create more back log and create even more blockage in the system.

Mr Speaker, we must understand that there must have been good reason why a hundred and more years of jurisprudence did not touch this constitutional axis in our Criminal Justice System and not simply because and I say this again, the ignorance, some of us we are not very good at ... this wide shift was always in favour of preferentially treated for the accused. We must understand that we must, because if we do not we are going to just play into the hands of an extraordinarily bad situation that is going to entail huge problems for us at the Criminal Justice System; not simply because, as I indicated, acquittal rates are soaring that we must come with haste in this National Assembly to pass laws like these.

Not because of a couple of unpalatable decisions that is but always what happens in this context. Not because we feel that if we write this balance by giving the right of appeal to the DPP and the State, we are going to have more convictions and lesser acquittals. No, it will not.

And not because we have an administration that likes to feel that it knows best must we support this.

This Bill Mr Speaker must not be supported; this Bill ought not to be supported. Thank you very much. *[Applause]*

The Speaker: Thank you Honourable Member

Honourable Member Mr Basil Williams *[Pause]* My apologies Mr Williams

The Honourable Minister of Labour

Hon Manzoor Nadir: Mr Speaker, today the lawyers will certainly have their day in Parliament and as we have heard so far from both sides of the House, very strong arguments exist on both sides of this issue.

Mr Speaker, not being a lawyer, but a simple law maker, the function of the National Assembly - the Parliament - is to make laws for the good order and good governance of the nation. I think that that principle is as sacred as all the conventions I have heard this afternoon from the lawyers. That principle goes way back to Roman times, even in the Roman Senate that the representatives of the people have the right to make rules and pass laws for the good order of society.

Mr Speaker, in looking at the arguments on both sides of this case, while I thought that we would have sound presentations especially from our English traditions, I had the opportunity to peruse this argument that goes back hundreds of years and in fact it is not only today ... this is not the first time. When the AG had his day in Court in Dominica that was not the start of this issue; if you go

back to American Courts, centuries ago you had this argument of the right of the State to Appeal.

Mr Speaker, some of those cases and many of them are online ... If we look at appeals by the State in Criminal Cases in the *Yale Law Journal*, Volume 36 No. 4 of February 1927, this issue has been hotly discussed.

If you look at the rights of the State to Appeal in Criminal Cases, the *Journal of Criminal Law, Criminology and Political Science*, Volume 49 No.5 of 1959.

The recent one in the States I looked at is *Acquittals in Jeopardy* by Cynthia Randell in the *University of Pennsylvania Law Review* Volume 141 No.1 November 1992.

Mr Speaker, when I looked at all of these matters from the legal perspective, I came down to the decision that this is not a purely legal, technical argument, this has to do with Governance and nothing else. Yes, there are going to be conventions that have existed for centuries that may be breached here, but we have in our own courts, our own judges. That sacred tradition of no bail for murder accused, only recently turned on its head ... It is okay for the courts to do that, but it is not okay for the representatives of the people to make laws for the good order of the people. *[Applause]*

The doctrine of Separation of Powers ... we heard about how this piece of legislation is draconian, we heard about it being devious, we heard about it being intended to intimidate the judges. Mr Speaker, we cannot intimidate any judge.

The Honourable Member who just spoke also criticized Section 34, which seeks to put a little check in the system to prevent some abuse by calling on the judgment of the Registrar to make a pronouncement on appeals that could be considered frivolous by the DPP and that too was criticized - us trying to put in some other checks and balances.

Mr Speaker, what is also being challenged by the arguments on the other side is the constitutionality of the separation of the powers of the DPP. As far as I know, if the DPP today decides that the DPP would not press a charge on any matter, so be it. It is not the first time that the DPP has ever challenged a matter by a Magistrate or a decision-maker of the Court. I remember only recently, within the last eighteen months, a particular person's charge in the Court was reduced from murder to man-slaughter and the person was let out on bail. The DPP challenged that and reinstituted the charge of murder. It happened in our Court only recently and so we are talking here about the rights of the State in my view, in particular the right of the State to make laws for the good governance of our country.

We have heard many persons on the ineffectiveness of the State to provide for the safety and security of the citizens. Many times, and I think what has been driving a lot of the debate, is not a Government that wants to entrench itself by draconian laws; it is a Government that is responding to the needs of the citizens and in this case, Sir, the victims and the families of dead victims, who

continue to cry out for justice. *[Applause]* Mr Speaker, I can even speak first hand on that particular issue. So while we are talking about this all-powerful State that is going to trample on the sacred rights of these puisne individuals, words that were used in the debate, we have also out there been criticizing this State as being a weak State, unable to protect its citizens with laws that can provide for the safety and security of the citizenry. Mr Speaker, this is now going to be a political decision and many of the countries ... and the first world countries have moved in that direction ... many of the countries that will continue to move will be termed, not draconian, but those States will be seen as progressive - progressive States in defending the rights of the victim.

The last speaker from the opposition, he just mentioned about the changes in the United Kingdom only recently in this direction. So we are going to hear excellent arguments from all the lawyers on both sides of the House, but the bottom line for me- a non-lawyer - and for my Party is that we are now going to strengthen the capacity of the State to provide justice for victims and the relatives of the victims. *[Applause]*

Mr Speaker, I also need to reiterate the whole issue of the Office of the DPP and as far as I know that Office is held sacred in terms of its own judgement, when it comes to charges on behalf of the State. Recently, our DPP has been flexing that right of independence. I saw a particular memo being circulated to several of the Government Ministries and Agencies saying that the

constitution gave the DPP the sole right to institute charges. So how in the name of all those whom we look up to, it cannot be that this Government is going to be able to intimidate judges on one hand, how this Government is going to be able to guide, to interfere with the actions of the DPP when we have seen so much independence, especially over the last decade and a half, exercised by these Constitutional Office *[Applause]*.

So, those of us who are brave enough to embrace this particular initiative, embrace it and also to look seriously at the Conventions; we are going to be at the cutting edge of putting in place new legislations that can protect the victims of crime.

And so Mr Speaker, I have no hesitation whatsoever, in giving full support to this particular piece of legislation. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Member Mr Basil Williams

Mr Basil Williams: If it pleases you, Mr Speaker, let me hasten to assure the Honourable Member Nadir that this Bill in no way, manner or form can be described as being in pursuit of the aim of good order and governance in Guyana.

Mr Speaker, I have listened to the other Honourable Members before me and I must say that I concur with the contributions of the

Honourable Member Mrs Clarissa Riehl and the Honourable Member Mr Ramjattan.

This Bill is so repugnant to the type of culture of justice that we appreciate in this country that it is mind boggling that it could have been felt that this could come to this Parliament, to this Honourable House, because the argument is that some semblance of it is in some other jurisdictions, but when we examine those jurisdictions, it is not exactly true. I am going to dissect that just now. But when you examine those jurisdictions, what do you see … the level of maturity of development of those societies.

In the United Kingdom, it was only in 2003 after centuries of the Common Law System by jury trial that the ability to appeal against only decisions of a judge during the course of a trial was granted. That is purely related to questions of law and that is in a highly developed democratic system where the executive does not ride roughshod over the other arms of the State. So the question is could such a Bill be parachuted into our jurisdiction at this time and in the context of the excessive atrocities that are being right now perpetrated against the hapless citizens of this country.

Mr Speaker, a basic starting point ought to be with the current system and as the Honourable Member Mr Ramjattan had said, this system has been in time immemorial and in Guyana for well over a century and as the Americans like to say *if it is not broken, don't fix it*. So therefore the question is, why are we trying to tamper with a system that has been hallowed by time - trial by jury on

indictment in our High Court? We all grow up in this land knowing that the jury's decision on acquittal is final. Those of us who practice in the Assizes in this country know that feeling of how powerful a jury is, because no matter how big you think you are, no matter how great you think you are, insofar as you do not have an inside track to the Members of the Jury, you are humbled, whenever those twelve people walk back into that jury room to deliver a verdict. The Honourable Member, the Attorney General would tell you … and the Honourable Member De Santos would tell you that it is a great leveller and your heart has got to be good. So when I see these venerable men there up to now, I am emboldened.

So Mr Speaker, we have been knocking the judges but we are not paying attention to the jury and we all recognize that the jury, as is described, the jury is a different kind of animal, because you can have the best summation to the jury … and I have heard eminent judges in this country lament that ... eminent summation, and they then start talking with disgust when the jury comes back with a verdict of acquittal and sometimes they are also disturbed that even though they did the summation in such a manner, the jury comes back with a verdict of guilty. All of us who practice in the Assizes know that. We also know that even without the appeal, the power of the State acting through the State Prosecutor could be very over-bearing. We all know how they carry on if they lose a point in an argument. We all know how they operate in the system when they

could go into the judge and then come out and tell you, *'oh, they're looking at the rest of cases on the list'* not recognizing that justice must not only be done but it must be seen to be done. As soon as they start, they open the case, they look so all-powerful and you are saying now you need to give them equality, what equality, when you have the resources of the State at your disposal? It is important that we look at the jurisprudential basis of the system as it is. What is that jurisprudential thinking that the prosecutor is a minister of justice? The prosecutor's duty is not to seek out a conviction, but merely to dispassionately adduce the evidence that it has before the Court. You are trying to turn that whole thing upside down and put it on its head. That is exactly what you will be creating here and the reason why they say that you are a *minister of justice,* you are a prosecutor and not a persecutor, is because with your resources, the ease with which you can concoct evidence in this inexorable drive to seek a conviction, would destroy any semblance of justice that inheres in an individual in this country. So there could not be no real reason, why for centuries you have a system like this. The Honourable Member Mr Ramjattan put it and I must say, he has it right there on his fingertip. That is the final bulwark against the excesses of the State and people are prepared to suffer through this lengthy period of incarceration. Perhaps the only reason they are prepared to do that, is because at the end of the day they are seeing that they will be judged by the twelve persons considered to be their peers and you

take that away from that now; what is there? We have a very imperfect system. I do not like talking about it, because we lawyers are the warriors in the system. People knock us, but we are the protection of the individuals in this country against the might and the excesses and the arrogance of the State. So, Mr Speaker, the jurisprudential basis is that we would prefer a thousand guilty go free than a single innocent person to be convicted.

Now the common law rule has always been that the prosecution cannot appeal against a jury's verdict of acquittal. What inheres in our present system is that a no-case submission upheld by a judge is also un-appealble; likewise where the Judge withdraws a case from the jury. Mr Speaker this cannot be an easy matter, where the law wants now to reach into the course of a trial and to tell a judge that 'look if you make a ruling rejecting the admissibility of evidence tendered by the State, they could appeal against the whole case. Look if you up hold a no-case submission that there is no case to answer, they could appeal the whole case. We know the State and Royston King of Guyana, a case on identification which applied the principle set out in R and Bailey, a Jamaican case which went to Privy Council, that is, if at the end of the prosecution's case, the identification evidence is so tenuous within the meaning of the rules in R and Thornbow, the judge must stop the trial and not send that case to the jury. This thing you know, centuries of a system cannot just be changed over night because in R and Bailey the evidence must so slender and weak and tenuous

of identification, but the High Court Judge felt that she was constrained and had to send it to the jury even though she believed and contended that the evidence was weak, she sent it to the jury. What did the jury do? Promptly convicted the man even though the judge knew that that evidence was not sufficient for a conviction and so the Privy Council said no, you cannot send a case like that where you see on the evidence that it is so slender and tenuous; you must uphold the no-case submission and withdraw the case from the jury. Now the law is so beautiful, I keep telling ... I love to say that this law is so beautiful. Now you come to say, if a judge in the course of a trial, where he has discretion to act, you now want to fetter this judge's discretion and have a sword of Damocles over this him, with every act that he purports to deal with during the course of a trial. What is that you are going to have on the bench then after this act is promulgated, if it were to be promulgated (and hope it is not) unless good sense prevails? What would be sitting on the bench, a demeaned person, a person lacking in esteem, a person who could be the object of ridicule of some young State prosecutor, because they can always say, 'you can do what you like Judge'. If this was to pass, at the end of the day, before you could discharge the acquitted person, they could say 'I gave you notice of appeal' and that stops everything in its track. So the judge would be operating *in tororem* of the State and we feel as practitioners especially in this area of the law, where we stand directly between excesses of the State and the justice for the

individual that this Bill ought not to be passed certainly in the form that it is contended.

