
THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 2003 – 2008

THE SENATE

Wednesday, November 17, 2004

The Senate met in the Senate Chamber, Parliament Buildings on Wednesday, November 17, 2004, at 11:15 a.m.

PRESENT

His Honour Senator Sir FRED GOLLOP, K.A., J.P.
(President)

Her Honour Senator DAME PATRICIA SYMMONDS, D.B.E., G.C.M., B.A. (Hons.) (P.G.C.E.)
(Deputy President)

Senator the Hon. E. R. GRIFFITH, G.C.M., J.P.
(Minister of Agriculture and Rural Development) (Leader of the Senate)

Senator T. E. BARKER, B.A. (Hons), M.A. (Econ.), J.P. (Parliamentary Secretary, Ministry of Finance and Economic Affairs)

Senator R. W. GRANT, B.A. (Econ.) G.Dip., M.A. (Parliamentary Secretary, Ministry of Tourism and International Transport)

Senator the Hon. Miss L. V. EASTMOND, LL.B. (Hons.), LL.M. (Minister of Commerce, Consumer Affairs and Business Development)

Senator I. ST.C. LINTON

Senator G. P. B. NICHOLLS, B.Sc. (Hons.), LL.B. (Hons.)

Senator Miss P. E. PARRIS, J.P.

Senator G. P. I. GOODING-EDGHILL

Senator Miss S. C. V. HUSBANDS, B.A., (Hons.)

Senator F. J. STUART, B.A., LL.M.

Senator the Very REVEREND H. E. CRICHLow, G.C.M., B.A. (Hons.) (Dunelm)

Senator Dr. F. L. CHANDLER, Ph.D., B.Sc. (Hons.)

Senator A. C. FIELDS

Prayers were led by Senator the Very Reverend H.E. Crichtlow.

Mr. PRESIDENT: This Senate is in Session.

ANNOUNCEMENTS

Mr. PRESIDENT: I have apologies for the absence of Senators the Hon. J. E. D. Williams, Dr. D. S. Lowe, Sir Roy Trotman, B. R. Collymore, Sir John Stanley GODDARD and the Hon. Mrs. V. E. NEWTON.

PAPERS

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I am commanded to lay the following:

1. Reports on the Public Enterprise Fund for the Quarters ended March 31, 2004 and June 30, 2004.
2. Reports on the Social Investment Fund for the Quarters ended March 31, 2004 and June 30, 2004.
3. Annual Report of the Labour Department for the year 2001.
4. Report of the Accountant-General for the Financial Year 2003-2004.
5. Financial Statements of Gymnasium Limited for the years ended March 31, 2001 and March 31, 2002.

SUSPENSION OF STANDING ORDERS

SENATOR THE HON. E. R. GRIFFITH: I beg to move that Standing Order No. 45(2) be suspended for the remainder of this day's Sitting.

The question was put to the Senate and agreed to without division.
11.20 a.m.

INTRODUCTION OF BILLS

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I beg to give notice of the following:

Caribbean Single Market and Economy (Implementation) (Miscellaneous Provisions) Bill, 2004.

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I beg to move that the following Bills be read a first time.

1. CARICOM Single Market and Economy (Implementation) (Miscellaneous Provisions) Bill, 2004.
2. Civil Aviation Bill, 2004.
3. Severance Payments Tribunal (Validation) Bill, 2004.
4. Road Traffic (Amendment) Bill, 2004.

The question was put to the Senate and agreed to.

PUBLIC BUSINESS

ORDER NO. 2 – CIVIL AVIATION BILL, 2004

SENATOR THE HON. E. R. GRIFFITH: Mr. President, the Civil Aviation Bill which is now engaging our attention, according to its title, is to make provisions respecting the regulation and control of civil aviation in Barbados. In that respect there is nothing different from the existing Bill which has similar objectives. However, the existing Bill is now 20 years old and since its enactment, the global environment within which civil aviation takes place has changed rapidly.

Mr. President, it has become more complex because of significant increased improvement in the technology being used in the industry. In addition, there is a tremendous increase in the number of persons travelling domestically and internationally but above all, Mr. President, a small group of persons seem bent on creating disturbance in the industry.

We all remember well the unfortunate event which took place not far from our shores some years ago which involved a Cuban Airline. We also remember the unfortunate incident which took place in 1985 in Lockerbie, Scotland and more recently, the incident which took place in the United States of America on September 11, 2001.

Sir, these incidents and others have brought the focus on the need for safety and security in the industry more so than ever before. It was always accepted that efforts should be made to keep the industry safe and secure but these incidents have now reinforced the need for us to make sure that the airline industry is safe and secure.

Sir, if we look at the historical development of the regulatory and controlling framework within which civil aviation takes place, you would notice that as far back as the end of the First World War that a number of countries in the developed world, recognising the importance of collaborating and cooperating to promote standards of safety and security in the industry, got together and established a number of regional bodies in Europe and across the Americas to promote those objectives.

Mr. President, in fact, a lot of what we now have within the international regulatory framework evolved out of that process. Sir, it was given greater focus on September 7, 1944, at the conclusion of the Chicago Convention on Civil Aviation. This Convention was the foundation on which regulatory standards are based which we now apply across the world.

Sir, at that Convention, the contracting parties made two significant decisions which are still very relevant today. If you look at the Preamble to the Convention, you would notice that they have acknowledged the need for cooperation and collaboration when it came to the promotion of common standards so they agreed to bind themselves to work together on promoting common standards and practices across the international sea.

The second important decision taken then was the role given to the International Civil Aviation Organisation. If we examine that role, we would discover this is the agency which has oversight responsibility and is expected to ensure that the contracting parties periodically upgrade and update the regulatory framework, and that they enforce and implement the various recommendations made for good practices within the industry.

Sir, this updated process is a significant and importance one because it takes into account, not only the changing technology used in the industry, but arrives at its conclusion by a consultative process and also makes use of any lessons learnt from accidents or various incidences involving aircrafts which take place from time to time. The idea behind the pursuits of ICAO is to have contracting parties implement the latest practices to make the industry one that is safe and secure.

Mr. President, as you know, Barbados is a contracting party to this Convention. In 1994, Barbados was a colony and by virtue of being a British colony, when Britain became a contracting party to the Convention, Barbados was automatically covered within that and at independence,

through the succession arrangement, Barbados remained a contracted party.

There is one special feature about this and it is the fact that the contracting parties agree to bind themselves to implement the standards and recommendations of ICAO. Sir, ICAO through its audit, standards and recommended practices and programmes periodically make visits to the contracting parties to assess the quality of their regulatory and control systems and encourages them to update them where necessary.

Mr. President, in spite of the international dimension which this subject of international aviation operates within, naturally, local circumstances and interests have to be taken into account when legislation is being put in place.
11.30 a.m.

The beautiful thing about the arrangement and the responsibility of the International Civil Aviation Organisation is that where there are differences where Member States choose for good reason to make a variation from the recommended practices, they are expected to report those differences to the International Civil Aviation Organisation so that the Organisation can still make an assessment of these practices, and that is a very important matter.

Mr. President, the differences which exist between this Bill and the existing Act, is that because of all of those changes which have taken place over the last 20 years, there is need for more detailed provisions to cover the issues of safety and security and this Bill does that.

In fact, there is a new section, Part III which deals with aeronautics. If we look at Part I of the Bill we will see that "aeronautics" means and I quote:

- " (a) the operation, construction, repair or maintenance of aircraft, aircraft power plant and accessories including the repair, packing and maintenance of parachutes;
- (b) the design, establishment, construction, extension, operation, improvement, repair or maintenance of airports, restricted landing areas or other navigational facilities.
- (c) the transportation of persons or goods by aircraft; or
- (d) flight training."

Sir, there is a lot of detail in this Bill that covers these issues falling under the heading described as aeronautics and that is a significant departure from the existing Bill. It is a very important one because if you look through the list in the Bill you will discover that all of the issues have to do with the promotion of safety and security at the Airport, the

manner in which pilots and other aircraft personnel operate and how this will eventually be brought into focus when the issue of registration and the issuing of licences have to be done by the respective domestic bodies that are responsible for areas.

Mr. President, the Bill is also very comprehensive when it comes to the question of the investigation of accidents and other aspects of safety.

Sir, in Part III, paragraph (j), you will notice that in some of the references to the responsibility of the Minister, it says:

- "(i) that any obligation under international convention relating to air navigation and air transport to which Barbados is a party;
- (ii) any Standards and Recommended Practices issued by ICAO;"

Sir, I singled out these just to focus on the fact that Barbados is reaffirming its commitment to adhering and pursuing the recommended standards of the International Civil Aviation Organisation and the implementation of the provisions of the various Conventions of which it is party. This tells us that we continue to regard safety and security in the international civil aviation industry as of paramount importance.

Sir, there is also the issue of the oversight and the enforcement of standards and practices. The Act makes reference to the Minister delegating a number of responsibilities to the Technical Director. You will notice here the reference to the Technical Director, Part III, (6):

"The Minister may, in writing, delegate to the Director any of the responsibilities of the Minister set out in section 5."

It also sets out a number of responsibilities of the Technical Director which have to do with the airworthiness of aircraft and other matters relating to safety and security.

Sir, these functions are very important and if you look at the trend which is taking place in Europe and North America, you will discover that there is a gradual movement to the situation where a number of countries are setting up what they describe as independent authorities to deal with these issues.

They are being described as being so important that they do not want to leave them within the control of the political directorate for fear that if you are dealing with your own aircraft you may tend to be lenient in enforcing some of the requirements that are absolutely necessary to guarantee the safety of human beings.

Mr. President, in many instances, the implementation of a number of the standards is a costly exercise and we know the tendency of persons when it comes to spending money, especially people who have a lot of money, they do not part with it that easily and the ones that do not have a lot of money, and you know the calypso of the wedding with the poor man and the rich man, so, wherever it is possible to avoid spending the money to implement some of these standards, people would try to cut corners. That is why the duties of the Technical Director are so important.

Mr. President, whoever fills that post must be the type of person that will enforce the standards and requirements without fear or favour, so that there will be no compromise of the safety of passengers travelling on aircraft leaving Barbados, coming into Barbados or persons using the Airport and that is a very important matter which I want to highlight. The Act makes provision for the Technical Director to fulfill these promises and we can only assume that the person who eventually fills this position would rise to the occasion.

Mr. President, the international civil aviation industry is a very important one. It provides a number of jobs across the world in respective countries for people. It also supports the world's largest industry, which is tourism. Barbados is a tourist destination and it could not maintain its tourist plant unless persons who travel felt safe and comfortable travelling on aircraft to Barbados. This is a significant matter for us and it is also so across the world.

Sir, it is only when the travelling public gets the feeling from the action being taken from the respective Member States that they are serious about promoting safety and security issues, that they will be able to travel freely.
11.40 a.m.

Therefore, we have to play our part in promoting the safety of the international civil aviation industry, and this Bill is seeking to do just that. Of course, there is the usual provision in the Bill for the Minister to make regulations and this will give us another opportunity to deal with any perceived deficiencies in the Bill in greater detail, as we develop the regulations. The regulations which will be added to the Bill, in due course, will cover all of the issues relating to the safety and security of the industry.

We know the importance of the civil aviation industry. Mr. President, 24 hours a day, 365 days a year, you are likely to find an aircraft taking off or landing somewhere in the world. The only way we can maintain that system, is if countries collaborate and cooperate on the promotion of common standards. Wherever a pilot lands in the world, he or she expects certain practices to be used, regardless of the country and that is the importance of the contracting parties, totalling now some 185 members pursuing and following common practices and standards.

This is to prevent any wide variation from country to country so that the aircraft personnel, moving from one to another, have to be confronted with different practices from place to place. Standards generally have to be common and applied in the same way from country to country. This is one of the very good outcomes from the Chicago Convention and the role which is played by ICAO.

Mr. President, that gives us the context within which we, as a contracted party to the Convention operate, and the way which we, as a country that is a tourist destination have to operate and this Bill seeks to do just those things.

Mr. President, I therefore have great pleasure in moving that this Bill be read a second time.