Now Mr Speaker, they are over-killing in the Bill and I was so amused to see in this Bill that they are saying, you could appeal a judge's decision in respect of the upholding of a submission that the depositions are defective and that the committal proceedings are bad. When I saw that in there, as a season practitioner ... I see the AG is laughing that is so much of a *non- sequitur,* of no consequence, because I personally learned the hard way with that particular submission when I raised it and it was upheld. All it does, it says that there is no jeopardy there, so you could go back for a re-trial and then promptly collect your client and dump him back in the lock up. That is to show you how this proposed amendment against the upholding of a submission that the committal proceedings were defective and that they were defective also is so useless; It is over killed, but this is our present system. So I am showing you that everything now that is proposed is to turn everything upside down. And what happens? There cannot be equality for this reason; the DPP does not have a constitutional right for a fair hearing before an independent and impartial court in this country. It is the individual under Article 141 that has a constitutional right to a fair hearing, not the State, because it is the state that charges the individual, it is the State that activates its powers to *prima facie,* rob you of a constitutional protection guarantee. So there cannot be no equality, otherwise you have to

amend the Constitution to also say that the State has a fundamental right in a criminal trial to a fair hearing and protection under the law. So when I read the authority referred to in Boyce by the Honourable Attorney General; I have always felt in my years as a lawyer, I only have twenty five years, but I personally believe that they were well meaning and full years. I have always felt that the English judges in that Privy Council, they never really come to terms with the fact that our Constitution is Supreme and I agree with Ramjattan. They do not understand that when the thing named *Kagage*, is different from the unwritten Constitution and so in Trinidad's case of Boyce, as far as I am concerned, they have some inchoate references to fundamental rights. I am not wrong, because even they themselves recognize that in the Privy Council. They do not have the same provisions that we have in our Constitution and that is a ground I think we can substantially distinguish our case from that. This is their fundamental rights provision. In fact, I had a discourse with your Honour on this same point. What I was asking, when did we pass legislation to amend the right to privacy of the home in Guyana and nobody could tell me. And as far as my research goes, it was edited out. But that was never passed because we had the same thing like they have in all those other … what you call principles, the right to privacy of the home. This is what they are talking about as being fundamental rights provisions in Trinidad:

It is hereby recognized and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race, origin, colour, religion or sex the following Human Rights and freedoms namely;

(a) The right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof, except by process of law.

What is this? Could you compare this to those beautiful, well laid out, full of life provisions that we have in our Constitution? Of course not and this is what the Privy Council itself said about those provisions. Well this is poor Lord Diplock in Thornhill:

The lack of un-specificity in the description of the rights and freedoms protected in Sections 4 (a) to (k) which I just read may make it necessary sometimes to resort to an examination of the law as it was at the commencement of the Constitution in order to determine its limits. We do not have to do that here. In our Constitution, our rights are clearly delineated in the Constitution and as far as I am concerned those provisions are similar to the right to privacy provision that we had that no longer appears on the Constitution. I will leave that there for another time. They are mainly like statements of principles and so we do not have to follow Boyce for that reason simplicitor that the

guarantees that we have here are so crystallized that they ought not to be taken lightly. So Mr Speaker we are not bound by Boyce, but if Boyce is saying that, this is what is important about what Boyce is saying about the law in Trinidad that gave the DPP power to appeal. It says clearly:

> *The DPP is limited to appealing a judge's upholding of a no-case submission and the withdrawing of the case from the jury.*

In a commentary by Derrick Mc Coy of the faculty of Law of the University of West Indies and the prosecution's right to appeal in Trinidad and Tobago, The State versus Boyce, this is what it says;

> *What might ever have been the correct position of common law; it is now important to note that the new legislative provision in Trinidad and Tobago is confined only to appeals from a decision of a trial judge to uphold a no-case submission or to withdraw a case from the jury. This decision was erroneous in law. The new statutory provision does not authorise the prosecution's appeal from a jury's verdict.*

That is so fundamental Mr Speaker, even when I prepared my initial observations on this Bill; I was unaware of that case until I went to research it. It is clear that in Trinidad, they recognize the sanctity of trial by jury and in England; they likewise recognize that sanctity, because they have also stopped short. In fact they have gone up to the point before summation starts in a jury trial to

show clearly that you could appeal all matters antecedent to the time that the jury is to be summed up to. In other words, once you reach the jury that is it. So even in those societies no attempt has been made, as in Guyana to get rid of the finality of a jury's acquittal in this country. That is the major plan that we must observe in these proceedings and I would say this. It is clear that the draftsmen pulled from here and pulled from there, but you know these highly developed democratic societies; they do not leave things to chance. They have for example, when the prosecutor wishes to appeal; they have to inform the court before the matter reaches the jury that's one. They must tell the court what are the offences that they are appealing against... as it happens when you make a no-case submission there, you can tag on other points that might have arisen and the court rule against you, you can also tag that on. But when you do that, it has the same effect as nullifying the decision of the judge, but they did not leave it like that. They said, look, you just cannot come and say you are appealing this decision of the judge; you cannot just go and do that. So what the Criminal Justice Act (UK) 2003 did is say they first must have leave of the Judge or the Court of Appeal to appeal. They must have leave to appeal and so we do not have that here. All it needs is for the DPP to say appeal and that is it; not in England, you have to satisfy the Court first that you have some arguable case to go and appeal. So they would stay momentarily until you proceed with your application for leave to appeal and if

you fail on that application that is the end of the matter, the acquittal stands and the citizen goes home. Blackstone's Criminal Practice 2006 Edition, I think puts this out so succinctly. It talks about the prosecution appeals under the Criminal Justice Act 2003 and it says that this Act introduces two new categories of appeal by the prosecution against rulings by the judge in a trial on indictment:

(i) Terminator rulings; and

(ii) Evidentiary rulings.

Our Bill tries to reach evidentiary ruling by saying you could appeal against a judge's rejecting material evidence produced by the prosecution, which is the same thing, but it goes on to say this:

> *In relation to both types of appeal the prosecution is prohibited from appealing against the rulings on the discharge by the Jury.*

So you are seeing it clear. They might flex a bit with the judge on a point of law, but they are not tampering with the jury. And from challenging under these provisions, any rulings which it may appeal under other legislation, it continues;

> *In any event it will have to obtain leave to appeal either from the trial judge or from the Court of Appeal.*

Sir that is so clear, now we do not have that here, but what do we try to put in place for that? The same Article or Section referred to earlier by the Honourable Member Mr Ramjattan. We suddenly

bring somebody known as Registrar in this process. Now is this Registrar independent like the DPP, or is the Registrar subject to control of a HPS, a Minister, an AG, or whatever? But you appreciate the point I am making, where in the United Kingdom that you pull up from, but. You left that out, you got to get the leave of the judge or you got to get the leave from the Court of Appeal. You are going in this country to get the leave of the Registrar. That is the protection you think an individual in this country who have just been acquitted by twelve people, selected randomly; this is the kind… for centuries this system is how we and this is how we feel we could deal with it overnight.

This prosecution is given a general right of appeal against a ruling made at any time, up to the start of the judges summing up to the jury. Well, if this is not so clear, you tell me. Trinidad telling you, you cannot go to the jury; the United Kingdom telling you, you cannot go to the jury, yet you are bringing a Bill to this country trying to destroy the jury; remove the right of the finality of trial by jury on an acquittal and reposing it now in some abstract body known as the Registrar and or the Court of Appeal.

So Mr Speaker, this is wholly unacceptable, if we are going to follow established precedence, we cannot pick out piece here and pick out piece there and then leave out those pieces that will really make sense of the provision that we are trying to pull into this country. What we now, is an amalgam of pieces pulled out, so as to justify the ability of the State in this country to exercise total

dominance over everything in this country? That is what this is all about. The moment this Government - this Executive has the ability to deploy the purported power intended under this act, woe is justice and democracy in this country, because we have not seen that maturity being exhibited in this country on the part of the Executive. And why should we not believe that this thing here has Hinckson in mind; so that when Hinckson comes up, okay let him go to the jury; that takes about five years or more. More or less, once the system is there and you do not have twelve members of the jury from the same business entity, he will be acquitted. Certainly what the system of jury trial does is ensure that you would not get convicted – *a la* Mark Benschop - because if they had their way, he would have been convicted. *[Interruption]*

The Speaker: You have to be careful with pending matters.

Mr Basil Williams: As it pleases you, Sir.

The Speaker: You are very familiar with the rules.

Mr Basil Williams: As it pleases you, Sir.

But Sir, I am saying, if it was not for the jury, where you had that hung jury, Mark Benschop would have been serving time one, it is quite conceivable and then he would have been met by this new provision and why I am bringing this up, is because there is a lot of

young men who have been charged when they were twelve, thirteen and fourteen on the East Coast for murders and the PIs cannot be completed yet. So it appears now that they now would be covered also by this provision, if this Bill were to pass. In other words, you have a generation of young people growing up in jail. When they spend five years now, you are waiting for a trial in the High Court; they cannot even go yet on the list, by the time another five years come up, they are tried the jury release them and they get tried another five, so you got a set of young people now in the system that would be coming up in jail for the next fifteen/twenty years. What are we producing? *[Interruption: 'Why are you worrying? You will get nuff work']* No, I do not want to make my happiness on other people's unhappiness Mr Nagamootoo. If you want to do that you could do that I don't need to do it, I have God given ability to don't do that *[Applause]* But take warning, because you told me, I don't know how true it was because I was not around then that the PNC tried to pass a similar Bill like this. But I don't know if it's true or not, I took your word for it. I will tell you this, you should have taken note of the fact that the PNC thought it better not to put this Bill to this Honourable House *[Applause]* You should take a lesson from that. *[Interruption: 'That is a diversion; why are you worrying; you will get work twice.']* But Sir, I will ask the Honourable Member Mr Norton to deal with that sound that is coming somewhere from over there in the way that you could best do. So Mr Speaker, this Bill ought not to be passed

in the House, because it takes away the constitutional right of an individual to a free hearing, because if the judge is not independent and is acting *in tororem* of the State, be cannot have a fair trial. That is clear.

Secondly, it abolishes the right to jury trial in this country and reposing that right now in some Appellate jurisdiction and as I said - some person called the Registrar and I do not know if it is the Registrar of Deeds or else. It also abridges a person's constitutional right under Article 31(2) and I see we keep making this mistake. Our Constitution has clearly laid out scheme for our fundamental rights provision and I suspect that if Lord Diplock had seen these clearly delineated provisions, he might have had a different opinion. But look what Article 139 says:

> *(1) No person shall be deprived of his personal liberty save as may be authorised by law if any of the following cases, that is to say ...*

and look at the very first one

> *(a) in execution of the sentence or order of a court , whether established for Guyana or some other country, in respect of a criminal offence to which he has been convicted.*

In other words that is the only time you could take away a man's liberty in the Court if he has been convicted, but what is happening here? They want to do the same thing to

take away his liberty where the jury and the judge have acquitted him and I challenge anybody to tell me that that is not unconstitutional, immediately it flies in the face of Article 139 (1) (e). It is clear.