Thank you, Mr. President.

SENATOR F. J. STUART: Mr. President, the Honourable Leader of Government business, who is also the Minister of Agriculture, outlined the rationale for the Bill in his introduction. It is common knowledge that while travel by sea ranks prior to time, travel by air ranks prior to preference among persons who want to go from place to place across the world.

Therefore, airports and aircrafts have become central to the lives of people worldwide, and decision makers have to make policies cognizant of these matters and put legislative provisions in place to ensure that people who use aircrafts and airports are protected from the perils which easily can befall large countries in times as dangerous as these in which we live.

The Minister was kind enough to remind us of the fact that, for example, the Pan Am flight that was flying over Lockerbie in Scotland some time in the 1980s, fell victim to the designs of criminal elements and, of course, the country from which those criminal elements came, and has only just managed to crawl out of international isolation as a result of that incident.

Sir, of course, just off Barbados in 1976, a Cubana Airline suffered a not dissimilar fate. I am given to understand that one of the elements responsible for that crash has just been released in Miami and at last, they will be on the prowl again. Of course, on September 11, 2001 aircrafts were used to commit a heinous crime and to account for the loss of a large number of lives.

Therefore, we live in an age when airports are now scenes for potential scenes of crime and aircrafts are also weapons with which crimes can be committed, if recent events are to be understood and properly embraced. Sir, any

forward looking Government or country would try to ensure that it puts in place the mechanisms that would keep the reputation of the country in line with what international standards regard as decent.

Mr. President, I really have no problem with the rationale behind the Bill. I think, in a manner of speaking, that it speaks for itself and, therefore, I am not going to detain the Chamber anymore. Sir, going through the Bill, I note that the Minister has a serious responsibility and a large measure of power is concentrated in his hands.

The power to make regulations is so vast that the letters of the alphabet were not enough to accommodate those powers. He would have needed an alphabet with 32 letters rather than 26 in order to embrace the concentration of power made available to him. This is, perhaps, as it should be, given the seriousness of the responsibility the Minister of Civil Aviation has to undertake.

Of course, he is assisted by and entitled to rely on the services of an airport manager, as the Minister said, a technical director, investigators, a civil aviation tribunal, boards of inquiry and, of course, an air transport licencing authority which is responsible for monitoring, as I understand the Bill, the quality and the cost of the service being rendered to passengers travelling by air.

Sir, going through the Bill and looking at the powers which the Minister is being given, my attention is drawn to Clause 3, which refers to the right of the Minister to regulate and control all aspects of civil aviation in Barbados, and in time of war or other national emergency to exercise those powers.

It seems to me that while there is nothing jurisprudentially wrong with that, in times of war and national emergencies, people more naturally look to a Minister of Defence and Security, than to a Minister of Civil Aviation.

11.50 a.m.

Therefore, I would have thought, that in order to avoid any dissonance between the Ministry of International Transport which is clearly responsible for the day to day administration of civil aviation, and the Ministry of Defence and Security, which is more relevant in times of national emergencies, threats and wars, that the power of the Minister responsible for civil aviation would have been ceded and that power better placed in the Minister responsible for Defence and Security.

That is something that perhaps the Government needs to take a second look at because I think it could lead to conflicting situations and contradictory directions at a time when time is of the essence in terms of a country being in a state of war or national emergency.

Mr. President, immigration officers and customs officers are basically fixtures at any international airport. This Bill does not subtract any of the powers which immigration officers or customs officers now enjoy, but if my memory serves, I do not think that immigration officers are mentioned in the Bill at all and mention is made of customs officer just once. However, there is this frequent mention to the exercise of police power at the Airport. I just want to issue a word of caution that every attempt should be made to make sure that the escheat of power which presently exist between immigration officials and customs officials should be maintained as far as possible.

Sir, I note that the Police have powers in this Bill which could easily collide with the powers more properly exercised by customs officers. This could lead to a conflicting situation which would be in nobody's interest. I hope that when the Minister comes to debate his regulations on the Bill that every effort would be made to particularise and clarify the role of immigration officers and customs officers in relation to the Police so that the scope for conflict is kept to a minimum.

Mr. President, in my view, the penalties referred to in various sections of the Bill are of a scale that should make persons who are inclined to make themselves disagreeable around the Airport to think twice. The management and the policing of prohibited and restricted areas at the airport become very relevant here.

Again, these prohibited and restricted areas which exist now are another area of concern I have because when I read the Bill, I read it more than once, it seems to me that the Police are going to have powers which rank higher than and could collide with those of immigration officers and customs officers.

Apart from those issues, Mr. President, the Democratic Labour Party accepts the rationale and is at one with the Government on the need to maintain universally accepted standards so that as a tourist destination, people can deal with the same coming here because the standards they meet here would be on par with the standards which they know in other more advanced and sometimes more sophisticated jurisdictions.

Mr. President, we have no problem with the Bill. When the Bill gets in Committee there may be a few points I would want to raise, but in terms of the general policy of the Bill we support the intent and the provisions of the Bill.

With those few words, Mr. President, I am obliged to you.

SENATOR R. W. GRANT: Mr. President, I want as well to lend my support to this Civil Aviation Bill. I think

the Honourable Leader of Government Business has clearly identified the reasons necessary for that subject. Sir, the reality is that the global environment being different and the fact that civil aviation has improved in the last few years.

In fact, one would recall that about 20 to 30 years ago, certainly when I was a little boy, we were seen as little Barbados. At that time the physical infrastructure was significantly different to how it is today.

Sir, when we talk about civil aviation, I suppose that we speak about it in the context of pre-9/11 and post-9/11 because the emphasis on safety and security has certainly been enhanced since that devastating day of September 11.

Sir, I would have spoken previously in this Chamber about the importance of civil aviation. I do not intend on this occasion to belabour on that, I want to touch simply on the fact that the existing Civil Aviation Act has a number of deficiencies. That Act is very difficult to administer and very difficult to enforce. Although there have been a number of amendments to the existing Act, a number of deficiencies still exist.

For instance, there are deficiencies in relation to international safety and oversight standards. The Honourable Minister would have made some reference to those. The duties of the Minister are not clearly detailed in the existing Act and they are now specified in this Bill that we are discussing. In this Bill, the Minister has power to inspect, to investigate and to detain an aircraft for safety reasons. So this Bill seeks to correct certain deficiencies that exist within the existing pieces of legislation.

Sir, the Minister would have made reference to the International Civil Aviation Organisation (ICAO) which has regulations for safety, security, efficiencies and regularity of air transport. Barbados is a member of the International Civil Aviation Organisation. The International Civil Aviation Organisation carries out a number of audits under the Universal Safety Oversight Audit Programme. When those audits are carried out, a number of deficiencies with respect to the airports that have been audited are always identified.

The Civil Aviation Bill being discussed today would ensure that we meet all of the legislative requirements as identified by the ICAO Universal Safety Oversight Audit Programme.

Sir, there is reference in the Bill, and I believe Senator Stuart made some reference to it, to the Air Transport Licencing Authority which is charged with the responsibility, among other things, of licensing aircrafts which come into Barbados.

12.00 noon

It is that section set out in clause 18, which gives the Minister power to delegate to the Authority, which is similar to what presently obtains in the Civil Aviation Bill.

“18. The Minister may delegate to the Authority

- (a) the authority to determine the fees to be charged for the issue of licences or types of permission to operate commercial air services into and out of Barbados.”

Mr. President, I make reference to that, only from the point of view to inform this Honourable Chamber that Government is certainly taking advantage of the existing air services agreement, to ensure that we bring more aircraft into Barbados and that is very important. There was a time where, in the United States of America, there were three major airlifts coming out of Miami, New York and San Juan. Those three areas were serviced by BWIA and American Airlines.

Mr. President, today there are airlifts such as American Airlines and BWIA coming out of Miami, Air Jamaica and American Airlines coming out of New York, American Eagle and LIAT coming out of San Juan, US-Airways coming out of Philadelphia, Continental Airways coming out of New Jersey, BWIA coming out of Washington, BWIA, Virgin Atlantic and British Airways coming out of London, Lauda-Air operating out of Milan, Condor operating out of Germany, and very shortly we will have BMI coming out of Manchester and starting February, there will be a new charter service.

Sir, I make reference to those services because I think it is very important for us to recognise that over the last 20 years and, certainly, since this Government has been administering the affairs in civil aviation, there has been a significant emphasis on ensuring that there are additional airlines coming in.

Sir, I should tell you that very early in 2005, we will be engaging in discussions with Brazil to have an air services agreement. I would have told this Honourable Chamber before that we were certainly interested in ensuring that South African Airways comes here. There are on-going discussions with the Government of South Africa in order to ensure that we have an air services agreement in place by 2005.

Sir, what is known as the Spice Island Accord was signed between Ministers of International Transport for South Africa, Barbados, Grenada, Dominica, St. Lucia and St. Vincent and the Grenadines. In that accord is an agreement to explore areas of navigation with regards to air and maritime transportation and, therefore, we are proceeding in that vein as well.

Mr. President, I believe one of the issues that could impact on ensuring that we get the most out of civil aviation relates to airport congestion. In fact, the success of civil aviation can be significantly impacted by airport and air space congestion because this is the time when throughout the globe there are a number of aircrafts.

Sir, I would have made reference in previous debates to what is taking place at the Grantley Adams International Airport and, in that regard, I want to say that the new arrivals terminal will be in operation during the coming winter season.

Mr. President, Senator Stuart has made comments with respect to responsibility and powers given to Ministers. At one point he made a comment with respect to the Minister responsible for Civil Aviation, in relation to the Minister of Defence having responsibility in times of war.

Mr. President, my understanding of the legislation is that because of the collective responsibility of Cabinet, even though reference is made to the Minister of Civil Aviation, it is understood that the Minister acts in concurrence with his Cabinet colleagues. Therefore, I do not think that there needs to be any major worry with respect to that because of Cabinet's collective responsibility which, certainly in our Government and in our system, is one which is maintained and one to which our Government will adhere.

Mr. President, reference was also made to prohibited areas at the Airport. At present, there are areas at the Grantley Adams International Airport which clearly are the responsibility of the Customs Department. There will be a new security system which will be implemented at the Airport. There will be no diluting of responsibility of any of the agencies at the Airport.

Mr. President, I should report to this Honourable Chamber that the policy of Government is to continue working continuously with partners at the Airport, so that every week at the Grantley Adams International Airport, there is a Working Group chaired by the Parliamentary Secretary in the Ministry of Tourism and International Transport, which involves standing members of that Working Group, officials from Customs, Immigration, Health, the Police Force, and Airport management. The reason for that is to ensure that we are in continuous dialogue with tour operators, *et cetera*, because we have to ensure that, as we move forward, we involve all stakeholders.

Mr. President, this Bill is one that is very much needed in our environment. Sir, there is a situation at the Airport where some days there have been challenges for parking positions. We, certainly, will be ensuring that around this time we will be going to the Ministry of Finance, in order to make sure that we provide additional parking positions.

Mr. President, the reality is that when we seek to enhance the business at the Airport, when we engage in various other activities such as air/sea transfers, there are days when we can have about six or seven wide-bodied aircrafts on the ground.

Mr. President, the Minister with responsibility for International Transport arrived into Barbados last week Friday on British Airways. He would have been returning from London after having attended the World Travel Market. When that aircraft that he was on got here, it had to remain in the air for about 10 to 15 minutes to allow a Virgin Atlantic plane to come out of the parking space, in order for that aircraft to park.

Mr. President, I would want to take this opportunity to thank the staff at the Airport, the Air Traffic Controllers, the Director, the Senior Technical Director of Civil Aviation and the Airport management, for the tremendous work they have been doing, in ensuring that they can properly safeguard aircrafts that land here.

Mr. President, there are times when we have to double park and triple park. That is the reality. There are times when we have to ensure that we utilise what is now parking position Number 17, which was not constructed for parking for wide-bodied aircrafts.

Sir, the point is that more and more airlines are coming in and there needs to be proper regulation in order to ensure that we take full advantage of exploiting that which we have. 12.10 p.m.

I give the commitment that the Government of Barbados is doing all in its power to ensure that we take advantage of the opportunities we have and we will ensure that we enhance airlift capacity coming into Barbados.

Sir, with those few words, I give my support to the Bill before us.

SENATOR THE VERY REVEREND H. E. CRICHLAW: Mr. President, I noticed in Section 32(3) that the penalty for someone in a prohibited area is \$250 000, imprisonment for a term of three years or both and that in Section 34(4), the penalty for having a firearm is \$250 000, imprisonment for 25 years or both. Sir, I wonder whether this is correct?

SENATOR THE HON. Miss L. V. EASTMOND: Mr. President, I wish to make a few comments in support of this particular piece of legislation, the Civil Aviation Bill.

I want to say that within the context we are operating that increased security has become an issue almost in every aspect of transactions we are engaged in, when we interact with other members of the international community.

Sir, much of the reform which has occurred in civil aviation and the increased standards that have been implemented have come as a result of September 11, 2004, which a number of other Honourable Senators referred to earlier. This greater focus on security comes about because of the greater mobility of individuals. More than ever before, it has become easier for individuals to travel around the world and many countries are engaged in activities which would allow for this greater movement of people.

Sir, even though trade agreements do not refer specifically to facilitating movement of people, if there is a greater increase in the movement of capital, goods and services around the world, it is unlikely that they would do so to the exclusion of individuals.

Mr. President, along with business commitments and investment being made in other countries, there will be movement of people as well. Since the international community is encouraging this, it means that within the framework of greater movement, there has to be a greater emphasis for greater security and improved standards.

Sir, often in Barbados we believe that we are small and that the international community is not looking seriously at what is done here, but this is not the case. It is clear to the international community that within the world in terms of travel and the interdependence of States both with respect to issues dealing with business and people that there is a link amongst all countries in the world.

Therefore, to have any one country with low standards or not meeting the international requirements set, the international community sees that as a potential breach in the chain of security around the world. Therefore, there are concerns that even small States like Barbados put the necessary requirements in place.

Sir, it is important to emphasise to the general public the kinds of implications that legislation like the Civil Aviation Bill would have for them because the ordinary public might feel that it is an issue far removed from this but that is not the case.

For example, Section 34(1) of the Bill provides:

“No person shall without lawful authority or reasonable excuse, the proof of which shall lie on him, have with him

(r) in an aircraft;

(s) in an airport; or

(c) in an air navigation installation, which does not form part of an airport

This section shall apply to:

- (a) any firearm or article having the appearance of being a firearm, whether capable of being discharged or not.”

Sir, I believe this to be extremely important because some individuals travelling may have an object that appears to be a firearm, they know it is not a firearm and is not capable of being discharged as a firearm. They might think they are okay, but the provisions clearly state that the section applies to any firearm or article having the appearance of being a firearm whether capable of being discharged or not.

Sir, Section (2)(b) says:

- “(b) any explosive, any article manufactured or adapted, whether in the form of a bomb, grenade or otherwise, so as to have the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, or any article marked or labelled as to indicate that it is or contains an explosive.”

Sir, whether or not the particular item is actually an explosive, as long as it has the appearance of being an explosive, whether it is capable of producing a practical effect by explosion or not, then one might find oneself liable.

I believe we need to pay attention to this and ensure that we explain this carefully to the public so that they do not believe that they would only become subject to the Law if they are actually carrying a firearm that can be fired and someone becomes injured.

Mr. President, another interesting provision refers to items in your luggage. If you have items in your luggage and you find yourself falling within Section 34 (2)(a) or (b) you may find yourself liable as well.
12.20 p.m.

I believe that it is very important for us to recognise that we do not have these items physically on our person, jacket, coat or trouser. If we have them within our baggage, there is the possibility that we may be guilty of an offence.

Sir, you would find that in terms of the legislation, it is being interpreted in such a way that the maximum degree of security is provided. The parameters of the legislation are couched in a way that is broad enough to capture those individuals who might wish to engage in any terrorist activity to alleviate them of the argument of trying to prove that the particular explosive or firearm does not fall within the definition of a firearm or explosive.

Those are the kinds of arguments one might find oneself facing when the individual comes before a court of law. Sir, the Law is drafted in this manner because of the very high standards that are being put in place with respect to civil aviation and ensuring the protection of individuals who travel in this manner.

Mr. President, those are the matters I wish to refer to, and with those few words I wish to lend my support to the Civil Aviation Bill.

I thank you.

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I beg to move that this Bill be read a second time.

The question was put to the Senate and agreed to.

COMMITTEE

On the motion of SENATOR THE HON. E.R. GRIFFITH, Mr. PRESIDENT left the Chair and the Senate went into Committee on the Bill, SENATOR Dame PATRICIA SYMMONDS in the Chair.

Madam DEPUTY PRESIDENT: The Senate is now in Committee.

Clause 1 was called and passed.

Clause 2 was called.

SENATOR F. J. STUART: Madam Deputy President, I am not concerned about the definition of what aircraft in flight means. Does aircraft in flight mean any period from the moment when all external doors of the aircraft are closed or following embarkation after flight? I am concerned about the word "after". I am not clear if it is after you have embarked the aircraft.

Madam DEPUTY PRESIDENT: Senator Nicholls, would you like to repeat that so that we could all hear rather than just having dialogue?

SENATOR G. P. B. NICHOLLS: I do apologise. I was suggesting to Senator Stuart that the word "embarkation" only means the aircraft itself.

Madam DEPUTY PRESIDENT: Senator Stuart, do you accept that explanation?

Asides.

SENATOR THE HON. E. R. GRIFFITH: Madam Deputy President, Senator Stuart I will take note of what

you said and I will raise it with the legal drafters. I do not want to give you incorrect information.

Madam DEPUTY PRESIDENT: Senator Stuart, is that accepted?

SENATOR F. J. STUART: Yes, Madam Deputy President.

Madam DEPUTY PRESIDENT: Is there another area of concern?

SENATOR F. J. STUART: No, Madam Deputy President.

Clause 2 was passed.

Clauses 3 to 6, inclusive, were called and passed.

Clause 7 was called.

SENATOR F. J. STUART: Madam Deputy President, Clause 7. (1) (a) states "that the Director shall (a) have the duties and functions as are conferred on him by this Act." Should the words "have such duties and duties conferred on him..."

Madam DEPUTY PRESIDENT: Senator Stuart, are you looking at it more for elegance rather than a legal explanation?
12.30 p.m.

SENATOR F. J. STUART: Yes Ma'am. More important, 7.(1)(q) the director shall "establish and maintain", rather than, maintaining.

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: Yes. Of course, I think that is a typographical error but it certainly would not make sense.

Asides.

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: Our Leader of Government Business has indicated that he would draw it to the attention of the Parliamentary Council or the legal draftsmen.

Is there anything else in this particular part?

Thank you.

Part III, Clauses 5 to 12, inclusive, were passed.

Part IV, Clauses 13 to 18, inclusive, were called and passed.

Part V, Clauses 19 to 24, inclusive, were called and passed.

Part VI, Clauses 25 and 26, inclusive, were called and passed.

Part VII, Clauses 27 to 44, inclusive were called.

SENATOR THE VERY REVEREND H. E. CRICHLow: Madam Chair I want to add to my previous query Clause 81 section 1. It is the same question and I want to know if there is anything on this matter.

SENATOR THE HON. E. R. GRIFFITH: Unfortunately, I am not in a position to say anything on this. It is a matter which I would have to check with the lawyers.

SENATOR THE VERY REVEREND H. E. CRICHLow: Clause 81 that I am referring to has to do with the reckless navigation of an aircraft, which carries the same penalty as someone loitering...

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: Excuse me Senator Crichtlow, would you please raise that again when we reach that Clause? We have not yet reached there, so would you mind waiting please, until we reach Clause 81 and then raise the question again.

SENATOR THE VERY REVEREND H. E. CRICHLow: Do you mean, Madam Chair, that I could wait at 34 too as well as 81?

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: Yes, when it is called, that would be part of the Clause.

SENATOR THE VERY REVEREND H. E. CRICHLow: Anyhow, I would use this opportunity to raise the 32.3 and 34.4.

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: The Leader of the Senate has already assured you that he would have to pass it on to the Chief Parliamentary Council that he himself cannot make a statement about it. Is that acceptable?

SENATOR THE VERY REVEREND H. E. CRICHLow: Yes, Ma'am, thank you.

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: Thank you, Senator Crichtlow.

Part VII, Clauses 27 to 45, inclusive, were passed.

Part VIII, Clauses 46 to 59, inclusive, were called and passed.

Part IX, Clauses 60 to 63, inclusive, were called and passed.

Part X, Clauses 64 to 77, inclusive, were called and passed.

Part XI, Clauses 78 to 91, inclusive, were called.

SENATOR THE VERY REVEREND H. E. CRICHLow: Madam Chair, Clause 81.

HER HONOUR SENATOR Dame PATRICIA SYMMONDS: Senator Crichtlow, the Leader of Government Business has assured me that it will be passed on.

Thank you.

Part XI, Clauses 78 to 91 were passed.

The First Schedule became the Schedule to the Bill.

The Second Schedule became the Schedule to the Bill.

On the motion of SENATOR the Hon. E. R. GRIFFITH, Madam CHAIRMAN reported to HIS HONOUR the PRESIDENT, the passing of one Bill in Committee and Mr. PRESIDENT resumed the Chair and reported accordingly.

On the motion of SENATOR the Hon. E.R. GRIFFITH, the Bill was read a third time...

SENATOR I. St. C. LINTON: Mr. President, I was caught a bit off-guard when the Leader of the Senate had a particular concern. I wonder if I could mention that concern.

Mr. PRESIDENT: I regret to say, Senator Linton that time has been passed and we are into the third reading.

On the motion of SENATOR the Hon. E. R. GRIFFITH, the Bill was read a third time and passed and cited as the Civil Aviation Act, 2004.
12.40 p.m.

SUSPENSION OF SITTING

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I beg to move that this Senate be suspended until 1.45 p.m. today.

The question that the Senate do now suspend until 1.45 p.m. today was put to the Senate and agreed to and Mr. PRESIDENT suspended the Sitting accordingly.
1.40 p.m.

RESUMPTION

Mr. PRESIDENT: This Sitting is resumed.

SUSPENSION OF SITTING

SENATOR THE HON. E. R. GRIFFITH: Mr. President, in view of the technical difficulties which the technicians are experiencing, I beg to move that this Sitting be suspended until 2:15 p.m. in order to give the technicians enough time to rectify the problem.

The question that the Sitting do now suspend until 2.15 p.m. today was put to the Senate and agreed to and Mr. PRESIDENT suspended the Sitting accordingly.
1.47 p.m.

RESUMPTION

Mr. PRESIDENT: This Sitting is resumed.

ORDER NO. 3 – SEVERANCE PAYMENTS
TRIBUNAL
(VALIDATION) BILL, 2004.

SENATOR THE HON. E. R. GRIFFITH: Mr. President, this matter is fairly straightforward and, in my view, is not a contentious issue. What has occurred here is that in the case of Tribunal No. 1, a member who serves on that Tribunal continues to perform his duties beyond the expiry date of that member's appointment. In that particular case, the appointment expires on 31st August, 2003.

The officer continued to serve until the new appointment was made, therefore, there was a period of time between the expiry date and the date of the new appointment where the officer would have performed duties that, though necessary, could still be legally challenged.

In the case of Tribunal No.2, there was a similar occurrence where the person's tenure of appointment had expired by 31st October, and where that person continued performing beyond that date, until the new appointment was made.

Mr. President, it was thought by the legal advisors that it would be necessary to have that action validated, so that there would be no issue of law regarding the validity of the decision taken by individuals on those Tribunals. Therefore, this matter is seeking to regularise that situation. Sir, you will notice that when the matter was discussed in the Other Place, there was an amendment to the actual date, and I will simply draw that to Honourable Senators' attention.

With those few remarks, I beg that this Bill be read a second time.

The question was put to the Senate and agreed to.