It also causes the continued detention, (I am not going to dwell on this much) because it has been dealt with so well by the previous speakers - the continued detention of a person

in prison despite being acquitted by judgement of the jury. Let me say this even in Boyce's case the Privy Council was uncomfortable with the fact that there was an acquittal and this person is still to be detained, but you could see it in the judgement. They left it open, they did not really resolve it then. This is why they said, the decision whether to order a new trial … and this is a new trial when you go up to Appellate Court, you finally come before the Court of Appeal and they decide they are okay, the judge was wrong, they just cannot say, you go free; they now have to decide what the options are and one of the options is to order a retrial. But they were uncomfortable and this is what they said:

> *The decision as to whether to order a new trial must take into account that unlike the convicted appellant the acquitted respondent has believed himself to be absolved from guilt.*

Even the Privy Council, Law of Lords recognised that this is not a normal situation and so we must take note in our

jurisdiction that it cannot be a light thing. As I am on this point, never mind the Registrar who is empowered to look at the appeal and the decision and decide *uh-ooh* this does not look that good and she recommends for summary disposal - never mind that. Let us deal with this one. *[Interruption]*

The Speaker: Your time is up, Honourable Member

Mr E Lance Carberry: Mr Speaker, could the Honourable Member, Mr Williams, be given fifteen minutes to continue his presentation.

Question put and agreed to.

Motion carried

The Speaker: You may proceed, Honourable Member

Mr Basil Williams: Thank you Mr Speaker. So never mind the intermediate Registrar … you come to the Court of Appeal and you believe that this man has been acquitted and he believes that he is free from guilt. You order a new trial; he then has to go through the entire process again. They are very uncomfortable with that. So the Honourable Attorney General, I will ask to take note of that fact that in

the State and Boyce, they have not resolved it and they are very uncomfortable, but they mentioned it. How do you resolve this? And this is the point I was coming to. It is illusionary to say that you could have bail.

When you look at the list of offences, Mr Speaker … look I cannot seem to find my Bill, but I know it out of my head … you have murder, treason, hijacking, piracy and the like. I think they have gun offences; I do not know if they forget the recent Firearms (Amendment) Bill. I am trying to keep track of the Honourable Minister of Home Affairs … that is why the AG has power to amend and add to the list. I think they are thinking of the activities of the Honourable Minister of Home Affairs, becomes at least - he seems to have a target of one every month. So all of these offences - murder, treason, manslaughter - well manslaughter will be the same position, because domestic violence gets the same position - no bail ... money laundering, robbery, drug offences, Mr Speaker, all of these offences are non-bailable offences certainly in the practice of this jurisdiction - they are non-bailable, but you see , in the practice in the Assizes they only try to put in burglary, house breaking, theft. I do not know if the Honourable Attorney General could tell us or the Honourable Member Mr De Santos could tell us, when last they heard any burglary case came up for trial in the Assizes. In the Assizes, there are only two Judges

working at any given moment. Never theft or larceny, I see they have theft ... I hope they understand what they are talking about; they are bringing in everything large scale, wholesale, lock, stock and barrel. I see they have theft, I do not know that we have an offence known as theft in Guyana, but we are going to deal with that. It is a point I keep making. Those things do not try here and so it is illusionary to say that you could apply for bail. It is a good thing Benschop come out, because if he had to apply for bail for treason, I do not know what they would have done, because the current Chief Justice must have been sorry that in a fit and proper case where he granted bail for murder, he attracted all this condemnation from the State - from the State mind you, not from the country. So in other words, there is no bail, when they appeal; Hinckson is freed by the jury before he could sit down back in his seat or so, the prosecutor *mercy noxious a precocious* - notice of appeal - and they would do it in such a way as to be in the face of a judge, because during the trial they would have been losing a little point here and there. That is in some cases, we also know the other side of the coin, where they win every point. So Mr Speaker, you have to take the corn and the husk together. We know that as practitioners, when you come to the jury, nobody can really predate what the jury is going to do. The judge is going to sum up adequately on

the laws of Guyana and as I said, it is the matter for the jury; the jury will decide and nobody has complained about this system. I do not know if there has been a complaint about jury; even if they complain about the judges, what the complaint about the jury is. So Mr Speaker, it is important that we preserve the sanctity of trial by jury in this beautiful country of ours.

Now, Legal Aid - I myself was wondering, why all this recent activity of opening legal aid clinics in the length and breadth of this country, but selectively. This is no way to disparage you in any way to attack you, Mr Speaker.

The Speaker: I would certainly hope not, Mr Williams.

Mr Basil Williams: Because, Sir, there is another institution somewhere close to the seawall; you have to use your language carefully lest it is felt that it is an attack. So these legal aid clinics that have been set up, I now see why, because they probably realise that we are going to ask what is going to happen. You having a system like this, you are actually breaching the individual's constitutional right to have a lawyer of his own choice. That is in our Constitution too. Now most of these people that are picked up arbitrarily, stereotyped and charged ain't get no money and so the family (I know, I am a practitioner) might have tried to send in a little money - a little hundred US or so to a lawyer like me, who

does not want all the money in the world and they get some service. Now when you get an acquittal and that is exhausted, where are they going to get money from for the higher court? And what happens there, Mr Speaker, Mr Legal Aid kicks in. Now this hapless freed citizen does not have an input - they do not give him a list of lawyers from the legal aid that he could pick out and I am certain that they would not see Basil Williams name on no list coming out from the legal aid places. Therefore, what is happening here is that you could have a PNCR-1G activist being assigned a lawyer like Mr Nandlall. *[Laughter]* A PNCR-1G activist who acts within the confines of our Constitution, peaceful protest, lawful demonstration and the like and that is what this could shut down too. If this Act was to pass and that power abused, that would be used as a weapon to target persons indulging in legitimate protest and legitimate demonstrations. We must make laws, Mr Nadir, for good order and governance. This cannot be one, because power corrupts and absolute power corrupts absolutely. When we are crying out for years about Mr Rohee's police and their activities, everybody is saying no, no, no, you are talking *stupidness*, till the Minister cry out. *[Laughter]* So I am sitting now betwixt the two Ministers who are sitting side ways. They are not looking at each other; they are looking away from each other. So these things could come back to haunt you. And I hope you listened to Mr Nagamootoo's advice that he said under the PNC that might have been contemplated, as he said under the

PNC, I would not know, but it never come here. You should take sound advice especially from those legal luminaries that were there in the People's National Congress during that period.

So Mr Speaker, in wrapping up, I think I touched on most of the things that I should touch on and not regale this House on some of the other important matters that we mentioned in other contributions, but we will ask on this part of the House that this Bill ought not to see passage through this Honourable House. It should not and I do not want to say and I was telling Mr Vieira, do not tell me that that if this Bill had come in the hay days of the Honourable Member, the Attorney General, and I know I cannot say Doberman - the other Doberman - but the Honourable Member Mr De Santos - a pitbull. This could not go no where - not all dogs are ordinary dogs. A pitbull … you will be glad to know that you are a pitbull … it could go anywhere. I do not know … My Honourable sister, Mrs Riehl, did give some insight that, in fact, the Honourable Attorney General is the one who really chalked up a lot of victories in the Assizes and it is ironic that he is now coming to stop other people from chalking up victories in the Assizes. *[Applause]* I think when I did the last audit - I have only a couple more cases to use it. *[Applause]* And so even though we have some mirth in it, there is this old operaism in Guyana that my old grandmother used to say, that *what is fun for lill boy is death for crapaud.*

We must not allow this Bill to pass through this Honourable House. And so, we on this side of this Honourable House cannot support this Bill at all, because if we are going to say it is okay that you could appeal against the Judges, uphold a no case submission, et cetera, you are going to fetter the discretion of the Judge; you are going to rob that Judge of his independence to conduct a criminal trial and this would amount to the same result. In that regard, Mr Speaker, we ask that this Bill be withdrawn from this Honourable House. Thank you very much. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Member Mr Trotman

Mr Raphael GC Trotman: Mr Speaker, I rise to make a very short presentation this evening on this Bill. I am happy that Mr Williams has been able to give us a smile and perhaps even a chuckle on a Bill which in my opinion is the most serious intrusion into our democracy since I have been sitting as a Member of this Honourable House. It is the most repugnant Bill I have come across in my time as a practising Attorney-at-Law. For that reason and in support of my brother Mr Ramjattan, in support of Mr Williams, in support of Mrs Riehl and in support of all others who will rise after me to speak against this Bill, we cannot in all good conscience support this Bill at all whether in the Assembly as

constituted or whether it is sent to a Special Select Committee and I am stating publicly that the Alliance for Change, even if invited will not sit in any Special Select Committee to review this Bill, knowing that it will be gone through Clause by Clause with a view to be sanitised and brought back here for passage. We will not participate in any way shape for form.

Mr Speaker, we believe that the Bill must be withdrawn. It is apposite to know that the Honourable Attorney General began his presentation with a reference to a time of old, when it is stated that certain party flags flew over the Court of Appeal of Guyana.

But, Mr Speaker, it is apposite to note as well that today I was presented with a draft motion which has been worked out between the PNCR-1G and the PPP/C in the name in honour of former President Forbes Burnham. I believe that Mr Williams quite rightly made the point that not even Burnham, who many claimed was the worst thing to have happened to Guyana, would have risked what has been risked today. Not even him would have done what is being attempted here today.

We have had references to Boyce; we have had references to Patrick John, but in my research and quite rightly so, no other jurisdiction has what we are attempting to do today. In Trinidad and Tobago and I will quote the particular section for you. The Trinidad and Tobago legislation stops very short and with your leave I will quote it. It is under the Administration of Justice Miscellaneous Provision Act of 1996. It says:

The Prosecution may appeal against a judgement or verdict of acquittal of a trial court in proceeding by indictment when the judgement or verdict is result of a decision by the trial Judge to uphold a no case submission or withdraw the case from the Jury on any ground of appeal that the decision of the trial Judge is erroneous in point of law.

It is on that basis that the judicial committee of the Privy Council in the United Kingdom in 2006 decided Boyce and I hasten to say that have they had the opportunity to consider the grave issue or question of whether or not a person's right to a jury trial could be undermined, taken away, diluted or destroyed. I dare say that they would not have rendered the decision that they did in Boyce. *[Applause]* I am positive and so what we have are issues of law which indeed, Mr Speaker, we as practitioners recognise that even with the best intent, and with the best training, and with the best will, and with the best legal minds that mistakes of law are made. I agree that if there is a mistake in law, such a mistake should be corrected.

Mr Speaker, I really do not intend to traverse the various clauses of the Bill, because I believe that we cannot and ought not to look at this Bill in a purely legalistic context. When a few moments ago, the Honourable Member perhaps the only non-lawyer, who will speak ably quoted legal passages from Yale Law and so forth. So this afternoon, we must make here make a political decision. I

believe that therein and thereon he made not a blunder, but he made an honest statement as to why we are here today. I am saying that this Bill has nothing to do with the strengthening of our jurisprudence; it has more to do with the propping up of the protection of political system and a political way that some believe is under threat. Ands o as has been pointed out by Mr Ramjattan and by Mr Williams, persons who have been incarcerated, persons who for centuries have been led to believe that once a jury of your peers acquitted you, you were allowed to leave unhindered and unfettered and that the most that we could have had was a case stated at the Court of Appeal and the DPP's reference.

Unfortunately, Mr Speaker, I am at pains to discover how or why we are here this afternoon despite all that happened with Patrick John and despite all that happened with hapless Boyce in Trinidad and Tobago. The Honourable Attorney General has not stated what the real reason is? Why at this point in time with indecent haste, this Bill has been brought to this House? In less than two weeks, we have been presented with a draft and it is debated.

I found a reference in Ireland where only last month the Minster of Legal Affairs in the Republic of Ireland had a Press Conference mentioned his intention to introduce legislation and this is a far more advanced society with a far more advanced legal system than ours. In Ireland, in June 2008, just a month ago, they are planning next year 2009, to introduce legislation for appeals to get

acquittals, where new evidence may have emerged and so forth. But the point remains that sufficient time is being afforded for all those who are likely to be affected by such draconian legislation, such monumental legislation, because it goes to get the very grain of our jurisprudence. Not two weeks, we are told today that you are given two weeks and this Bill is going to become law and it may be sent or probably will be sent to a Special Select Committee, but we know what a parliamentary majority means in the context of this country and for that reason, I am saying that we will not support even that process.

And so, I urge the Honourable Attorney General at whose feet I have sat in many cases and listened to him. I have had the guidance and training from Mr Se Santos in criminal matters and I cannot understand how particularly the Honourable Attorney, who has excelled at the Criminal Bar has ad a defence counsel could without as I said advancing a strong case. We have had no statistics which tell us that the ratio of acquittals to convictions is as a result of bad summing ups, is at a result of no case submissions being upheld when they ought not to have been upheld. We have been given nothing and as practitioners, we know that we could not approach, dare even approach a court with such an argument without any basis or foundation on which it should be advanced or in fact such an argument would have been thrown out of court.

Mr Speaker, this Bill has to be seen in a wider context. We have seen in a rush and a rash of legislations trying to address issues of crime. We had a statement made recently, which had a chilling effect on me; it caused me to shut up and that was a statement made just a few weeks ago, by the acting, perhaps then she was, but now confirmed as the Director of Public Prosecutions. In her own words she said that time has come to stop summations in trials. This is the context in which these Bills are coming. First, we start with the jury trial, then we move to the abolition of summation in trials and all of us who have practised at the Assizes know how important a judge's summation is; and all of us know that if there is an injustice whereby a person is convicted wrongfully that there is a Court of Appeal that sits to correct that injustice. And now, Mr Speaker, we have I believe not a coincidence, but the beginning of what I would believe a sinister plan to carefully, systemically and systematically roll back our fundamental rights as a people. During the stakeholder's engagement, one person who was present at those engagements got up and said that the time has come for persons to be denied bail for thirty days and there was a hue and cry, but the person who made the statement was not a passive person. I believe and I will state it here that there is obviously a trend which is evolving. I want to say as well that this Government is pushing the people too far and it has to stop. I see Mr Rohee looking at me. We are being pushed

too far and it will be stopped. We cannot allow our rights to be eroded in this manner.

Mr Speaker, there is a very famous quote of course of Apasa Nirmula in Germany; first he said they came for the trade unionist and they said nothing; they came for the academics, I said nothing. I am paraphrasing of course, Mr Speaker. They came for the Jews and I said nothing and then they came for me and I was none of those, but when I looked around there was no one left.

Mr Speaker, I am getting a feeling now, tonight, that at some point in time, all of us perhaps starting on this side of the House will become subject to some of these draconian laws that are being passed and unless we stand up and talk out about them, we are going to be the next and if we stay quiet, when we call for support there will be no one there to support us. As I said, my intervention is not a long one, because I do not believe that anything in here has any merit and in their haste to try to make right or what they are trying to do look good, they have created jurisdictions within the Registrar's Office, which is unheard of; as I have a note here, are we are making the Registrar God to decide that an appeal is frivolous and can be dismissed. Have we gone beyond where Ireland, Australia, even England and Trinidad and Tobago by saying that you can appeal a Jury's decision.

Mr Speaker, we cannot as I said at the beginning in all good conscience support this Bill and for those reasons even if the Honourable Attorney General says that this Bill goes to a Special

Select Committee, the Alliance For Change will not participate in that Committee. Thank you. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Member Mr Nandlall

Mr Mohabir A Nandlall: Mr Speaker, I rise to speak on this Bill and I have listened to the picture painted of this Bill by my learned friends on the other side, a very warped depressing, oppressive, repressive and inaccurate picture of this Bill which has been painted by my learned friends on the other side and I shoulder the Herculean responsibility to correct some of the inaccuracies that have been peddled before this House, and I humbly undertake to do so.

A lost have been said about the inequalities and imbalance which presently exist at the criminal bar when an accused person is indicted to stand trial.

Mr Speaker, I am of the firm view that at a criminal trail in the High Court, that essential component of the rule of law, which prescribes that all must be equal before the law is missing. It is missing because the proverbial scale of justice which at all times ought to be equally balanced between parties in legal proceedings is tilted in favour of the defence and I wish to elaborate on what I mean when I speak of this imbalance.

Firstly, an accused person has a right of appeal against his conviction the prosecution has no right of appeal against the accused acquittal.

Secondly, throughout the trial the accused person is presumed to be innocent. This common law presumption of innocence has received constitutional imprimatur in the form of Article 144 of the Constitution.

Thirdly, a necessary corollary to the presumption of innocence is the burden of proof. In a criminal trial the burden of proof remains upon the prosecution throughout.

Fourthly, throughout the trial all doubts which may arise upon the evidence must be resolved in favour of the defence and whenever there are two or more inferences, which are to be drawn, the law compels that the inference most favourable to the defence is to be drawn.

Fifthly, the standard of proof that devolves upon the prosecution is proof beyond reasonable doubt, but whenever the accused is to prove is defence the standard that is required of him is one which is merely on a balance of probability, a much lower standard than beyond a reasonable doubt.

Mr Speaker, I have outlined only some of the inequalities which exist between the defence and the prosecution at a criminal trial, but these inequalities are facilities which the law has guaranteed to the accused person from time immemorial. Today, they form a network of mechanism imbedded in our criminal justice system to

guarantee to the accused person a fairest possible trial and that forms the foundation of our legal system today. *[Applause]*

This Bill which is before the House does not in anyway whatsoever take away or interfere with those protected facilities which the defence enjoys. That is the first fundamental point I wish to make. All that this Bill does is to confer upon the prosecution a right of appeal and of course this right of appeal can only be exercised at the conclusion of the trial, so that this Bill seeks to change nothing during the presumption of the trial. The presumption of innocence remains. The burden of proof remains. The standard of proof remains. All the other benefits which an accused person has in the law remains during the course of trial. All that this Bill seeks to do is at the end of the trial when the battle is completed; confer upon the State a right to challenge the ruling of the court.

Mr Speaker, indeed the Bill is historic, because for the first time in the legal history of Guyana, the right of appeal at an indictable trial now is now conferred upon the State. I submit that there appears to be no philosophical, juridical or practical why the prosecution should not have a right of appeal in a criminal trial in the High Court. I must emphasize that in summary trails that is, in the Magistrates Court the prosecution has a right of appeal and that right has existed for the last one hundred years. For one hundred years the prosecution has had a right of appeal against a trial in the

Magistrate Court. I can see no reason why that should not be extended to the High Court.

Mr Speaker, it is important that I explain at this juncture because nobody from that side mentioned this point, whose interest the prosecution represents in a criminal trial. I must emphasize in law that when a crime is committed, the crime is not only committed against the victim, but also against the State. The prosecution represents the interest of the State and whose interest does the State represent? The State represents the people's interest; the public interest and the public good. That is why in the United States in a criminal trial is referred to as the people against John Jones. It is the people against John Jones. When there is a criminal trial in Guyana, it is the State against John Jones. So that when John Jones stands to face trial in this country, it is John Jones against the people of this country and the people's interest - the people have no say at the trail?

Mr Speaker, it is believed that justice is about the interest of the accused person alone. This is a grave misconception and a myopic perception of justice. The State at all times has an interest in a criminal trial. Justice is about balancing the accused interest on one hand and the public or the State's interest on the other. That is what justice is about. It is striking a balance between the State interest on the one hand and the accused interest on the other, .having regard to all the inequalities which exist in favour of the accused.

Mr Speaker, justice is a dual carriage way, which must accommodate in a balanced way the interest of the accused along with the interest of the State. Therefore, a fair and impartial and balanced legal system, if the accused has a right of appeal on what jurisprudential basis should the State - the public - or the prosecution not have a corresponding or reciprocal right. It is common knowledge ... *[Interruption: 'You are not dealing with the history.'* ... I will deal with the history... that in recent times, Guyana has been plagued with an unusually high incidence of brutal, violent and sophisticated crimes and it is the legal and the constitutional responsibility of the State to curb and address this horrendous social reality. Enacting suitable legislative measures and strengthening the criminal justice system are recognised the world over as a necessary and effective mechanisms to combat crime. This Bill, Mr Speaker, represents one of such mechanisms.

It is also common knowledge that a high crime rate is a social problem confronting many countries in the Caribbean and further afield. Ina quest to address this serious problem, similar legislation is enacted both in the Caribbean and beyond which confers upon the prosecution the right of appeal. Mr Speaker, my research informs me that in the Caribbean alone this right exists in Antigua since 2004;

- in the Bahamas since 1989;
- in Bermuda since 1962;
- in Barbados since 2000;

- in Dominica since 1982;
- in St Kitts and the Nevis since 1998; and
- in Trinidad and Tobago since 1996.

All these countries have already have conferred upon the prosecution the right of appeal. So all this horrible horrendous story that we hear will happen to Guyana if this right is conferred upon the State that the judiciary will collapsed, that jury trial will be abolished that judges are going to be intimated, that we are going to have somewhat of a revolution into this country if this right is conferred. Mr Speaker, it exists throughout the Caribbean; in Bermuda since before we became independent, since 1962 this right exist.

And let us move beyond the Caribbean and see what the position is. The prosecution has a right:

- in Singapore;
- in Tasmania;
- in Sri Lanka;
- in the Union of India;
- in the United Kingdom;
- in Canada; and
- in the United States of America.

Mr Speaker, we are first hearing that the conferment of the right of appeal is a disastrous thing. That is the first argument and then what they are going to deal with, on what basis we can appeal. I

am going to deal with that, but I am going to deal with your argument in a coherent manner. *[Applause]*

Their first line of attack was in the right of appeal in the first place and I am demonstrating the number of countries in the world. America has it over one hundred years now. *[Applause]*The Union of India if possible the largest democracy in the world has it for over fifty years now. Has anything collapsed? Are Judges being intimidated? All these puerile infantile arguments that we have been hearing if this right of appeal is conferred a horror story we have been told.

Presently, position in Guyana as explained by the Honourable Attorney General is that if the prosecution wishes to challenge an acquittal ... right now there is no challenge of acquittal ... what the prosecution has available is under the Administration of Justice Act an amendment was effected to the Court of Appeal Act that allows the prosecution to refer a case to the Court of Appeal if the prosecution feels that a miscarriage of justice took place. And when that occurs the Court of Appeal is only empowered to render an opinion; it has no bearing, no impact whatsoever on the decision or the verdict which occurred in the High Court.

In my research, I was able to unearth four reported instances where the DPP utilised this device and they are as follows:

(a) DPP Reference No.1 of 1980 29 WIR on Page 94;

(b) DPP Reference No. 2 of 1980 29 WIR on Page 594;

(c) State against Alvin Mitchell 1984 39 WIR on Page 185; and

(d) DPP (Undefined) 41 WIR 1987 on Page 169.

I am going to get to the point now … *[Interruption: 'What is the point?'] I will tell you*

In all these cases the Court of Appeal ruled that the decision of the High Court in acquitting the accused person were wrong, but of course the Court of Appeal was impotent to do anything. The result is, we had four cases of manifest miscarriages of justice, where four guilty persons, three murderers and one rapist was allowed to walk free, because the State does not have a right to appeal. This Bill seeks to correct that situation. *[Applause]*

I am going in depth and I am going to demonstrate to you. Mr Speaker, in particular the State against Alvin Mitchell is a classic example of a miscarriage of justice, which I will share with this House. The facts of this case were so glaring, the miscarriage of justice was so obvious that the Court of Appeal in Guyana in 1984 issued a call to this House to confer upon the prosecution a right of appeal and I am going to quote the judgement in which the Court of Appeal issued that call. Mr Speaker, this was a murder case and the facts adduced by the prosecution were extremely convincing. They led to the inescapable conclusion that the accused person had a connection with the murder of the deceased. At the High Court trial, a no-case submission was strangely made and even stranger it was upheld and the jury was directed to return a formal verdict of

not-guilty. The DPP referred the matter to the Court of Appeal for the Court of Appeal's opinion.