SENATOR F. J. STUART: Mr. President, this is the third Validation Bill that has come to this Honourable Senate over the last 17 months. I make that point because the Barbados Labour Party, in opposition in the early 1990s, expressed themselves very strongly against breaking the caulk and then coming to have Parliament satisfy the breach.

The Democratic Labour Party was held up to scathing ridicule for bringing a Validation Bill to Parliament in respect of exceeding the Ways and Means limit of the Barbados Central Bank. The Opposition at the time committed itself to never leaving its footprints stamped down that unworthy path, but in 17 months, three Validation Bills have come before this Honourable Chamber.

Mr. President, this Validation Bill comes out of the Ministry of Labour and Social Security. I would have been very sympathetic to it if, over the last 10 years, that Ministry had produced the employment legislation protection that it had promised and if it had produced the Safety at Work legislation that it had promised.
2.20 p.m.

I would say it was so busy dealing with those things that it had no time to check to see when the contracts of persons appointed in the Severance Payments Tribunal would expire. Sir, nothing of substance has come out of that Ministry for the workers of Barbados for the last 10 years. In spite of that, something as basic as monitoring the terms of contract for members of the Severance Payments Tribunal still escape that Ministry.

I have to support this only because the losers in this are the workers of Barbados but I want to place on record my Party's strongest possible objection to this unpardonable dereliction of duty on the part of the Ministry of Labour.

I also want to place on record my condemnation of Government that has basically spat in the air and the spit is now falling back in its face because it promised Barbadians that validations would be a thing of the past, yet we have had three over the last 17 months in this Chamber.

Mr. President, added to that is the fact that the Tribunals deal with issues relating to workers who have been severed without pay. It computes their benefit for payment either by employers or by the Severance Fund.

Sir, on page 22 of the Barbados Labour Party Manifesto of 1994 there is a commitment on the part of that organisation to review the whole issue of severance payment. The commitment was put in the Manifesto because the Democratic Labour Party restructured the severance payment arrangements for workers and the Barbados Labour Party committed itself to reviewing the structure of severance payment presumably to correct what

Labour Party had done and to ensure that workers were fairly compensated.

Mr. President, 10 years later, nothing of the sort has happened and I have to conclude that the Government is happy with the rate at which workers are compensated on severance in Barbados and that, after all the sound and fury which signifies nothing, the Government was really agreeing with the Democratic Labour Party that severance payment needs to be revisited.

Of course, in 1995, there was an Investment Sector Reform Programme with the Inter-American Development Bank. The contract document makes it clear that this Government would reduce labour cost and would review severance payments but that, too, has not been touched over the last 10 years.

I have to thank the Government ten years later for agreeing with the Democratic Labour Party that the workers of Barbados are not being treated too badly where severance payments are concerned, that it was a forward-looking and foresightful initiative on behalf of the Democratic Labour Party to restructure and review severance payments when that happened and to effect a gradation that took account of the length of time workers were employed with their employers.

Mr. President, as I have said, severance payment is usually paid by the Severance Fund and come out of the National Insurance Department. I hope that workers in Barbados are not experiencing, in getting their severance payment, the same difficulties which pensioners and others have been experiencing.

I am aware that recent issues at Sam Lord's have demonstrated that there are real problems relating to how workers are compensated in Barbados after spending long periods of time in the workplace.

Mr. President, I am quite upset about this Bill not because I think that workers should be left high and dry and be exposed to any disadvantage by failure to validate the decisions of the Severance Payment Tribunal but because the Barbados Labour Party self-righteously committed itself 10 years ago to never letting this thing happen again and in the short space of 18 months we have had three validations coming before Parliament.

Sir, I am confident that this is not the last one we have seen. I hope that as compensation for the support which this Bill is getting from the Opposition today, that the

Ministry of Labour and Government will see it fit to bring the Employment Protection legislation, promised in every Barbados Labour Party Manifesto since 1971, and the Safety at Work legislation, promised over the last 10 years but which has not yet seen the light of day.

Mr. President, with those few words, I reluctantly lend my support to this Bill in the hope that the Government would be a little more astute and careful in future and save this Chamber the need to validate illegality that could be avoided if only persons paid by taxpayers would do the work for which they are paid.

Sir, I am obliged to you.

SENATOR G. P. B. NICHOLLS: Mr. President, I rise to lend my support to the Bill but only by way of further elucidation of the Government's rationale for bringing this Bill. The word must not go out that the Barbados Labour Party and this Administration is not performing its function in a legal manner.

Indeed, as a practising Attorney-at-Law, I happen to appear before the Severance Payment Tribunal on many occasions. Sir, in one particular instance last year throughout the hearing of a matter before the Tribunal, the appointment of the Chairman and the members of the Tribunal came to an end, but the matter had not yet been resolved. This meant that the person complaining would have to go before another Tribunal and expend money to retain legal counsel to assist him in matters deliberated by a new tribunal when the first Tribunal had gone all the way except making the final submissions by the Attorneys-at-Law who represented both parties.

Mr. President, there is a fundamental distinction that has to be made between the administrative situation like that, and a purposeful breach on the part of the Government and the Laws of the land in relation to the Ways and Means situation back in the 1990s.
2.30 p.m.

This is not the first time the Honourable Senator has made that point and Senator Grant, on the last occasion Senator Stuart had to rise and make the distinction. Mr. President, every time the Honourable Senator makes that point, we on This Side are going to rise because this is not the wilful and purposeful act of the Government in breaking the Law in a situation where it demonstrated

the greatest amount of arrogance and contempt for the people of this country.

Mr. President, I say "arrogance" because it was the same Democratic Labour Party, in Opposition, when given the opportunity to amend its ways and confess its sins, voted against the amendment to the Constitution so that they could cut workers' salaries. The same Democratic Labour Party Administration also went to the Privy Council to fight the workers of Barbados in relation to pay.

Mr. President, when the Honourable Senator speaks about...

SENATOR F. J. STUART: On a point of elucidation. Sir, a case was lodged in the court against the then Government of Barbados, the Democratic Labour Party. That case was decided in the Government's favour. The employee appealed, the Court of Appeal agreed with the Government and the employee went to the Privy Council and the Privy Council agreed with the Government. The Government did not go anywhere fighting any workers. The workers carried the Government to the Privy Council.

SENATOR G. P. B. NICHOLLS: Mr. President, let me get back to the substance of this debate. I want to make the point that the Honourable Senator cannot come 13 or 14 years after the Democratic Labour Party to paint them in a better light than it ought to be painted and it cannot change or alter the course of history.

Sir, this validation that is being sought is to facilitate those people who go before a tribunal where the appointments of the Tribunal members have come to an end but their matters have not come to an end. Sometimes parties may unwittingly agree to the Tribunal continuing to hear the closing arguments, as was done in my case, not understanding that the appointment of the Tribunal came to an end while there was widespread agreement by all the parties that the Tribunal should hear this matter but, administratively, we could not do so.

The purpose of this validation is to validate the decisions taken by persons going before the Tribunal to have adjournments or to agree to matters being extended so the same Tribunal would hear these matters until they come to an end.

Mr. President, we have been treated by the Honourable Senator who seems hellbent on marrying a particular relationship with the person who represented the constituency, which he courted previously, and who was responsible for what was going on in the country in 1991. The Honourable Senator has to come here at every opportunity to make amends to that person who represented

the constituency which he now seeks to represent in order to rewrite the cause of history in Barbados.

Asides.

Mr. PRESIDENT: Senator Nicholls, I would prefer if you leave the *ad hominem* and stick to the subject.

SENATOR G. P. B. NICHOLLS: I am grateful, Mr. President. I just want to conclude that this is a party which has a very proud record over the last 10 years in managing the affairs of this country. We are not ashamed to bring this Bill to validate the acts done by the Severance Payment Tribunal. All acts of Government must be measured by the test of reasonableness and it is not unreasonable in these circumstances to bring this Bill to validate the actions done by the Tribunal after their appointments have ceased to be in effect.

Mr. President, I thank you.

Mr. PRESIDENT: Senator Grant.

SENATOR R. W. GRANT: Mr. President, I rise to give my support to this Bill which is before this Honourable Chamber for discussion. The truth is, I did not anticipate that I would necessarily need to participate in this debate because, as the Honourable Leader of Government Business indicated, the matter is a very simple matter.

Sir, I could not sit and simply listen to the remarks of Senator Stuart, particularly, when he stated that the Ministry of Labour in this Government has done absolutely nothing and, time and time again, I had to point out in this Honourable Chamber to Senator Stuart the historical facts. I want Senator Stuart to understand that it was the Democratic Labour Party Government which took 8 per cent away from the workers of this country amounting to approximately \$63 million.

Mr. President, you cannot on the one hand stand up and seek to speak with glowing words about representing the interest of workers and then by your actions do something else. I want to remind Senator Stuart that it was this Barbados Labour Party Government which gave back to the workers the money which the Democratic Labour Party Government took away. Sir, that point has to be made. I also want to remind Senator Stuart that there were a number of casual employees who were converted to permanent status.

Sir, I could not sit down and allow Senator Stuart to convey the impression that as it relates to representation of the workers of this country, that this Government was doing absolutely nothing.

Mr. President, a Barbados Labour Party Government introduced a policy that public officers who were killed in

the line of duty that their relatives should receive compensation. Our police officers play a fundamental role and we think of their families in the event something happened.

Mr. President, in 2001 there was an excess of \$40 million in the Severance Payment Fund and \$60 million in the Unemployment Fund that was transferred to the National Insurance Fund but the contribution to the Severance Payment Fund was reduced by .05 per cent. I make these points because I believe that Honourable Senators should not convey to the public half truths and when they speak they must provide the truth, the whole truth and nothing but the truth.

Mr. President, this Bill before this Honourable Chamber seeks to ensure that legality is being brought to an action. Sir, it is a simple matter, it is not a situation where a Government makes a deliberate determination that they will break the Law, as happened under a Democratic Labour Party Administration with regards to the Ways and Means. This point has to be constantly made whenever Senator Stuart seeks to introduce that into this Honourable Chamber. There is a fundamental difference and that has to be understood.
2.40 p.m.

Mr. President, I wholeheartedly support this Bill and give the assurance to the public of Barbados that this Government continually has the interest of the labourer at heart.

I thank you, Mr. President.

SENATOR A. C. FIELDS: Mr. President, I had no intention of speaking to this Bill, but I just wanted to correct a statement that Senator Stuart made which can easily be misconstrued. Sir, all of us in this Honourable Senate know that Senator Stuart is a fountain of knowledge, historical and otherwise and, I am not sure that many people would have had the opportunity to suggest to him that he made a statement which could be misconstrued but, Sir, he said that the National Insurance was responsible for the paying of severance payments.

Sir, as a Director of the National Insurance, I could not sit and let that statement go into the public in a manner that could be distorted because the employers in Barbados pay National Insurance, as it becomes due.

Mr. President, the fact of the matter is that the National Insurance, is a case of last resort, in paying severance when those few unscrupulous employers for whatever reason, do not remit payments to the National Insurance Scheme.

Sir, for the record, I just want to point out that the National Insurance repays employers a portion of the money they paid in, when it becomes necessary for them to make severance payments and that is only as a case of last resort in

making severance payments directly to employees. I am proud to say that those payments are speedily processed and paid. I do not think that you will find that anyone who is in the position where they deserved to be paid severance, is ever kept waiting for an inordinate length of time.

Mr. President, I am grateful to you and I support this Bill.

SENATOR I. St. C. LINTON: Mr. President, I could not sit here and give credence to what Senator Stuart has brought before this Chamber, in this simple validation of the terms and dates of members of the Tribunal, which gives the right of workers to severance. Sir, he sought to validate what was done to the workers of Barbados in 1991.

Mr. President, the changes to severance payment that took place in 1991 did not come into effect to impact upon future workers. Approximately 5 000 workers were laid off and lost their jobs who were eligible for the present level of severance payment at the time, which was approximately four weeks to a year, and it was reduced to three-and-a-half weeks, three weeks and two-and-a-half weeks.

Sir, it took away millions of dollars from the workers who had qualified at that time. I know workers who had given up to 36 years of employment with the Transport Board and the Ministry of Communication and Works that were denied their rights, under the Severance Payments Act of the day.