Mr Speaker, Chancellor Massiah was the Chancellor of the Judiciary, a jurist whose competence no one can dispute in this country. Indeed he became an Attorney General of the PNC government and sat in this very House and this is what Chancellor Massiah said:

> *My answer to the question under reference would therefore be that in point of law the trial Judge fell into fundamental error, when he concluded that the circumstantial evidence in its total and cumulative effect would not justify an inference of guilt by a properly charged jury acting reasonably. He ought to have over-ruled the no-case submission made on Mitchell's behalf and submitted the case to the jury for their determination and of his guilt or innocence.*

And then the Chancellor continued:

> *No one could ever tell what the result would have been if the case had been sent to the jury. In my judgement in any event justice miscarried as it appeared to have done also in another case of the DDP reference No. 2/1982 arose.*

His Honour continued:

> *In my opinion, there can be a miscarriage of justice in relation to an effecting the State just as there can be one in relation to the accused person. [Applause]*

This is not Anil Nandlall speaking, this is a former Attorney General of the PNC government, a former Chancellor of the Judiciary of this country, when our Court of Appeal was the apex of the Judiciary. So this is a call from the Judiciary and I will repeat it.

> *In my opinion, there can be a miscarriage of justice in relation to an affecting the State just as there can be one in relation to the accused person. It is a grievous state of affairs, which in either case ought to be deprecated. For this reason, Parliament may wish to consider whether the law ought not to be amended to give this Court the power to order a new trial. [Applause]*

I will repeat it Mr Speaker:

> *Parliament may wish to consider whether the law ought not to be amended to give this Court the power to order a new trial, where the Court is satisfied that a case ought to have been sent to the jury.*

That is Chancellor Massiah in 1984, twenty-five years ago.

Mr Speaker, I now move to Justice of Appeal Fung-a-Fat, who sat in that case as well. Mr Speaker this is what Justice of Appeal Fung-a-Fat said in that very case:

> *Bearing in mind that justice is not one-sided that the State is entitled to justice in the same manner as an accused person is entitled. It is my considered opinion that there was a denial of justice to the State by the trial Judge when he ruled that the State failed to establish a prima facie case.*

Justice of Appeal Fung-a-Fat continued:

> *My answer to the reference posed by the Director of Public Prosecutions therefore is that the trial Judge fell into serious error in agreeing to the no-case submission and ordering an acquittal. My answer like Massiah see is an emphatic no.*

And this is the most important part: [*Interruption: 'The man was an Attorney General and never passed a Bill like this.']* I will wait for you, Mr Ramjattan. Are you finished? Mr Fung-a-Fat continued to say:

> *In conclusion, I feel that the time is right for Parliament to consider the question of giving the State a right of appeal.*

This is what the Court of Appeal said and he continued:

> *Had the State has such a right of appeal; I am doubtful whether Mr Mitchell would have left the*

courtroom a free and innocent man on 21 February 1984. So that a guilty man was allowed to walk free because the State had no appeal.

That is what the Court of Appeal is telling you. I am not finished. Justice of Appeal Vieira who sat, the Honourable Member's uncle. Listen to the wisdom of your uncle. At page 191, in this matter under reference, Chancellor Massiah has painstakingly pointed out the telling circumstances put forward by the State, which in my view might lead any reasonable jury inexorably to the almost irresistible inference that Mitchell brutally murdered the deceased during the early morning hours on Sunday, 7 February 1982. What the trial Judge did was to usurp the functions of the jury as a result we are seeking to correct that ... *[Noisy Interruption]*

The Speaker: Honourable Members, would you please allow Mr Nandlall to continue his presentation and please stop banging the paper weights on the desk? I have threatened to remove them and I will do so if this continues. Proceed Honourable Member

Mr Mohabir A Nandlall: I thank you, Mr Speaker, for your kind intervention and protection. Mr Speaker, Justice of Appeal Vieira continued; Justice is a two-edged sword which should work equally for the prosecution as it does for the defence.

I entirely agree with the views expressed by Chancellor Massiah that the time is now ripe for legislation in this country similar to

that enacted in Canada where an Appellate Court has the power to order a new trial if it is satisfied that a miscarriage of justice took place below.

Mr Speaker, I have gone in to that case, because when you listened to the presentations on the other side, you would not get an iota of impression that the State has any say in thing called Administration of Justice. That a high court trial is about an accused person alone and that the State is there apparently to ensure that he gets off. That is the impression that one gets.

Mr Speaker, we must recognise that Judges are human beings and therefore fallible. The above four cases clearly demonstrate this. Repeatedly we hear the public, the victims of crimes and their relatives complain that criminals are able to defeat the Criminal Justice System and walk free. Often it is these same exonerated individuals who go on to commit more offences. We are all aware of career criminals in our society. These are the realities which we must accept and seek to correct if we as national leaders are serious about confronting crime. It is incumbent upon us to devise new and innovative mechanisms to deal with the exigencies of the changing phenomenon of crime. This Bill is but only one of such mechanism.

Mr Speaker, it is important that I emphasize that while this Bill seeks to confer upon the prosecution a right of appeal, this is not a carte blanche right of appeal. The Bill lists grounds upon which the prosecution is to appeal and these grounds are contained in

Clause 34 of the Bill and I will go through them, because the first objection which was raised by the other side is that the right ought not to be conferred in the first place. And then they moved to a stage beyond that and they are saying look, if you want to confer the right, then you must only deal with a question of law. Well let us see what the Clause provides and on what grounds the DPP can appeal.

It can appeal against the judgment or verdict of acquittal of an accused person in proceedings by indictment in the High Court when the judgement or the verdict is a s a result of -

(i) A decision by the trial Judge to uphold a submission that there is a no case to answer.

That is a question of pure law and that is specifically the factual matrix that Mitchell case presented and it is in that exact context that in 1984. The judicial arm of government issued a call to the legislative arm to State to confer in a unanimous way the right of appeal. The Executive has now complied and we have the Executive and the Judiciary saying the same thing.

(ii) A decision by the trail judge to uphold the submission that there is a defect in the deposition or on the Committal of the accused person.

That again is a question of pure law. Nothing so far in either ground has to do anything about jury. This is on pure principles of law wither the committal is bad, whether the deposition is bad

or whether the Judge is wrong on principles of law to uphold a no-case submission.

(iii) A decision by the trial judge to exclude material evidence sought to be adduced by the prosecution.

Again this is a question of law as to what is admissible evidence and what is not admissible evidence. The jury has nothing again to do with this.

I have to go through this, because of the misconception that came from that side.

(iv) The trial Judge's substantial direction of the jury on the course of the judge's summation on the law or facts or a mix law of facts.

Again what is being challenged is the judge's direction and the judge's direction is challengeable only on questions of law.

(v) Is a material irregularity at the trial.

Again, whether there is a material irregularity at the trial or not is a question of law.

So all these things we heard about the abolition of jury trial, about intimidation of judges, all are completely baseless.

It is clear that on Clause 34(b), the prosecution can only appeal against the decision of or the ruling of the judge. In a criminal trial the judge is the sole arbiter of questions of law, therefore when an appeal is launched against the judge's ruling; it is an appeal that invariably involves the question of law alone. Indeed the only challenge that is allowed in respect of question of fact is in respect of the judge's summation to the jury.

I say all of this, Mr Speaker, to emphasize that this Bill does not allow an appeal against the decision of the jury. The province of the jury remains untouched; therefore the cardinal principle that a man must be tried by his peers remains intact and un-affective by this Bill. It is the judge's decision which will be the subject of the appeal. The verdict of the jury cannot be appealed under this Bill.

It is important that I point out that in many Commonwealth jurisdictions ... *[Interruption: 'Which country?]* I am getting to you, I am anxious to reply to you ... which have already conferred a right of appeal on the prosecution, the relevant legislation provides for a right of appeal against all verdicts of acquittal in the High Court including the jury verdict... *[Interruption: 'Which country did that?']* I am getting to that now.

If one looks at the jurisdiction of Tasmania, one would see that they have gone the whole route that is there is a right of appeal not only in relation to errors of law, but against any acquittal.

Singapore, Sir Lanka and India have similar legislation. So in all those countries the legislation allows ... *[Interruption]*

The Speaker: Your time is up Honourable Member.

Mr Gail Teixeira: Mr Speaker, can I ask that the Honourable Member be given fifteen minutes to continue his presentation.

Question put and agreed to.

The Speaker: You may proceed.

Mr Mohabir A Nandlall: Mr Speaker, in all those countries jury trial still exists, but there is a right of appeal against the verdict. *[Interruption: 'Where?']* I did the research.

Under Clause 34 (b) the Bill also empowers the prosecution to appeal against sentence on the grounds that the Court has no power to pass such sentence, that the sentence is inadequate, that the sentence is wrong in principle. Mr Speaker, it is trite that sentencing is something that has been done by a judge in accordance with established legal principles. It has nothing to do with the jury. So again, this Bill leaves the province of the jury untouched. *[Interruption: 'Dem boys did not read anything at all.']* No, they did not read anything. *[Laughter]*

Mr Speaker, under the Bill what can the Court of Appeal do. All that the Court of Appeal can do is either dismiss the appeal or order a retrial and I have to pause here to explain.

The Court of Appeal has no power to impose a sentence. What the Court of Appeal can do is to order that the case go back to the jury so that the jury trial again remains intact. Presently the Court of Appeal has the power to order a retrial when the accused person appeals and it is the same system. If the appeal succeeds and the Court of Appeal feels that it is in the best interest of justice, it will order a retrial to go back to the High Court. So this thing about retrial is not something new as you created the impression, Mr Ramjattan about waiting forty years and fifty years.

The Bill also allows for the legal aid to be provided as Mr Williams pointed out, but he put his own twisted interpretation. *[Interruption]*

Mr Basil Williams: Mr Speaker, could I have your protection?

The Speaker: Yes, Honourable Member, please do not refer to the Honourable Member's interpretation as twisted.

Mr Mohabir A Nandlall: Okay, it was warped. *[Laughter]*

The Speaker: Honourable Members, we must learn not to attack each other in the House please; warped, twisted and I heard a word earlier.

Mr Mohabir A Nandlall: Can I say inaccurate?

The Speaker: Yes.

Mr Mohabir Nandlall: The learned counsel was inaccurate in the impression that he conveyed, because the provision of legal aid is in important facility for the functioning of a proper Administration of Justice and here you see it, the State is saying look, we have filed the appeal and if you cannot afford a lawyer well we will provide one for you; one at your own choice.

Mr Speaker, the other fundamental aspect of this Bill is that it allows both the prosecution and the defence a right of appeal to the Caribbean Court of Justice, our final Court of Appeal as a right. This is another mechanism to ensure that the interest of justice from all sides is served. I feel compelled to point out that in all Caribbean jurisdictions that retain the Privy Council as their final Court of Appeal; the State has had a right of appeal since the establishment of the Privy Council since 1883. So all these things that are being pulled out as new and draconian things have existed, for example the right of appeal of the State to the Privy Council has existed in the entire Commonwealth; that the Privy Council served as the final Court of Appeal since the establishment of Her Majesty's body in 1883. It is nothing new.