Mr. President, not only that, but an imposition was made that workers who are still employed, paid their own severance. This was one of the Acts which indicated that workers had to pay their own severance. I would agree that this matter, from a worker's point of view, should have been addressed before, because you can have laws that are on the books, but they disadvantage workers in this situation.

Sir, unlike Senator Stuart, Honourable Members of the Democratic Labour Party hailed the 1991 situation in Barbados, where workers and inhabitants of Barbados suffered tremendously, as a successful programme of the then Prime Minister and Minister of Finance.

In truth and in fact, Sir, it was an International Monetary Fund imposition on Barbados, because of the peculiar circumstances in finance at that time, when the then Government moved from a good foreign exchange position in 1989 to a \$13 million foreign exchange position in 1991. In the election campaign their Manifesto on the front page read:

"Bountiful Barbados."

Sir, within months of winning the 1991 Election, all the events that took place followed. Therefore, Senator Stuart

cannot claim any validation to the 1991 impositions on the people of Barbados. It is time that the Democratic Labour Party stop calling a victory.

Mr. President, the victory came in 1994 when the Democratic Labour Party voted themselves out of office.

Asides.

SENATOR I. St. C. LINTON: Certainly, the people of Barbados had no choice but to elect the Barbados Labour Party to run the affairs of this country for the last 10 years and, no doubt, they are going to run it for about 50 years. Sir, I want the Democratic Labour Party to continue to hold up 1991 as a victory for Barbados because the Barbados Labour Party might rule for another 20 years.

Mr. President, I am simply saying that it is wrong for Senator Stuart to use a simple validation of a contractual period to seek to validate that the Democratic Labour Party did something magnificent for Barbados from 1991 to 1994.

Sir, I support this Resolution in which this validation makes things right in this regard.

Thank you, Mr. President.

SENATOR THE HON. Miss L. V. EASTMOND: Mr. President, I must say, like my colleagues, that I was also shocked at the intervention of the Honourable Senator Stuart in this particular matter because I heard him heap condemnation on the Government. Let me just repeat what the Leader of Government Business outlined very carefully and clearly.

The Leader of Government Business could probably have been a lecturer or school teacher and I find that he is very clear in what he has to say. I am surprised, knowing how fertile the mind of the Honourable Senator is, he would quite understand what he was saying.
2.50 p.m.

Sir, the Leader of Government Business was simply saying that on the Severance Payments Tribunal there was an officer that was appointed, his term came to an end and he was not reappointed but he continued to sit on the Tribunal. Therefore, what we have before us is a Bill which is seeking to validate the functions performed by the Severance Payments Tribunal during the period 1st September, 2003 to 6th February, 2004.

Sir, having heard the Honourable Senator, you would believe that the Severance Payments Tribunal was in a state of disarray for 10 years when that is not the case.

Mr. President, this would not be the first time that the Democratic Labour Party has sought to score points by misleading the people of Barbados. I would not go as far as to say that any of the Honourable Senators on the Other Side in this Chamber would stoop to telling lies. I do not believe they would do that in here. My personal experience is that they do it outside, and I have suffered as a result, but I would go on.

Mr. PRESIDENT: I take it that you are not referring to any Member of this Honourable Chamber.

SENATOR THE HON. Miss L. V. EASTMOND: Of course not, Sir. The Honourable Senator, as you know, is associated with the constituency of St. Philip West which I regard as my constituency and he regards it as mine too, and I would never do that.

Sir, that is a pattern that should come to an end. It really bothers me that you have a Party in Barbados that believes that the only way it can win a seat or an election is by misleading people. Whenever I hear of these things, I am reminded of a song by Bob Marley which says: "We have been trodding on the winepress much too long".

Sir, because he was talking about Babylon system, people might have thought that he was talking about the Police or about white people, but that is not what he was talking about. He was talking about the institutions that allow those of us who belong to them to believe that in order for us to make a point, we have to tell the people lies or that we have to mislead them.

Sir, if the Honourable Senator wishes to condemn or reprimand the Government for allowing this thing to happen, he is within his rights to do so, but for someone to turn on a radio and hear that the strongest condemnation is going to be heaped upon the head of a Government, one would imagine that some major infraction had occurred and that we are seeking somehow to cover it up now by coming to Parliament, and that is not true.

Sir, I do not understand why the people on the Other Side seem not to believe that the people of Barbados are educated enough and have enough comprehension to understand issues that they themselves might consider to be complex. The ordinary people of Barbados can understand the issues. There is no need to mislead them or to tell them lies. You can tell them the truth.

Sir, now that one of our greatest leaders, speakers and thinkers Bob Marley is dead, I might have to carry on for him and plead once again to tell the people the truth. There is no need to mislead people on a Bill like this. Unfortunately, the people hearing us cannot see the Bill for themselves. This Bill talks about validating the functions

performed by the Severance Payments Tribunals during the period 1st September, 2003 to 6th February, 2004. That is all it is talking about, it is not talking about anything else.

Sir, I would go on further to say that this is not an issue of condemning the Department of Labour. I used to work in the private sector with a number of companies and sometimes you would appoint a board for a period of time and then you might appoint another director, not for the same period of time, and because of that disconnection between the two appointments, things like this happen. It happens in Government and it happens in the private sector as well. It is just one of these things that would happen. However, Sir, I am not saying that because it happens in the private sector and in Government that it is okay.

Sir, to me, the real issue that arises out of this matter has to do with the systems that one would put in place to ensure that these occurrences do not persist. This is why the Ministry of Commerce is so supportive of the Data Processing Department that recently launched the ICT Portal for Barbados called "Barbados Integrated Government". It would be a wonderful thing if Honourable Senators could have a look at it.

It is just a pilot project but when you look at what can be done with ICT for Government where you can actually access Government at any time, 24 hours a day, seven days a week from anywhere in the world, you would understand the revolutionary change that would occur within the Civil Service if we can allocate the resources to implement it fully across the Civil Service.

Sir, when you look at this portal, it has tools built into it such as being able to go online and calculate what your land tax would be for the year. It has potential for filing tax returns online. For persons in the public sector it could have a feature where you input the names of your directors and the dates on which their directorships will come to an end.

If that date says 6th February 2006, a little message would come up on your computer and on the computers of the individuals in the departments saying, Mr. John Brown's appointment is coming to an end at X date, so it would not be a matter of someone having to look on a file or having to remember that somebody's appointment is going to come to an end. It would be there for us.

This is an example of how information communications technology can help us in the work we are doing on a day-to-day basis. These things happen all the time. It is not that Government is seeking to disadvantage anybody. These things are happening in Government and in the private sector as well.

Sir, these things are excused when we are in the silly season, and for some reason, the Other Side believes that the

silly season has started. I do not know why, but somehow we find ourselves in a position where on dealing with a simple straightforward matter like this we have to engage in a type of political exchange that the public of Barbados tolerates.

Sir, I can tell you that they tolerate it at election time by saying that in four weeks time they are going to finish the foolishness. However, for us to engage in it for years will cause the population of Barbados and the people of Barbados to become very annoyed with us very quickly because they will feel that we are not doing their work but that we are simply grandstanding and talking foolishness.
3.00 p.m.

Mr. President, I know that the Honourable Senator would not like the people of Barbados to consider that he is involved in that kind of folly. As I said, they have tolerated it at election time but I do not believe they will tolerate it for four more years. Sir, even though I might be tempted to do so, I will not be engaged in that type of contribution to this Honourable Chamber.

Mr. President, the major issue that was raised here on this particular matter had to do with our ability to manage our affairs in such a way that a matter such as this, should not continue to come before us, if we use the technology that is clearly available to us, both in the private sector and in the public sector. It had to do with nothing else.

Sir, I believe we will cause criticism to be heaped on us if we continue to mislead the public. The public will find out the truth because, as Senator Stuart knows, they are finding out the truth in St. Philip West because a lie can only last for so long. When people eventually find out the truth about how they were misled, they will not forgive you because they do not like to be made a fool of. I am warning that if we continue in this kind of approach to our work in this Honourable Chamber, the public will soon grow very tired of us.

Mr. President, I wish to support this Bill.

I thank you.

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I have listened carefully to the comments of Honourable Senators and before bringing this debate to a close, I would like to make a few comments.

Sir, I wish to remind Honourable Senators of the amendment which was made when the matter went to the Other Place. The amendment is for the period September 1, 2003, to November 9, 2003. Previously mentioned in the document was February 6, 2003, which was amended in the

Lower House because the period was shorter than had been anticipated.

Mr. President, all of us know how the Severance Payments Tribunal is constituted. It is an arrangement that allows both employers and employees to be represented. Persons on that Tribunal are not appointed by Government. It is a bipartisan approach where persons represent different interest groups.

It is, therefore, normal to assume that when the person's tenure comes to an end, that it will continue, unless the agency which has nominated that person in the first instance, seeks to make a change. Therefore, it is not to say that members knew that their tenure had come to an end and they simply continued to work. It would be quite in order to assume that would have been the case and, in fact, that is what happened in the end, they were reappointed.

It was simply that during that short period of time, the instruments were not yet put in place. As you would have heard Senator Nicholls mention, there is always the desire to seek continuity when cases are being dealt with and, therefore, it was never any malicious intention on the part of anyone.

Mr. President, I am glad that Honourable Senators on this Side have taken the opportunity to explain to Senator Stuart that there is no similarity between what is occurring here and the instance where the Ways and Means exceeded the legal limit. They are two different things. That is cheese and chalk being brought together as if they were one and the same.

Mr. President, I, therefore, wish to thank all Honourable Senators for their contributions and I beg to move that the Bill be read a second time.

The question was put to the Senate and agreed to.

On the motion of SENATOR THE HON. E. R. GRIFFITH, the Senate resolved itself into Committee on the Bill, HER HONOUR SENATOR Dame PATRICIA SYMMONDS in the Chair.

COMMITTEE

Madam DEPUTY PRESIDENT: The Senate is now in Committee.

Clauses 1 – 2 were called and passed.

On the motion of SENATOR THE HON. E. R. GRIFFITH, Madam DEPUTY PRESIDENT reported to HIS HONOUR the PRESIDENT the passing of one Bill in Committee and Mr. PRESIDENT resumed the Chair and

reported accordingly.

On the separate motions of SENATOR THE HON. E. R. GRIFFITH, the Bill was read a third time and passed and cited as the Severance Payments Tribunal (Validation) Act, 2004.

ORDER NO. 4 – THE ROAD TRAFFIC (AMENDMENT) BILL, 2004

SENATOR THE HON. E. R. GRIFFITH: Mr. President, this Bill before us seeks to amend section 38 of the Road Traffic Act. That section of the existing Act deals with motor insurance and states as follows:

“38(1) For the purposes of this Act, a policy of insurance is a policy that is issued by a vehicle insurer and subject to subsection (2) insures the persons or categories of persons specified in the policy against

- (a) liability in respect any sum to a maximum of \$10 million which such persons or categories of persons shall become liable to pay in respect of death of, or bodily injury to, any persons; and
- (b) any sum not exceeding \$50 000 which such persons or categories of persons shall become liable to pay in respect of damage to property, arising out of the use of a motor vehicle on a public road.”

Mr. President, let me say that none of us would wish to put a price on anyone's life. A life is so precious that we do not believe that any price could be put and therefore, there is no intention on the part of Government to try to put a price on anyone's life or to say that any damage or injury which a person suffers, should be restricted to a particular sum of money.
3.10 p.m.

We hope that there would be no deaths, accidents or serious injuries to persons but the reality is that things do happen in this life. We also have to face the reality that we live in a real world and that it is the role of the Government to protect the interest of the citizens of the country. It is also the role of the Government to create the type of environment that would allow businesses to pursue their legitimate endeavours.

Government seeks at all times to find reasonable solutions to the problems which confront the society. Sir, I wish to emphasise the point that there is always a search for a reasonable solution. There is never a case of the

Government seeking to protect one against the other but always thriving for a reasonable solution to the problems we have to deal with from day to day.

Sir, elsewhere I hear people making statements to the effect that Government is protecting businesses and trying to attach a price to the lives of people, but this is far from the truth, because this is not the intention of the Government.

Sir, all of us who understand the nature of the insurance business especially in small countries of the Caribbean, know that the domestic providers of the service are not in any financial position where they are able to carry unlimited risk.

If you look at the balance sheet of the providers of this service, you would discover that they are not as strong as some people believe and that, on their own, they could not provide the type of coverage necessary to satisfy the industry so they have to seek services from reinsurers who are outside Barbados and the region.

Sir, at the moment there are about ten reinsurers who are willing to do business in Barbados. If we look at what is happening worldwide, you would discover that there has been a gradual consolidation to mergers of companies in this area of activity and that more and more, those companies are taking the position that in order for them to survive, they need to have a good idea of what are the liabilities that would confront them at any point in time.

Sir, reinsurers are not keen anymore of dealing with situations where there is unlimited liability then to discover that at a point in time their businesses are wiped out. They want to know what they are likely to face down the road. There is a need for a reasonable idea of what would confront them.

This is the context within which this amendment is taking place because it is the environment in which the local motor insurance industry finds itself. It has to seek reinsurance and the persons willing to make that service available to them are not interested in underwriting unlimited liability. They want to get a reasonable idea of what they have to deal with down the road.

Sir, in the present legislation, the limit for persons is \$10 million. It is now being proposed that the \$10 million per person should remain but, in the case of the limit per event, that it should be limited to \$30 million because there is no limit at present. If we take that within the context of what is happening in the region and on a wider scale, you will discover that in the case of Trinidad & Tobago, the limit per person is TT\$1 million and TT\$2 million per event, in Jamaica the limit is JAM\$3 million per person and JAM\$5 million per event. In the Bahamas the limit is \$2.5 million per person and \$30 million per event. Sir, in Barbados it is proposed that limit per person be \$10 million and \$30

million per event.

Sir, the highest limit which I have seen is 33 million Euros per event in Sweden and the nearest to that is 10 million Euros in Denmark, but all the other countries in Europe fall below that and in the United States of America, it is less than one million dollars. What we are doing in Barbados to facilitate the continuation of the industry is in keeping with what is happening worldwide and, in many instances, the limits set are in excess of the limit which exists in the region and is comparable to countries outside the region.

Sir, persons not of our thinking could still find fault with the decision to impose a cap on this piece of legislation. Therefore, we need to look at the historical situation in Barbados with respect to claims. I am sure that Senator Stuart from his practice will be able to help me. As far as I can, there was one instance in Barbados between 1995 and 1996 where a claim was made for \$12 million and before or after the nearest number to that was \$2 million. There is no evidence to suggest that the \$10 million per person is an unreasonable figure nor is there any evidence to suggest that a cap per event of \$30 million is unreasonable in the sense that it is too low.

Sir, the two limits which the Government has identified and placed in this piece of legislation, in my view, are reasonable and generous and, therefore, our reaction to those persons who approach it with cynical statements that I have been hearing elsewhere is that they need to be realistic.

We are satisfied on this Side that nothing which is being done will create any disadvantage to the citizens of the country but will ensure that the local providers of the service can continue to provide the service and will not run into the situation which they are likely to encounter if steps are not taken in this direction, that is, they will not get any reinsurance cover and cannot provide the coverage themselves because their balance sheets are not strong enough to permit them to do so.

3.20 p.m.

Therefore, the individuals who otherwise would have coverage would not have any coverage. I think if that had to occur, they would have been in a worse position than they would be in now because the Government has taken steps to make sure the limits will take care of all possible situations, based on all that has happened before, and based on what is happening around the world.

Mr. President, I will repeat that we would hope that there will never be a case which would require these limits to be invoked, because we would wish that people would

be able to move around the streets without getting involved in serious accidents, but we are making sure that, should the need arise, the provisions here are adequate to cover those persons who suffer injury.

Mr. President, on that basis, I beg to move that this Bill be read a second time.

Mr. PRESIDENT: Senator Stuart.

SENATOR F. J. STUART: Mr. President, I think that the Honourable Leader of Government Business set out clearly the rationale behind the amendment before the Senate. Sir, whenever legislative amendments are presented, the first question a lawyer asks is what mischief is the amendment intended to correct? Having listened to the Leader of Government Business, I am satisfied that Government must be reasonably clear on the mischief which it has need to be confronted with by legislative amendment.

Sir, interesting though is the timing of the amendment, especially after the Honourable Leader of Government Business went into some history of claims made against insurance companies. It seems to me that if there has been no recent history of claims that have imperiled local insurers that would have put reinsurers in a position where they have felt that the risks of underwriting insurers in Barbados were too high, that the urgency which the Government seems to be bringing to this issue would not be justified.

Sir, now it may be that there is more than could be said on this issue in order to put it beyond doubt, but based on the history which the Honourable Leader of Government Business has given, there have been no extraordinary claims in Barbados, for a long number of years, sufficient to satisfy any reinsurer that he is putting himself in any particular risk by reinsuring in terms of the existing legislation.

Mr. President, I know that the General Insurance Association of Barbados for some time has been bellyaching about personal injury claims. There has been a lot of precedent on this issue, and the arguments revolved the fact that sometimes by innuendo and sometimes fairly explicit lawyers, doctors and injured persons contrive to present inflated claims to insurance companies in circumstances where injuries do not justify the awards claimed. Sir, I have been doing it for 20 years and I can attest to the fact that it is a real problem and it is something which depends a lot on the integrity of the injured person, doctor and the lawyer.

Mr. President, certainly from speaking from the position of a lawyer, we as professionals try, as far as I know, to walk the high road on this issue. I have no doubt that the medical professionals have done the same thing but this is a source of concern for insurers in Barbados. I know that there are persons, and I was told this when I came into

practice 20 years ago, who get injured and they suffer from something called "compensationitis" and they begin to plan their lives around large sums of money for injuries which bear no relation to the sums which their imagination conjures up.

Mr. President, all of that notwithstanding, we have not had situations in Barbados in the recent and not too recent past which, in my view, placed reinsurers at risk in terms of what the existing legislation says. I know that it wrangled with the Government when elsewhere the question was raised about placing a value on the life of a person.

The truth is, on any objective analysis of the evaluation of the amendment before this Chamber, it would have to be accepted that if \$10 million can be proposed for the death or the bodily injury of one person, if more than three persons die, a smaller value is being placed on the lives of those persons than if only one person had died. Sir, the logic is inescapable.

I understand that actuaries and persons who deal with statistical trends would be in a position to say that the probabilities do not lend themselves to the lengthy occurrence of events such as would invoke the need to claim more than \$30 million but, in terms of strict logic, the argument of the Democratic Labour Party and elsewhere, in my view, cannot be faulted.

Mr. President, I think that the Honourable Leader of Government Business has explained what the difficulty is and it may very well be although he has not said it, that reinsurers do not

Mr. PRESIDENT: Senator, I think that Senator Reverend Crichtlow wishes to speak.

SENATOR THE VERY REVEREND H. E. CRICHLLOW: On a point of order. Sir, is the existing legislation for an event not exceeding \$50 million?

SENATOR F. J. STUART: Mr. President, I was making the point that it was not said by the Honourable Leader. Perhaps, it is that even though reinsurers have not had to confront those realities in Barbados, reinsurers view these risks regionally, in which case, even though they have not had to confront them in Barbados, within the context of a region, which I am given to understand that it extends as far as Florida, that it was necessary to know what they were getting into. I think, quite frankly, that the case is clearly put by the Honourable Leader of Government Business on the issue.

3.30 p.m.

I want to reassure my very good friend Senator Eastmond that my powers of comprehension are no better

on this Bill, than they were on the previous one. I understand Senator Griffith on this Bill very well. I just want to make the point that, in terms of strict logic, the Democratic Labour Party is saying that you cannot say that \$10 million covers one life but \$30 million could cover an event that could involve 15 or 20 people, because then, it reduces the value of each additional life beyond the three.

I think the case has to be made for the cap, having regard for the state of the industry and the demands that reinsurers are making. Certainly, from my point of view, there is no need to oppose the amendment as presented. Other occasions, of course, will arise when this issue can be more expansively dealt with, because there are some other issues that really need to be clearly ventilated, in relation to personal injury claims and fatal accident claims.

I would just mention here that I call this a victory for insurers, because this is the second major victory which they will be recording in the last 10 years. I also considered it a victory when they were able to get the limitation period for personal injury and fatal accident claims reduced, particularly fatal accident claims, from six years to three years. Sir, this made a substantial difference to the state of the market, in the interest of insurance companies.

I do not think Barbados can isolate itself from the rest of the world. The changes of which Senator Griffith spoke and I am aware, are that markets as small as Barbados will feel the effect of pressures exerted in larger environments and, therefore, we have to fall in line or be left behind.

With those few words, Mr. President, I support the Bill.

SENATOR T. E. BARKER: Mr. President, the last speaker has the sympathy of all of us. We understand the extremely difficult situation in which he found himself, having to oppose something that he knows in his heart of hearts is reasonable.

The fact that he has to recite...

Mr. PRESIDENT: I am not sure that you are right. My understanding was that the Senator did not oppose what is before the Senate.

SENATOR T. E. BARKER: Yes, Sir, I agree, but his Party, the Party of which he is President is on record as opposing it. He has to put on the appearance of solidarity with his colleagues but, at the same time, such an action and recent experiences this afternoon, he knows that the amendments which are proposed are logical and stand the test of reasonableness, so therein lies the difficulty but, Sir, that is his problem and he has to deal with it himself.

This is the first time, Sir, and I am sure you agree with me, that I have heard the Senator so lost for words. His natural fluency was lost and he was reduced to a stammering wreck.

The point is, Sir, that this amendment is reasonable, especially when we hear that almost the whole Caribbean and most countries in the world have a cap on damages, and very few countries have a cap in excess of what we are proposing.

Sir, I do not understand how the Democratic Labour Party and their cohorts can accuse us of putting a value on human life. This shows a lack of understanding and shows a Party that is more prepared than anything else to ensure that they can regroup themselves with the public, so much so, Sir, that they would have their agents calling on the Call-in Programmes and other media, saying that we are putting a value on human life.

Sir, none of us in here can think that this Bill cannot affect us. All of us at some time or the other, know that this can affect ourselves or somebody else, so this Bill can touch all of us in a very fundamental way but we must be aware, Sir, that Barbados has to depend on the reinsurance market. Otherwise, the premiums which are already high, and which we know because our costs are rising every year, will be even higher. They will be astronomical, so we have to depend on the reinsurance market, and if the market is demanding that we make certain changes, then we have to make them.

This Government has made them in a way that, in my view, is not going to put us out because in any case, we must not fool ourselves that because the limit is \$10 million per person that every person would automatically get \$10 million.

All of us know the way these things are worked out in the law courts. We look at the expected future earnings, the costs to people and these are the factors. Sir, the fact that the limit is \$10 million, must not lead one to believe that if they get injured in an accident that they are going to automatically get anywhere near \$10 million.

The point is that this is a requirement which would enable us to go out there and access the reinsurance market and on this score, if this feature would help to keep the rates a little more stable, then it is worth it.

Sir, we are hearing that many people, for whatever reason, are not ensuring their vehicles. This is a very dangerous practice and one that we would do well to encourage people not to do. A lot of people in Barbados have got into accidents and the other party did not carry the relevant insurance and they are left holding the bag, so to speak.

Therefore, any measure which could have an effect of keeping the insurance rates stable, so long as it is not

out the average person, is one that we would have to support because we know that every year our insurance cost goes up, so this measure would fall into that category.

Sir, it is not a matter of looking and seeing what was the past Bill and using that but rather, what the market is saying, is that when they seek reinsurance, the sellers of the reinsurance would want an idea of what they are exposing themselves to and, if they are going to expose themselves to a market that is going to cost them \$100 million or more, depending on the number of persons involved, they will charge to suit. Then, very few of us would be able to pay the premiums which would result from such a situation. I know that when I talk privately to Senator Stuart, he will admit to me that the report taken by the Party, of which he is President, does not make sense and is opportunistic at the best.