On the question of bail, the Bill allows Mr Speaker ... the impression one would get is that one has not right of bail under the Bill, but there is a specific provision that once the appeal is filed, then an application can be made for bail. Mr Speaker, can application can be made with respect to murder, because after twenty-five years, some lawyers should understand that lawyer id bailable in Guyana as the Chief Justice of this country has demonstrated a few months ago. Treason is bailable in this country. So the impression that is created is that people are going to be locked away and there would be no right of a bail is again an inaccurate, flawed perception that is being conveyed to this House. Mr Speaker, it appears as though people are entitled ... that under the criminal justice system, an accused is entitled as of right to benefit from a legal error. That is the impression you get, because all this Bill seeks to do is not to convict innocent people, but to ensure that guilty ones do not walk free. *[Applause]* That is the pittance substance, it is not to convict innocent people, but to minimise the possibility of allowing guilty ones to walk the streets of this country; to ensure that there are less State and Mitchell walking the streets terrorising 750,000 Guyanese people who are entitled to peace. That is what this Bill is about and no citizen of this country has any right to benefit from legal deficiencies; that is not a fundamental right; that is not a legal right, so that if there is a deficiency in the Administration of Justice, those who are in

charge of it must have a duty to correct it and this Bill seeks to do that.

Mr Speaker, as I have pointed out, the Judiciary has called for this Bill twenty-five years ago. The Executive has seen it fit to present it to this National Assembly. The people of this country have called for it and it is the duty of the Legislature to pass it. I thank you very much. *[Applause]*

The Speaker: Thank you Honourable Member

Honourable Members, we will suspend for fifteen minutes. Mr Corbin, we were supposed to do so at seven o'clock for half an hour. If Members agree, we will suspend for fifteen minutes and return very shortly.

19:35H - SUSPENSION OF SITTING

20:13H - RESUMPTION OF SITTING

The Honourable Member Mr Corbin

Mr Robert HO Corbin: Mr Speaker, this afternoon when I listened to the initial presentation of the Honourable Attorney General, I felt somewhat relieved since I came to the House with some grave apprehension as to what will be the future of the liberty

of the citizens of Guyana after the passage if indeed it does pass this piece of legislation.

It is my sincere belief that dark clouds hang over Guyana and what we are seeing is the legislative framework being put in place to strengthen a rising dictatorship in this country. That is what we are seeing. *[Applause]* The liberty of the subject is seriously threatened and one wonders why the Government has chosen to proceed with such haste with this piece of legislation recognising the far reaching implications of this proposed Bill.

I had hoped to decline to speak, but having heard Mr Nandlall, it helped to explained very succinctly that the motivations for this Bill are far more far reaching than those explained by the learned Attorney General.

And so I want to draw attention to Article 13 of the Constitution in the context of Mr Nadir's presentation this afternoon that this Parliament ought to pass laws for the peace, order and good governance of this country, but the Constitution in Article 13 emphasizes that the principal objective of the political system of the State is to establish an illusionary democracy by providing increasing opportunity for the participation of citizens and their organisations in the management and decision making processes of this State with particular emphasis on those areas of decision making that directly affect their well-being. I do not believe that anyone could advance an argument to the contrary that the Bill that is being proposed this afternoon seriously threatens the well-being

of most Guyanese in this country. And so one must ask why the haste, what are the motivating factors that would cause the Government to rush this Bill through the House after a few days notice was given barely sticking the legal requirements in terms of notice, even upsetting the present order of today's sitting to bring it forward from the place it was fixed on the original agenda for this afternoon. And so I want to say that this Bill threatens the liberty of subject and we believe that it is in breach and threatens to breach the fundamental rights of citizens as guaranteed under Articles 139, 144 and 147, and so to avoid this kind of controversy before the House since the Government has been boasting about consultation, after all we were told by the national newspapers that the President of this country refused to sign a certain document, because it has far reaching implications for this country, and so he declined to sign in order to engage in widespread consultations.

I wrote the Prime Minister, Mr Speaker, and I think for the benefit of the House I shall like to read for the records what I said to the Prime Minister:

> *The PNCR-1G requests that the Government re-schedule the second reading of the Court of Appeal Bill from Thursday, 24 July to a later date to facilitate consultations with the opposition parties and other stakeholders on its implications.*
>
> *The PNCR-1G is of the considered view that a proposed law has far reaching consequences for the Criminal Justice System in Guyana including the*

Constitutional rights of the individual to a fair hearing in a criminal trial before an independent and an impartial court; the abolition of trial by jury and the independence of judges in the conduct of a criminal trial in the High Court of the Supreme Court of Judicature.

Consequently it ought to attract the widest consultation with stakeholder groups in Guyana.

The PNCR-1G is prepared to commence discussion on this matter at your convenience.

I place this in the records because unless there was some proper explanation given for the haste, I am at a lost to find out why is it the Government requires this legislation so quickly. Is there some pending matter before the court that they would like to address? Is there some urgent issue affecting the Criminal Justice System with someone who is accused tomorrow that there is some rush to pas this legislation? If according to Mr Nandlall we are seeking to implement a recommendation of the court made since in the 1980s, one wonders why a few days more would do such harm to a recommendation that is nearly three decades old. So one must draw the inference that there must something sinister afoot wit the speed and haste with which this Government would like to proceed with this legislation that admittedly at best has areas of grave concern and misunderstanding, and at worst seriously threatens the constitutional rights of citizens as enshrined in the Guyana Constitution.

Mr Speaker, Mr Nandlall spoke of the existing law of what exists and spoke of privileges to the accused person. It seems to me that he had the whole Criminal Justice System confused, because as I understand it, it is the citizen who is provided with certain constitutional rights which needs to be protected by the State. That is how I understand and even when you speak of the State functioning, it is in order to control the very powerful coercive powers of the State that these guarantees are there in the Constitution and to think that these powers can be used willy-nilly from the way Mr Nandlall spoke equating the rights of the citizen with that of the DPP; equating the presumption of innocence as Mr Murray pointed out, painting it with the same brush as he paints the rights of the State to challenge a conviction and the law under which a person is convicted seriously boggles my mind and reflects a callousness for this Constitution that is very worrying indeed.

Mr Speaker, Article 139 of this Constitution states very clearly that no person shall be deprived of his personal liberty save as may be authorised by law in any of the following cases that is to say in the execution of the sentence or order of a court whether established in Guyana, et cetera in respect of a criminal offence of which he has been convicted.

There is another constitutional provision which I believe all Members of this House are familiar with of a right of a person to a fair trial within a reasonable time. Unfortunately, because of the

clogged up Criminal Justice System, that right of the citizen is constantly abused in Guyana. For the right of a person for a fair trial within a reasonable time has been translated to mean a minimum of three or sometimes as many as seven years from the time the person is accused fro the time where they are able to have a fair trial. So this reasonable time has already been abused. This legislation will further violate that right to a fair trial within a reasonable time prima facie just on the surface of it by providing the right to detain a person further, forget the provision for bail, I think my colleagues have adequately dealt with the legal arguments. I am not making any legal points here. With right to a fair trail within a reasonable time could end up with a person being deprived of their liberty as guaranteed under Article 139without being sentence for what might in legal terms be a life sentence. That is what the possibility of this provision makes, because if someone waits for seven years before they face a tribunal, the possibility exists that upon appeal and the fact that the system is already clogged up, it could result in them spending another seven years. So you have someone who already has a constitutional right to a fair trial being incarcerated for forty and possible longer, because we do not know whether there is going to be a second appeal and so we see the possibility. You need not advance the argument that that would be unreasonable, because the law has to assume that it would be applied by the most irresponsible person. You have to take that into account, you do not deal with the

incumbents. This law is for all times unless repealed. So the argument that the Government is giving, this law is not being passed for the PPP/C; this law is not being passed not for the present DPP or for the present Attorney General. I believe he is worried about this; he may not want to see this implemented. But it is not here for the present Attorney General and the present DPP, it is for all times and therefore we have to assume that it could be utilised and misused for partisan political activity as we have seen in several cases in this country and that is why the possibility of a breach of Article 147, which guarantees ... and Article 147 is very clear that with except with his or her consent no person shall be hindered in the enjoyment in his/her freedom of assembly association and freedom to demonstrate peacefully, that is to say his/her right to assemble freely to demonstrate peacefully and to associate with other persons in particular to form or belong to political parties or trade unions, et cetera. All those provisions are threatened by the possible misuse of this legislation that is before the House today.

Article 139 (3) of the Constitution speaks to the following:

That any person who is arrested or detained shall be informed as soon as practicable in the language he understands for the reasons for his arrest, et cetera. But more important, the latter part of that provision: to retain and instruct without delay a leader/adviser of his own choice being a person entitled to practice in Guyana as an Attorney-at-law and to hold communication with him. That right

is threatened with abuse, where the average citizen is going to be exposed to a seven years journey with attorney of his own choice and is faced possibly with the challenge of a higher court, the Court of Appeal or the Caribbean Court of Justice, which would obviously require at that stage eminent counsel. That's not the case, eminent counsel for representation and at that state he will be denied his right by the operationalist throughout that stage unless he is in a very affluent position and I doubt with the way the Legal System operates, he would have been in there in any case if he were affluent *[Applause]* So we are dealing with poor people who cannot afford lawyers and who could find themselves in the disadvantageous situation of having struggled, pooling family resources and hearing that they have been acquitted by the jury, because the learned counsel was telling me a few minutes ago that it acts as s suspension, but this is very clear, because under this provision Clause 34C (iv):

> *An appeal under this section shall have the effects of suspending the execution of the decision, judgement or other appeal from until final determination by the appeal proceedings except...*

and it the goes on to say

> *... the court having regard to gravity of the offence may grant the accused bail and the accused to attend the appeal proceedings shall abide by the results of the proceedings.*

So at that late stage, the constitutional right of a citizen to retain counsel of his own choice is likely to be infringed because of economic hardships. And so Mr Nandlall fails to appreciate the

point, when my colleague on this side spoke about the legal aid centres, because it is know that in such serious matters, those persons affected only relying on a legal aid centre for competent legal advise, because he would need eminent counsel like the Attorney General and the learned member Bernard De Santos and he will have to find probably $1 million to lodge before he enters the chambers. I do not know what are the fees of a senior counsel. *[Interruption: 'More!']* Thank you. I want to be generous - to consider the brief and to read the history of the proceedings before he decides whether the case is one worth taking. Well tell me, who are we representing? The Honourable Member suggested that all of this is in order to enable the State to protect the rights of the victim. I do not know that that is the area in which the State ought to look to provide protection for the victim. The arguments have already advanced by the very first speaker on this side of the House, that if we are really serious about protecting the rights of victims and preventing victims in the first place, then our focus ought not to be on legislation, it has to be on the security infrastructure of the State, the police force, the detection system and many other areas, not on onerous legislation. For if you do no arrest the persons in the first place the you still have a large body of people out there who will continue to abuse the rights of victims without being arrested in the first place. And so in my opinion, this law here has nothing to do with any protection of the rights of victims. This law clearly, particularly with the haste with which it

is being rushed has some objective of empowering the State to pursue a particular agenda which is so manifest around Guyana today.

I want to advise the Honourable Attorney General to seriously consider the recommendations that this Bill should not be proceeded with the urgency with which the Government appears to what to proceed with it.

Even where this Constitution provides for detention of persons in cases of national security, the Constitution builds in protection that after three months you have to have a another tribunal hearing the reasons why this should be detained further. These are constitutional protections, but under this law you do not have to worry with any tribunal explaining why somebody is being detained. All that has to happen is that the DPP or his or her representative of the DPP signals to the judge that they intend to appeal without any reason, because according to this fact now and without any reason then and they have fourteen days to submit the reasons to the Court of Appeal that maybe extended. Anyone who is familiar with the working of the Court and I believe that the AG is very familiar with this particular in civil matters against the State that twenty-one days or fourteen days ends up many times being forty-two days or sometimes months before you get an affidavit in reply. So it is not impossible to assume that that fourteen days could be extended by leave of the Court of Appeal for some other reason being given. So you have someone who has been

incarcerated for years faced his trial as guaranteed; the result is an appeal; it is suspended immediately without reason and then nothing happens. What is more frightening is the emphasis of the Honourable Member Mr Nandlall that most of the appeals would be on matters of law. I wondered why the emphasis, but when I examined this law very carefully it is clear that according to Clause 34 (g) and I would like to read it for Mr Nandlall and other Members:

Notwithstanding that a respondent is in custody, the respondent shall on the hearing of an appeal under this part be entitled to be present in court if the respondent so desires except where the appeal is on a ground involving a question of law alone. So that where the appeal involves one of law, which according to Mr Nandlall will be main ... the man would not have a right to go to see what is happening with his business in the Court of Appeal. He will be deprived of that right of even being present according to this law that is being passed here today. It is you, because he has already faced his trial and he has been acquitted by a jury, but the learned DPP finds some question of law and fact, which Mr Nandlall avoided, which impugns the decision of the jury, because the jury will arrive at the decision based on the advise of the Court and you will appeal ostensively on some question of law which the judge advised on, but the fact is that the decision of the judge is impugned and the person could either be incarcerated or even if he is not incarcerated, his liberty is still infringed, because if even he

is given bail his movements in Guyana is restricted, because there is another piece of legislation that should have come before this one, but has been shifted further down. I think it is the prevention of crime giving the police powers to monitor people who have been convicted for one year after for first offence and all of that. So when you put the whole infrastructure in place, this person is still on a charge, he has to wait seven years again to find out the decision of the jury to acquit them will hold and during that period whether they are in or out of prison, their liberty to live the life of a normal citizen without the wait of a conviction hanging over their head would be removed. Therefore one must question this notion of presumption of innocence that a person is presumed innocent until proven guilty. When will that be established?

And so Mr Speaker, for these reasons, recognising the far-reaching implications of this legislation, we suggested ... not that the government comes here and go to a Special Select Committee, we suggested a delay, because the track record of Special Select Committees suggests that when matters go there and I have said this before in this House, there is the Parliamentary Governmental majority and we go there as a matter of form, discuss and argue over points and very little is changed, but prior to coming to this House, we were assured that the Bill would not go through all its stages today. I had thought that they were postponing the debate that is what I interpret it to mean. So when I got here and find that not going through all its stages meant debating the Second reading

and going to another process before one examines the contents of the Bill, I am very wary about what would be the end result of whatever is being proposed, because nothing yet has been proposed so I am at a little disadvantaged. The Honourable Attorney General said that he would make an announcement at a little later having regard to certain concerns and he did hint that he had certain proposals in mind. But I would say that we would need to have some serious assurances from the Government made in this Assembly that they have seriously understood the implications of the possible constitutional breaches, which of course you have to go and try to settle elsewhere, but that there will be some serious attempt to address those areas of concern and that this Special Select Committee should not be one that is restricted not only to Members of this Parliament, that is why I said stakeholders. This affects the liberty of the citizens. We should have the public knowing what the serious effects of this are. So I am hoping that that approach will be one which will seriously address those areas of this Bill that give cause for grave concern.

I would therefore like to make the position of the PNCR-1G very clear. We would not be part of any process that seeks to delay the implementation of this Bill in the hope that there will be a genuine approach towards addressing the concerns that have been raised, and since I have written the Government and they have responded that they are prepared to look at it and delay, I am interpreting that to mean that the Attorney General will be giving certain assurances

that those concerns will be addressed. Based on that the PNCR-1G will reserve its position. We cannot support the present Bill that is before the House, but we look forward to this Bill being carefully rewritten and reworded so that it will be a Bill that would be acceptable and one which would guarantee the protection of the fundamental rights of the citizens. So I wait to hear the Attorney General on this matter. Thank you very much, Mr Speaker. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Attorney General and Minister of Legal Affairs

Hon Doodnauth Singh: May it please you Mr Speaker, I could assure my learned friend, the Leader of the Opposition that the concerns which have been expressed by the speakers on the opposition benches are with which the Attorney General is familiar. Issues which have been raised which are caused for concerns and ought to be properly and adequately addressed.

Mr Speaker, a review of the analysis of the Legislation dealing with these issues has been done by Mde Dinah Sithahal, Senior Counsel. In her work the Commonwealth Caribbean Criminal Practice and Procedure at Page 378, where she reviews in detail the particular legislation emanating out of the Bahamas, Dominica, Trinidad and Tobago, St Nevis, St Kitts and other States.

Their Lordships in the Privy Counsel enunciated the principle, which is the hallowed principle and it was stated in this way:

> *They would accept the broad principle that a person who has been finally convicted or acquitted in proceedings which have run their course should not be liable to be tried again for the same offence is a fundamental principle of fairness; a principle which I have advocated during my fifty years at the Bar. There is nothing particularly unfair or unjust about a statutory rule which enable an Appellate Court to correct an error of law by which an accused person was wrongly discharged or acquitted and order that his question of his guilt or innocence be properly determined according to law. Such a rule existed since time immemorial.*

Mr Speaker, I listened with wrapt attention to the various comments and submissions which were made by my colleagues and I can assure them that the proposals to have a Special Select Committee examine this Bill will be subjected to the fines t scrutiny and the widest consultation that is possible to ensure that the constitutional entitlements of both the State and the citizenry is protected.

For those reasons, Sir, I propose that this Bill be sent to a Special Select Committee. *[Applause]*

The Speaker: Thank you Honourable Member.

Question -

Proposed, put and agreed to.

Motion carried.

The Bill is so committed.

The Speaker: Honourable Members, we can now move to the next Item on the Order Paper.

2. TAX (AMENDMENT) BILL 2008 - Bill No. 13/2008 published on 2008-07-16

A Bill intituled, an Act to amend the Tax Act

The Honourable Minister of Finance

Hon Dr Ashni K Singh: Mr Speaker, I rise to move that the Tax (Amendment) Bill 2008 - Bill No. 13/2008 be read a Second time and to present my views in favour of this Bill.

Mr Speaker, in commencing this task, I hasten to assure this Honourable House that I anticipate that this debate should not take

quite as long or at least I do not anticipate that it would take nearly as long as the one on the Bill that immediately precedes it.

The Bill, in fact, is a very simple Bill and it has its genesis in a measure that was announced in Budget 2008 in relation to the cost of Company registration and increasing share capital and it might be recalled in that regard that I had announced in presenting the Budget for 2008, Government's intention to introduce legislation to restructure the Stamp duties and fees paid by companies when they incorporated or increase their share capital. I had further suggested that the specific objective of doing so would be to remove the variable element of the charges incurred and therefore reduce the cost of registering a company and of increasing share capital.

I had further stated in the Budget Speech that this was expected to have a favourable impact on the cost of doing business in Guyana particularly in the case of companies starting up or of expanding their equity.

This announcement was made in the context of the six broad areas or particularly of six broad priority areas that had been identified in the Budget. The Sixth being the advancement of reforms aimed further of transforming the business environment to stimulate greater investment, job creation and sustain economic growth.

Mr Speaker, in this regard the announcement can also be situated in the context of a number of policy pronouncements that have been made and indeed that have been implemented as reflected in

documents such as the Poverty Reduction Strategy Paper (PRSP) and indeed perhaps most significantly the National Competitiveness Strategy, which articulates a comprehensive and indeed ambitious agenda for further improving the environment for doing business in Guyana; for increasing the competitiveness of businesses in Guyana and indeed for increasing the competitiveness of our economy.

And so this Bill seeks very simply to repeal Section 16 of the Tax Act, Chapter 80:01, which currently provides as follows:

Section 16 provides very simply that -

> *A company incorporated in Guyana should pay on the date of incorporation a duty of one half of one percent of its nominal capital and on increasing its nominal capital shall pay a light duty within fifteen days of registering the increase.*

This, Mr Speaker, with the passage of time and with the growth of companies has proven to an amount particularly in the case of larger companies, but also perhaps in a relative sense equally so in medium and small size companies. This provision has amounted to what someone described as a fairly substantial sum. The evident in fact suggests that if one was to look a the numbers of companies registering on the share capital that they register and the number of cases of companies registering increases in their share capital, the evidence would suggest that this provision has proven to be a disincentive to companies to incorporate and to and indeed a disincentive to increase or somewhat prohibitive in relation to

increasing equity or share capital. In that context the measure that was announced in the Budget that I referred to earlier that is to say a repeal of this provision.

I hasten to add, Mr Speaker, that companies are also required to pay certain fees under the Companies Act, specifically fees that are articulated in the regulations made under the Companies Act and as suggested in the Budget speech and in consistent with the repeal of this section, I have indeed very recently signed and had published in the Gazette an amendment to the Companies Regulations that would similarly eliminate the variable component in the Companies Regulations. In the case of the Companies Regulations the fees are determined again on a percentage of the share capital; in the case of an incorporation of a company and registration of a company the fees amount to six percent of share capital currently; and in the cases of increases of share capital two percent.

I have along with the submission of this Bill for consideration of this Honourable House also signed as I indicated send for publication in the Gazette and amendment to the Companies Regulations.

And so Mr Speaker, this Bill is now submitted to this House for consideration. Like I said, I believe it is relatively simple; its intent is clear very simply to remove a charge that has proven to be somewhat onerous on companies and indeed can be situated in a context of Government's several other measures to encourage

companies registration and to reduce the cost of doing business in Guyana.

And so Mr Speaker, with those relatively brief introductory remarks, I commend this Tax (Amendment) Bill 2008 to this Honourable House. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Member Mr Winston Murray

Mr Winston S Murray: Mr Speaker, let me straight away say that the People's National Congress Reform-One Guyana, supports this Bill brought before the National Assembly unconditionally any measure which seeks to cheapen the cost of doing business by a new company incorporating itself is to be welcomed. I want to say that I acknowledge as the Minister stated that this measure brought before us today is a fulfilment of a commitment, which he identified in the Budget.

I do not necessarily share l his view that this cost of half percent of the share capital is really onerous. If you check it on a $9 million company, it would amount to $45,000. The aspect that is onerous if the variable registrar fees and I was going to draw to his attention that his commitment in the Budget was in respect of duty and fees. But I noted that he somewhat blunted the attempt I would have made to draw that to his attention and the lack of

fulfilment thereof except that he has now announced that that he has recently signed a measure which has gone for publication to be gazetted reducing those fees. It would have been helpful, Minister, I dare suggest if you could have mentioned in this National Assembly this evening what the reduction is. As you said it is currently six percent and it would have been helpful if you told us that is has gone to five or four or three or whatever, because that is really the one that I would say is onerous, because six percent of a $9 million capitalised company is $540,000 and $10 million company is $600,000. And I hope that you would use the opportunity of your reply to clarify exactly what you have sent for gazetting in respect of a reduction of those fees.

I also want to make a brief comment since you ventured in that area about the competitiveness of companies generally and I have taken note of the various initiatives that you say are ongoing intended to achieve that.

I want to throw into the mix, Mr Minister, what I consider to be a key component of making businesses truly competitive and that is a comprehensive re-look at the taxation structure of businesses. We have for some time been arguing in this National Assembly that the corporate tax rate should be reduced. At the end of the day for that purpose a comparative analysis could be done very readily as to what that rate is in other CARICOM and other non-CARICOM neighbouring regional countries. I have that information and I am sure the Minister has access to it, because it

is surely in this neighbourhood that we must compete in the first instance and that can be an incentive or a disincentive. I would have thought that the windfall that has accrued from the VAT that has been in place which you have shown no inclination to reduce that have shown a disposition to spend freely in other sectors in accordance with what you determine to be our priorities that sight be not lost of this particular area. Because while it is an attractive political proposition in the short term to do a number of social type projects, many of which we agree are useful and make a contribution to improvement in people's lives. At the end of the day it is the generation of economic growth that will ensure that on a permanent basis, we can increase the standard of living of our people and their general overall well being. And so anything that could be done to use this windfall by was re-look at the corporate tax structure, I think would be helpful.