3.40 p.m.

SENATOR F. J. STUART: On a point of order. The Party's President spoke earlier today and said what the Democratic Labour Party's position is.

SENATOR T. E. BARKER: Mr. President, all I am saying is that he will tell me something different in private. He is my friend and we are always talking in private, so we will get to the matter in private.

Sir, I want to appeal to all of us to be more cautious in the way how we use our roads. There are a lot more cars out there. The roads would forever be small because the cost of widening the roads would be astronomical. To widen roads would mean moving a lot of people, so that the idea of widening roads is not on. We have to put up with small roads.

We have to put up with the high volume of traffic which is a natural consequence of our improved standard of living, so let us exercise some more patience to make sure that the loss of lives or injury on the roads would be severely lessened. It is to all of our benefits that this should happen.

Sir, I support this measure and commend it to this Honourable Chamber.

SENATOR G. P. B. NICHOLLS: Mr. President, I rise also to lend my support to this Road Traffic (Amendment) Bill. Sir, I did not intend to speak on this Bill, however, because of certain things that are being said about the Government's amendment to the Road Traffic Act, a number of my colleagues in the insurance industry and some in the legal profession came to me and said that I have to clarify the effect of the amendment, because what is being said about the amendment is not accurate.

Sir, the truth of the matter is that the insurance

companies in Barbados cannot of their own, write the risk to take care of our needs in relation to motor vehicle insurance. They do not have the capital base to do so and the reinsurance market is used to supplement their being able to cover persons who might require or who might claim on the insurance companies.

Sir, the debate has taken a surprising turn in the Senate, particularly because Senator Stuart has said that he does not see any problem with it, but he raised some important concerns which I would want to elucidate upon during my short presentation.

Mr. President, there is a lot of misunderstanding about what reinsurance is. Therefore, I think that now is the time for the Government to share with the people of Barbados through you, Mr. President, the true nature of the reinsurance contract that our insurance companies negotiate with the big reinsurance companies in the world in relation to writing insurance contracts in this region.

It normally takes two forms. There is either a contract of reinsurance by a simple direct contract or a reinsurer might require that a class of direct risk be accepted by way of a treaty. In Barbados, the companies either purchase a quota share or an excess of loss treaty for their clients. They negotiate by way of a very complicated procedure and the concept of scratching a snip effect the coming into being of reinsurance contracts.

Sir, in the past, coverage for unlimited liability was easily accessible. Insurance companies could go to reinsurers all over the world and say that they want them, the reinsurer, to write a reinsurance for them to cover liability in Barbados for a limited amount, and they were able to access those reinsurance contracts.

Sir, the truth about the matter is that the number of companies which provide that unlimited cover have now been significantly reduced. A major reason for that, Mr. President, is the losses the reinsurance companies have said they have sustained as a result of the events of September 11. We cannot in Barbados believe that the small premiums we pay to our insurance companies in Barbados together with other countries in the Caribbean could sustain a reinsurance treaty for the region in which Barbados falls into.

Sir, since 9/11, all of the reinsurance companies have said that they are no longer going to be able to write reinsurance contracts on an unlimited basis. They have been giving warning since 2001 that as of 2004 they would be unable to offer new reinsurance contracts on an unlimited basis. Hence, I say to Senator Stuart that therein lies the timing of the amendment to the Road Traffic Act. That is why this amendment is here so that we could be able to

assure Barbadians that as of January 2005 the insurance premiums which they make sacrifices to pay to the local insurance companies in Barbados could secure them in the event of injury, loss or damage.

Mr. President, there are a number of reinsurance markets in Munich and Switzerland. These are the markets in which most insurance companies in Barbados operate. They are called Munich Re and Swiss Re. These are the major markets to which we relay and have contractual relationships. They write insurance and reinsurance contracts in the Caribbean.

Several of these reinsurance companies have ceased writing reinsurance in 2002 primarily because of the events of September 11, so we run the risk of operating without the support of the major reinsurance markets and so we could have a situation in which the primary insurers in this country would have to undertake accepting premiums and paying out claims on the basis of their own domestic capital base which, in certain circumstances, would not sustain the risk that they undertake.

Sir, I will use the Cayman Islands which was recently affected by Hurricane Ivan as an example. The Cayman Islands have sustained US\$1.3 billion in losses as a result of Hurricane Ivan, but as a total insurance coverage, they collected US\$300 million in premiums in a given year, so if we say to the reinsurance companies that we are not going to negotiate reinsurance contracts on the basis of limited liability coverage, that we want to tell Barbadians that we are not going to place a limit on their lives, we will find a situation in which we would not be able to get that much necessary support. Sir, the argument is that the \$10 million limit on a life has been in existence since 1998 when the Government amended the Road Traffic Act. What the Bill before the Senate purports to do is to cap off the liability for an event.

3.50 p.m.

Mr. President, the truth is that in the history of road traffic claims in this country, the maximum amount of liability in relation to an event has been BDS\$12 million. The maximum amount that has been paid out to an individual in a road traffic accident is \$4.3 million. Therefore, while we can make the cute statement that the individual cap is \$10 million, the cap for an event is \$30 million, and if 15 people were to become involved in an accident, it would be worst off than if many persons were to become involved in an accident.

Mr. President, that is true but I am always reminded that when dealing with statistics... George Bernard Shaw once said that "Statistics were like a woman in a bikini. What they revealed were interesting but what they concealed were vital" and, therefore, we must not necessarily get into these arguments about figures to make very cute points because it

has no relevance.

Mr. President, the point is that nobody is trying to say that if a ZR van filled with persons were to get into an accident that the Government is trying to punish the passengers in the ZR van, as opposed to one person who got into an accident. That would both be a very fallacious and a salacious argument.

Mr. President, there has never been a cap for an event and the reinsurers are saying that as at the end of 2004, they will no longer be writing any reinsurance contracts where they will be exposing themselves to unlimited liability on the roads of Barbados or any other country in the region. Sir, that is all this amendment seeks to do.

Mr. President, the point has to be made by the Other Side that the Barbados Labour Party is a Party that likes big businesses. That is true because the people's business is big business. We have to make sure that the persons who traverse our roads on a daily basis are protected to the extent that we do not run the insurance companies in Barbados into a state of bankruptcy.

Mr. President, the Honourable Leader of Government Business went through the limits that are set out in other jurisdictions. Sir, many Barbadians travel throughout the Caribbean. They go to Trinidad and Tobago for Carnival. If these persons were to become involved in an accident in Barbados, they would be better off than if they were to become involved in an accident in Trinidad and Tobago, because the same 15 persons travelling to Trinidad would have to share TT\$5 million but in Barbados the cap is BDS\$30 million, as opposed to TT\$5 million.

In Jamaica it is even worse. The cap for an event is J\$5 million. Therefore, since the amendment was passed in the Other Place, I cannot understand why this debate, especially on the Call-in programmes and other places, has taken the tone that it has.

Mr. President, however, the point must be made that the only place in which unlimited liability coverage is legislated is in the United Kingdom. Unlimited liability coverage is still a part of the Road Traffic Laws of that country but we do not have the capital base to sustain an insurance market. Sir, I think I heard someone mention that Barbados should get together with other insurance companies in the Caribbean and form a Caribbean reinsurance market.

Mr. President, that is a very laudable thing, but we simply do not have the capital to underwrite the kind of risks in this environment. Sir, you would appreciate that the insurance companies in Barbados not only write insurance premiums or undertake risks in relation to road traffic

accidents but that they underwrite all kinds of risks. Therefore, the insurance market in Barbados and, by extension, the Caribbean cannot be broken down into certain categories. We have to look at how our reinsurance looks to us as a whole, that is, writing insurance risks to the entire country.

Mr. President, I want to take this opportunity, however, to make a plea for the people who drive on the roads of Barbados and particularly those who get injured or whose family members have died. Sir, as a practising Attorney-at-Law, I have seen a number of instances where clients have come to me, severely injured, cannot work, cannot carry out simple conjugal relationships with their spouses because of an accident and there is no compensation available to them for one reason or other.

Mr. President, notwithstanding the provisions of the current Road Traffic Act, there is, indeed, a big gap which would have allowed the family of an injured person or a person who has died, to receive compensation. There is a big gap between theoretical right of a third party to be compensated and the practical effect of that person receiving compensation.

Mr. President, sometimes a motorist might drive a car that is uninsured and the only way in which one could pursue that person to recover for injury suffered is by going to the court and a judgment against that person would be a waste of time because that person has impunity and is a man of straw. Sometimes a motorist might be untraceable. Sometimes insurance companies might be able to avoid paying the claim because the driver of the car has done something in breach of his own policy and causes the insurance company to have to void the policy.

I am speaking particularly about when that policy was first obtained by giving the insurance company full particulars at the time when the contract was first entered into or sometimes the vehicle might be used outside the scope of its cover.

Mr. President, there is something in the English Common Law called a "Motors Insurers Bureau". I believe that in this country, with the amount of traffic on our roads... In fact, one of the situations which I did not deal with is the hit-and-run accidents which are becoming the norm in this country. There are too many persons in this country who are injured, or too many persons whose vehicles are damaged, whose properties where people would wake up the next morning to find their guard-walls knocked down or their property being damaged and no compensation is available to them.

Mr. President, I believe that now is the time for us as a society to consider a motor insurers bureau compensations scheme. Sir, the history of how that is operated is well

documented. I do not think that as a society which prizes itself on its own development today and wants to aspire to higher levels of development, that we should allow the situation in which persons who get injured on our roads or who suffer injury, loss, or damage, were uncompensated because of the situation to which I have earlier described.

Mr. President, much thought and meaning has gone into the Road Traffic Act. There are other sections of the Act which I would want made clear because the situation at section 48, I think, which deals with the inability of an insurance company to void the policy provided that there is a judgment against the owner of that vehicle.

There are certain situations which have been coming up in the courts in which an owner of a vehicle could lend his vehicle to someone, where that person drives that motor vehicle, not on any business relating to the owner of the vehicle, and gets into an accident. Therefore, as far as the Common Law position is concerned, the owner of that vehicle is only vicariously liable, insofar as the driver of the vehicle was doing so, solely or partly on business of the owner.

4.00 p.m.

Sir, insurance companies have been using that statement of the Common Law to avoid settling or paying claims in respect of judgement awarded in court against the driver of the car who is not the owner. I understand that all motor vehicles in Barbados are supposed to carry a certificate of insurance to cover injury, loss or damage by third parties.

The problem is that the Road Traffic Act, to my mind, needs to have further clarification to invoke liability, not in circumstances where there is vicarious liability determined by the courts but where the owner of the vehicle allows someone to use the vehicle privately for his own purpose, not related to the owner of the vehicle but to which the borrower has his own reason.

I do not believe it was contemplated by the framers of the original Road Traffic Act that the coverage of that motor vehicle ceases when my car is lent to someone. I think a situation has evolved within the legal system where we need further clarification on that section of the Act because it is creating a loophole where the argument is being made that you have to attach some form of vicarious liability as the owner of a motor vehicle.

For example, if my car was stolen, used in the commission of an offence and the person who stole the car injured someone on the road, the insurance companies will say to the injured person that the car was not

being lawfully used for a purpose to which they have extended insurance coverage. Hence, the reason why I say we should start thinking about a motor insurance bureau because too many persons in this country suffer as a result of injury, loss and property damage because the Road Traffic Act does not cover all situations.

Mr. President, with those few words, I want to lend my support to this amendment. I hope the word would go forth from the Senate that this Government is interested in people. In this instance, we are not looking out for the insurance companies in Barbados but for the people of the country to make sure that they have the right to receive some form of voluntary compensation for their losses as a result of accidents on our roads and that the right is not eroded because of indifference to concerns of the reinsurers to whom we are in no better position to demand certain things.

Mr. President, I am obliged to you.