With those few words, I will take my seat by repeating that we support this measure; it is probably a small drop, but it is not to be underestimated, every little bit helps. So I will say that to you, Mr Minister and if you can tell us indeed what is the reduction you are moving forward with on the Registrar fees that will endear us more to what is being done and we hope you can take a look at the other areas that we have mentioned. Thank you very much, Mr Speaker. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Minister of Tourism, Industry and Commerce

Hon Manniram Prashad: Mr Speaker, I rise to support the Bill to repeal Section 16 of the Income Tax Act to remove duty payable upon the incorporation of a company.

Mr Speaker, the Government recognises the role of the private sector as the engine of growth. It is important that Government remove all the necessary red tape, inefficient, duplicating and time-consuming procedures. The private sector must be able to operate within a regulatory framework that is conducive to doing business so that they are free to get on to what they do best that is creating jobs, exports and economic growth without being hindered by excessive red tape.

I am particularly happy to be part of this process in this Honourable House today to speak on this issue, because I remember just a couple of years ago as Chairman of the Private Sector Commission, I lobbied the Government then with the support of the Chamber of Commerce, the Guyana, the Guyana Manufacturers and Services Association, CAGI and other private sector organisations to do this very thing - to reduce the cost of doing business.

In 2006, the private got the opportunity to collaborate with Government and other stakeholders as part of a ground-breaking partnership that led to the development of Guyana's National

Competitiveness Strategy. The National Competitiveness Strategy is s comprehensive document, which recognises many of the obstacles to greater economic growth in Guyana and sets out 122 actions to improve Guyana's competitiveness of business and its economy. In a sense, the National Competitiveness Strate4gy is to create more jobs, more investments and more exports. One of the key concerns of the business community that was incorporated into the Strategy was the need to streamline bureaucratic procedures. An important set of procedures that the Strategy need improvements are those involved in the registration of companies. The National Competitiveness Strategy highlights several reasons why it is important to have efficient business registration procedures. Formalised companies found it easier to access and public services including the course to the judicial system in the case of commercial disputes. Business registration provides information on the business sector and so can help inform Government policy and investment decisions. Of course, business registration is also the first contact of business with Government and so strongly impacts perceptions of the investment climate.

The National Competitive Council which is chaired by His Excellency President Jagdeo is a high level public/private body charged with leading implementation of the National Competitive Strategy. It is broad based and it includes representatives from the:

- Private Sector Commission;
- Association of Regional Chamber of Commerce;

- Guyana Trades Union Council; and
- FITUG.

In this vein, Government is working to implement several reforms. First, as a consequence of the recent amendment to the 1995 Companies Regulation made on 16 July by the Minister4 of Finance. Many companies would experience a significant reduction in the cost of incorporation. The Amendment of the Regulation provided for the restructuring of the fees payable by new companies on incorporation when existing companies increase their share capital. Previously the fees were computed and it was mentioned before and the Honourable Member Mr Winston Murray requested to know, so I would not go over the six percent and the two percent increase, but according to the new regulation companies will now be allowed to pay fees as follows:

- $60,000 for a certificate of incorporation and the registration of share capital at incorporation. That is one fee.
- $30,000 for any further increase in share capital increase in any class of stated share capital or increase in any series of any class of stated share capital.

Honourable Member Mr Murray, other business related fair fees such as those for filing and certifying of documents and the duty payable under the tax Act remain unchanged. The new fees are only applicable to local companies. In addition to the cost of doing business in Guyana, the fees should be reduced; business will be

better able to compete with other countries in region and internationally for investment.

The above initiatives are all in keeping with ongoing works to streamline several other regulatory procedures that affect the ease and cost of doing business in Guyana as well as to institute additional measures in Guyana, to improve the broader environment for doing business. These include access to finance; business people will find it much easier to access finances and at much more reasonable rates upon introduction of a credit bureau in Guyana. Credit history will replace much of the cumbersome process of funding adequate collateral. The credit bureau should become operational in 2009.

Import/Export procedures - The introduction of TRIPS that is the Total Revenue Integrated Processing System has brought tremendous ease to the process of clearing imports and exports. However, we are now moving beyond ensuring that most of the transactions are simplified and computerised. We are also taking a closer look at the licensing and other compliances processes with a view to making our system much more effective and efficient standards. In order to ensure that our private sector is able to compete internationally, the Government is taking steps to allow for accreditation and certification of firms to respective international standards. The Guyana National Bureau of Standards will commence these works shortly.

These are just a few of the initiatives that are ongoing. I probably should mention also the modernisation of the Deeds Registry and the strengthening of GO-INVEST to handle the increasing number of investors and potential investors.

This Government has a genuine interest in promoting the private sector as the main catalyst in growth of our economy which is why we are opening more and more industrial estates to those who are interested.

Mr Speaker, this is a simple Bill and as I mentioned before, this Bill is one of several initiatives to promote private sector growth and development in our country. I would like ot urge the entire House to support the Bill proposed by my colleague the Minister of Finance. Thank you. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Member Mr Ramjattan

Mr Khemraj Ramjattan: Mr Speaker, it is always amazing how a miniscule matter can be given so much propaganda to something that should just take five minutes, but I have to respond. When you look at what is being amended here, a deletion of Section 16, 0.25 percent of the value of that capitalised share capital is what is now being deleted and both the Minister and the other Minister gave the impression that this is going to do a fantastic job literally

of doing business in Guyana. I want to say what could have been more important for us was for the Minister of Finance to indicate to us, over the years how much of this Section 16, 0.2 percent he has been collecting? I understand that the thing is not even being collected. So miniscule it is and then to come here with the propaganda, oh yes, look what we are doing for business. I gave a speech here in the Budget Debate as to how the private sector is not being made the engine of growth. I am also stating that what was kept away from us was also this six percent in the Companies Act, which is very onerous and one of the highest in the world, but they are not taking about that; they said that they are going to do it in some regulations to come. It is important that that be brought, because regulations as I have said when they come and are laid here, they are hardly debated. Why did he not indicate to us that look we are going to delete this 0.25 percent which is but a cosmetic thing; it is hardly collected and let us really know what it is that this six percent in the Companies Act will be. They are now saying that the $60,000, $200,000, I want to know whether that is really a reduction. In this country lots of companies do not put up share capital that is very high as you would know. It could very well be that that 200 percent might again be onerous that Mr Manniram Prashad just talked about. But it just goes to say how they are not freely informing the Parliamentarians as to whether this is good or not, but they propagandise that yes, we are going to do good for business be deleting this and we do not know whether

that $260,000 and we do not know about the other fees in relation to it, and we are not going to have a debate on that. But we also know what is going to help business and Mr Manniram Prashad is very well aware of that, is that this forty-five percent that some companies are going to pay for taxes, when they deal with merchandising; the manufacturing firms that got to pay in the vicinity of thirty percent, that is what affects it. Moreover, just now we spoke about the Court of Appeal Bill; we went to the Caribbean and say what the Caribbean Legislation has. They do not want to go generally for taxation levels and percentage to the Caribbean, because we have the highest for companies and taxation levels probably in the world, but the Caribbean got some of the lowest and they would not want to go that way, but let us say for the Court of Appeal Bill, they will go all over the Caribbean which one got it. It is important that you jut not conveniently go looking into the Caribbean for certain things and in others you do not make yourself comparable. I just want to make that point, but what point should have also been made by Mr Manniram Prashad and I also would want to mention that it is important that tax holidays and tax concessions too can help and not only certain firms like Queens Atlantic should get those. If we ant to make this thing sweeping and help business in Guyana all the firms must get, then you are going to see business striving in Guyana. There is no way that we could object to this, because even 0.25 percent constitutes a sum of money, but that is not the total picture, so we

have half the picture here and a big set of political propaganda that is going to do good for business; no, we must bring down the forty-five percent tax; we must bring down the thirty percent; we must give more tax holidays and concessions to firms and then we are going to have business; not favourites that constitutes nepotism. Thank you very much. *[Applause]*

The Speaker: Thank you Honourable Member

The Honourable Minister of Finance

Hon Dr Ashni Kumar Singh: Mr Speaker, in rising to respond, let me say first of all how please I am to have heard the voices that joined me in supporting this important piece of legislation that seeks to implement an undertaking that was announced in the Budget.

Let me respond to a couple of the observations made by the Honourable Member Mr Ramjattan. He started out his presentation by speaking about propaganda, but appeared to be an expert proponent of this practice, because he launched a completely unnecessary and in my opinion a totally irrelevant tirade on what really is an extremely simple legislative measure. To illustrate this point, the matter of the regulations made under the Companies Act was alluded to in my presentation. I did not specifically detailed the fees that were listed the fees in the new

regulations, because they were in fact gazetted almost a week ago. So I was working under that assumption that several Honourable Members might have seen it already, but that notwithstanding the Honourable Member Mr Murray, I thought quite legitimately and appropriately asked what the fees were and it of course would have been my intention to present those and my colleague Minister Manniram Prashad presented the information considerably well before the Honourable Member Mr Ramjattan spoke. So I do not know what all the drama and hysterics would have been. The Honourable Minister clearly stated what the fees are; they are gazetted; they are publicly available; he has presented the information; if you want me to present the information again, I would be happy to present it again. So there is no great mystery. In the event that the Honourable Member would like it to be repeated as Minister Manniram Prashad indicated the fee for incorporating a company is $60,000 and the fee for increases in share capital, we have now eliminated the variable component - the six percent - and as we have indicated in the Budget Speech where we said that we would remove the variable component; we have now introduced a flat fee of $30,000 and I thought that the Honourable Minister has indicated that quite clearly. So all of this drama and histrionics, I thought were totally unnecessary.

I go further and I say that the Honourable Member responded in a way that suggested in a way that this is a trivial measure. For the Honourable Member's information, this was a specific

recommendation and request made by Members of the Private Sector of the Government in our engagement with them. So it is not to be trivialised, perhaps he is out of touch with what the private sector is interested in, but I would inform him that it is not a measure to be trivialised with; it was of sufficient important to have been highlighted by the private sector and to have been brought to the attention of the Government and the Government therefore thought it appropriate to include it in the budget and to announce it and therefore to implement it as we are now doing.

Nevertheless, it is not my intention on a matter as straightforward as this to detain the House unduly. Once again, let me say how pleased I was to hear the voices of support in favour of Bill and it gives me great pleasure once again to say that in our opinion, this Bill represents together with the other measures that we are taking very important steps aimed at continuing to bring down the cost of doing business in Guyana and I therefore move that the Bill be read a second time. *[Applause]*

The Speaker: Thank you Honourable Member

Question put and agreed to.

Bill read a Second time.

IN COMMITTEE

Clauses 1 and 2

Question proposed, put and agreed to Clauses 1 and 2, as printed, agreed to and ordered to stand part of the Bill Assembly Resumed Bill reported without amendment, read the Third time and passed as printed.

The Speaker: Honourable Members, we can now move on to the next Bills**.** Well there are four speakers; we can finish it if each one speaks ... *[Interruption]*... The Honourable Member Mr Rohee

Hon Clement J Rohee: Mr Speaker, I wish to move that the three Bills that are slated for this evening that they be rescheduled for tomorrow and that the House stands adjourned until tomorrow at two o'clock.

Question put and agreed to

[Bills Nos. 8/2008, 9/2008; 10/2008 and 11/2008 deferred to Friday, 25 July 2008]

The Speaker: Honourable Members, I gather that we are resuming tomorrow.

Adjourned Accordingly At 19:25H