SENATOR Dr. F. L. CHANDLER: Mr. President, I rise to support the amendment to the Road Traffic Act. As I understand it, we have no alternative since reinsurers worldwide are unwilling to accommodate unlimited liability. The matter of the inadequacy of \$30 million for claims relating to tour buses has been brought up. I have been informed that additional insurance, apart from the basic insurance, can be bought to deal with this matter but, of course, the cost of the premium would have to be considered.

While on the subject of traffic, I would like to express concern over the lack of action being taken to solve this problem. While the issue of limited liability is not under our control, I think the traffic problem is, and that something should be done urgently. As with other problems, once again we have waited and now our backs are against the wall trying to find solutions.

The effect on productivity is obvious because of the amount of time spent on the roads which could otherwise be usefully used. I think too that the problem has an effect on the attitudes of people and service given in the workplace. I do not see how anyone can be in a reasonable mood when they reach work to offer good service to the public after being in traffic for hours.

Over the years, many others and myself have made several suggestions via the media to the Ministry of Public Works and Transport, but they appear to have gone unheeded without even an explanation from the Ministry why they think the suggestions are not relevant or workable. I have also seen what I consider to be a backward step in the replaying of roundabouts with traffic lights and, as far as I am aware, there has been no satisfactory explanation for this. The officers in the Ministry of Public Works and Transport appear to be lords unto themselves.

I know this will not be a popular suggestion but I think

that there should be some control on the number of vehicles being imported. Sir, although duty is an important source of revenue, I am sure that alternative methods could be found.

I think we should pay more attention to the adequate stocking of spare parts for vehicles so that they would be maintained in better condition without having to import more at such a rapid rate as there are too many vehicles on the road. There is a rumour that the head of one of the companies who brings in a large number of these cars is thinking about travelling to work in a helicopter but, for most of us, this is not a viable option so maybe, we may have to be looking at helicopter insurance in future rather than motor insurance.

I also agree with the suggestion made recently that the age of eligibility for a driver's licence should be raised. In my opinion, there are too many children driving on our roads and this has a number of implications. First of all, I think that children are becoming independent too early since by the time they reach the age of 16, they are given their own cars and treated like adults.

It is not uncommon to see three or four cars outside one home and apart from leading to traffic congestion, I feel that this affects family life. I do not know if Senator Crichlow would agree, but it is said that the family that prays together, stays together. I also feel that a family that travels together also has a better chance of staying together.

While awaiting a comprehensive national transportation plan, as has been recommended by the Barbados Association of Professional Engineers, there are a number of interventions which could come in the short-term such as no right turns at the Pine East/West junction of the ABC Highway or the suggestion made by another Senator that there should be a roundabout at that junction. There could be a toll for entering Bridgetown or, as is done in Singapore, allowing even number vehicles one day and odd numbers another day into the City.

We could also look at the transport of children to city schools from various collection points by reliable and safe school buses since it is obvious that the delivery of school children is one of the major problems in traffic congestion. 4.10 p.m.

Sir, in the long-term I feel strongly that all schools should be moved from the City and surrounding areas. I know that there is a certain amount of sentiment about the old schools but Queen's College was removed from the City and life has gone on.

Mr. President, I also noted from the media that the Principal of St. Michael School has been advocating the

relocation of this school and I trust his concerns would be taken seriously.

Sir, staggering working hours within business companies has also been suggested as part of the solution, but I would like to go one step further and advocate the virtual office as the major solution. I note that it is not always suited to all of the situations since a human presence is needed in some situations. I had the experience of working to some extent in a virtual office situation and I know that this is a very efficient way of operating.

Mr. President, in fact, I also know of a colleague who lives in one parish, his secretary lives in another and many days neither of them moves from home and most of their business is conducted electronically. I also feel that many CEOs, secretaries and other management staff could also conduct some portion of their work from home. Mr. President, one danger would be the proximity of the refrigerator, but with the encouragement of Professor Fraser, and many others, I think this could be dealt with.

Mr. President, I lend my support to the present amendment to the Road Traffic Act but trust that they will be other amendments which would address the problems of congestion which we face daily.

I thank you.

Mr. PRESIDENT: Senator Linton.

SENATOR I. St. C. LINTON: Mr. President, I rise in support of this amendment. I do not hold any letters of the law or actuarial studies but I want to speak to what I call a profound perspective.

Sir, as the Law stands before this amendment, against that background, there was never a single incident or accident where an insurance company paid out more than \$12 million and no single death brought to the beneficiaries of more than \$5 million.

Mr. President, it seems to me that from an economic point of view, that we were losing foreign exchange. For example, if X number of persons secured themselves through vehicular insurance and the insurance companies were reinsured, it meant other clients outside of Barbados benefitted more than those clients in Barbados. I am saying this because the reinsurers for the past years were having concerns about the level of reinsurance they had to commit themselves.

Sir, I recall the Supervisor of Insurance in Barbados, now the Director of Insurance, drawing our attention to this problem for a number of years and it is not only in relation to reinsurance for motor vehicles. I remember clearly that an outstanding insurance magnate, Lloyds Insurance Company and others had been experiencing difficulties in the

reinsurance arena.

Sir, over the last 15 years, the kind of hurricanes, tornadoes, plane and train crashes that these insurance magnates had to face, there is no doubt about their reasons for concern. Therefore, there must be some relief in terms of premiums that clients pay to insure their vehicles and properties and I hope that as a result of this amendment that they would have some relief in the insurance premiums. I am simply saying that there should be some relief in this regard for those who insure their vehicles.

Mr. President, let me make this point. For example, you were travelling to your office on a given day but you did not get there because you were involved in an accident with another vehicle. However, the vehicle that you were involved with not only "wrote-off" you and your vehicle but at the same time there is no reinsurance. If the current law remains on the statute book, it would mean that the insurance company, with which the person who "wrote-off" you and your vehicle is insured, would have to be responsible for the unlimited liability benefit.

Sir, I am saying that from my perspective, the Law as it stands is a mischief and that is my perspective. Therefore, this present amendment is seeking to remove a mischief that could occur and, therefore, my fears are that if one of our buses with 75 persons on board fell into a ravine and 60 persons died, what would happen in this case? That is also still a question if it happens now with the amendment to this law. I heard Senator Chandler make the point that there are some aspects of further insurance in regard to this.
4.20 p.m.

Sir, this exacerbates the question of bringing to order vehicles on the roads of Barbados. I am simply saying that this amendment, as we seek to put it in place today, opens other areas in which we are going to have to look at the Road Traffic Act. We are going to have to put measures in place to stop this road rage that we have in Barbados.

Sir, daily, I am home on my street, Queen Victoria Road, and I can tell you the speed that vehicles travel from the upper cross road, Barracks Road. I mentioned this earlier when I first came to the Senate. I have seen that the Ministry of Public Works is seeking to look at the matter because they have equipment now testing the speed running down those roads. I called to have silent policemen placed in those avenues and I hope that they will soon be installed, otherwise there are going to be some serious accidents coming through these avenues in Barbados.

Sir, I am simply saying that this amendment begins to address problems, not only of the benefits that come to

Barbadians, in relation to their insurance, but in relation to how we order traffic and how we limit the congestion of traffic in Barbados. I hope that we will see some quick action in regard to traffic control because it must not be only left to the police. The Ministry of Transport and Works must hasten in its provision of having safer roads.

Sir, there are certain aspects of our economy and the provision of infrastructure such as water and roads that must be looked into. I would never like to see any time that there is stoppage of road repairs and road construction in Barbados. I would never like to see that continual upgrading of our water system in Barbados, as it has taken place. Sir, there is a rhythm about moving traffic and repairing roads or providing roads.

For example, I am sure, working in the building industry myself, that when MTW does a road, they put a life on that road. They may say that this road must not be dug up, unless in case of an emergency, for less than seven or 10 years. Sir, that gives opportunity to see to other roads, and what we have been having in Barbados in years past and now, is that you cannot catch up with road repairs or replacing water mains in Barbados. I am looking for some system to come up where there should never be any cessation of road construction or replacing mains in Barbados.

Sir, not that I am harping on the early 1990s, but in the early 1990s nearly all the equipment at MTW was parked and there was no proper programme in place for replacing mains in Barbados. There must be a serious approach to these most important aspects of our infrastructure, so as to have order in relation to road maintenance and proper passageway, as well as maintaining a good water service in Barbados. I thought of mentioning that because I believe that this amendment and looking at things like this, is the beginning of things to come.

I thank you, Mr. President.

SENATOR THE HON. E. R. GRIFFITH: Mr. President, it seems as if we have exhausted discussion on this matter and I wish to thank the Honourable Senators for their contributions. I appreciate that there have all acknowledged that the measures being put in place by the Government are seeking to correct a problem which is facing the industry and that the proposed solution is reasonable.

Senator Stuart is correct when he said that the historical information does not suggest in any way that Barbados should have a difficulty with reinsurance. He was also correct when he said that it is probably because the reinsurers bring into the pool, currencies which happen elsewhere and that is the unfortunate situation in which we, as a small country find ourselves.

Sir, for many years, I had the opportunity to take part

in discussions with the World Bank and such institutions, about the establishment of schemes for the region because there is always that problem. Whenever there is an occurrence in a neighbouring country, including certain occurrences in the United States that have nothing to do with Barbados, and may never turn up in Barbados, or that is put into the picture and then you get the news that the reinsurers are talking about carrying up the premiums and so on.

Unfortunately, that is the world in which we live. It is not one where there is always an effort to see that fairness and justice are done, in the countries that are small and cannot make too much noise. Therefore, this situation has arisen not because in the past there have been extraordinary claims in Barbados, but because we are caught with all that is happening around us and even outside of the region.

In an effort to prevent us from reaching the stage where the local providers of the insurance coverage cannot get the reinsurance which they need to support and sustain the industry, the Government found it necessary to limit the liability. We on this Side are pleased that all of the evidence, historical and otherwise, all of the probabilities, that have been examined as to what may or may not happen and when, in terms of time span, would be taken into account in arriving at the cap.

As I made the point in my introduction, the cap to personal injury has not been changed. That has been so for a number of years. A cap is being imposed on the liability with respect to the event.
4.30 p.m.

On the surface, it may appear that if the cap per person is \$10 million and the cap per event is \$30 million and that if four persons are involved in an event they would each get less than \$10 million. However, the probability is that such an event may never arise, and we trust that it would not arise. It is on that kind of basis that the Government has reached the conclusion that the \$30 million cap is a reasonable one.

Therefore, Mr. President, I beg to move that this Bill be read a second time.

The question was put to the Senate and agreed to.

On the motion of SENATOR THE HON. E. R. GRIFFITH, the Senate resolved itself into Committee, HER HONOUR SENATOR Dame PATRICIA SYMMONDS in the Chair.

COMMITTEE

MADAM CHAIRMAN: The Senate is in Committee.

Clause 1 was called and passed.

Clause 2 was called.

SENATOR THE HON. E. R. GRIFFITH: Madam Chairperson, before I make the motion, I just wish to draw to the attention of the Senate that there seems to be a typographical error in Clause 2(a)(I) where it reads that \$10 million which such persons or categories of persons shall become liable, *et cetera*. It should read as "shall become liable".

Clause 2, as amended, was passed.

On the motion of SENATOR THE HON. E. R. GRIFFITH, Madam CHAIRMAN reported to HIS HONOUR the PRESIDENT the passing of one Bill with amendment in

Committee and Mr. PRESIDENT resumed the Chair and reported accordingly.

On the separate motions of SENATOR THE HON. E. R. GRIFFITH, the Bill was read a third time and passed and cited as the Road Traffic (Amendment) Act, 2004.

ADJOURNMENT

SENATOR THE HON. E. R. GRIFFITH: Mr. President, I beg to move that the Senate do now adjourn *sine die*.

The question that the Senate do now adjourn sine die was put to the Senate and agreed to and Mr. PRESIDENT adjourned the Senate accordingly.
4.35 p.m.

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2. Reports on the Social Investment Fund for the Quarters ended March 31, 2004 and June 30, 2004.
3. Annual Report of the Labour Department for the year 2001.
4. Report of the Accountant-General for the Financial Year 2003-2004.
5. Financial Statements of Gymnasium Limited for the years ended March 31, 2001 and March 31, 2002.

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