
THE SENATE DEBATES

(OFFICIAL REPORT)

FIRST SESSION 1994 – 99

THE SENATE

Wednesday, February 25, 1998

The Senate met in the Senate Chamber, Parliament Buildings on Wednesday, February 25, 1998 at 11.20 a.m.

PRESENT

His Honour Senator Sir Fred GOLLOP (President)

His Honour Senator C. L. BOLDEN (Deputy President)

Senator the Hon. R. R. FARLEY (Minister of Industry, Commerce and Business Development) (Leader of the Senate)

Senator the Hon. P. C. GODDARD (Minister of International Trade and Business)

Senator the Hon. G. S. H. MURRAY (Minister of State, Prime Minister's Office)

Senator T. E. BARKER (Parliamentary Secretary, Ministry of Finance and Economic Affairs)

Senator the Hon. Miss O. P. SYMMONDS, G.C.M.

Senator D. T. GILL

Senator Miss J. C. ODLE

Senator N. A. LYNCH

Senator N. P. WELCH

Senator Mrs. A. P. THOMPSON

Senator J. D. E. BOYCE

Senator J. A. WORKMAN

Senator Mrs. P. E. RICKINSON

Senator S. P. BERNSTEIN

Senator Dr. V. J. DAVIS

Senator C. LeR. TROTMAN

Senator C. K. LAURIE

Prayers were led by Senator J. A. Workman.

Mr. DEPUTY PRESIDENT: The Senate is in session.

ANNOUNCEMENTS

Mr. DEPUTY PRESIDENT: I have to announce that Senator Rickinson will not be present today. She asked to be excused.

PUBLIC BUSINESS

ORDER NO. 1 – COPYRIGHT BILL, 1998

SENATOR THE HON. R. R. FARLEY: Mr. Deputy President, I rise to move the second reading of this Bill, the Copyright Bill, 1998. This Bill, Sir, seeks to revise the law relating to copyright and make better provision for the rights of authors, producers, performers and broadcasters and give effect to trade related aspects of industrial property rights and world trade organisations and to provide for related matters.

This Bill will also repeal the 1982 Copyright Bill. Discussion of this Copyright Bill, Sir, must be taken within the wider context of the critical importance of matters relating to intellectual property in our modern world. Much of the thrust in development around the world would be driven by the ownership, control and management of knowledge whether that knowledge results in a new way of doing things, whether that knowledge results in a new way of making products, whether that knowledge results in new products, the general recognition is that no longer will the inability to communicate or the relative isolation of geographic areas, no longer will those factors be the major sources of protection for inventors and creators. But with the explosion in the means of communication around the world, development of a new idea of a new manufacturing process, of a new product today, can be simultaneously spread around the Globe even before one has finished making a presentation on this new invention.

Therefore if we are to be able to benefit from the creation of these new works of art, new products, services and so on we need to continue to recognise the need to create the incentive and the greatest incentive for invention and innovation is still gain. It is true that the hope of reward often sweetens labour and if we are to be able to benefit from the labour of our inventors and our creators then we must take steps to provide protection and to allow them to earn a living out of their endeavours. In fact it is Laurence Stern who once said that the sweat of a man's brow and the exudations of a man's brains are as much a man's property as the breeches on his body. It really recognises the fact that property is not just those physical items, things that one can hold, but really knowledge is also part of that property.

But in the context of Barbados, our interest is extremely keen in this whole area of intellectual property. One of the greatest and strongest features of Barbados as all have recognised is the strong talent base of our people. Our people have been able to find unique and new ways of doing old things as well as have over the years made interesting and useful discoveries of new things. We are therefore already in the position where we are exporters of ideas and with the movement toward liberalisation of trade in services we look towards being even greater exporters of ideas, knowledge and the like.

I look particularly at our artists, our photographers, our musicians, our software developers, our other professionals, our scientists, our manufacturers for that matter, persons who are able to add to the store of wealth of knowledge in the world.

All around the world there is a move towards strengthening intellectual property legislation and Barbados is pleased to be part of that process. But in doing so, we are not doing this to protect other people's interest alone, although there is a reciprocal push to do that. But we are really going to be the net beneficiaries because having strong intellectual property legislation in place of which copyright is one aspect, the other two major aspects being patents and trademarks, not only protects our creators of intellectual property but it also puts us in a position to ensure that our interests in other countries are equally protected.

I will give you a few examples, Mr. Deputy President, of why this is critical in the context of where we are. Take our musicians. I am sure you would agree, Sir, that we produce excellent world class music. If you look at a range of styles ranging from the calypso of Krosfyah, the Jazz of Arturo and the R & B of the IV People.

We look for example at 1997. Krosfyah before they had any official agreement for distribution of CD'S in the Netherlands discovered that their CD'S were available for sale in the Netherlands at some fantastic price. Clearly a case

of pirating. So that musicians are not able to make the full benefit from the fruits of their labour because of this major industry of pirating. The change from cassette tapes, phonographic records to CD'S, increasingly, whilst the technology seems to have improved the technology has also made it easier to make the copies. And with the advent of desktop computers and publishing one can even scan and replicate the promotional material, the CD labels to make it look like the real thing and we therefore have a strong interest in protecting our local musicians like Krosfyah.

We know of examples, Sir, of our local beer which had the experience some years ago when they attempted to penetrate the United States market of finding itself in a situation where some American company had registered that trademark as their own and it took them some time and some money and some effort to persuade the United States authorities that they were in fact the original owners of this trademark and therefore they were not, as the claim against them was, seeking to pirate the trademark of an American company.

We know of course of the examples of Barbados pepper sauce, produced in Costa Rica, distributed widely in the United States, again recognising the appeal of Barbados and the unique formula and so on. Therefore as we seek to penetrate the world in supply of products, in particular brand names with intellectual property generally and the work of our innovators and artists we therefore need this type of legislation, both in Barbados and overseas. So that this Bill that we are proposing, Sir, will basically replace the existing Act of 1982 which was indeed a very good bit of legislation. However a number of things have changed since then. The legislation, for example, did not speak in the clearest of terms about computer software and related matters. It did not speak as clearly on matters of licensing and of future copyright. It did not have penalties with the severity and which basically reflect the realities. If one is able to profit heavily from piracy and a penalty is to be placed on that activity, then it has to be of a meaningful value. It must not be such that it will be worthwhile to pirate and pay and still come out profitable. That would basically defeat the entire purpose of a penalty as a mechanism for avoidance of this illegal activity.

11.30 a.m.

So the Bill basically aims to reform and modernise the law and copyright, taking into account the changes which have occurred in this area of intellectual property. It draws heavily on some English and Jamaican precedents and we also took the opportunity to have the directions in which we are moving consistently with the World of Intellectual Property Organisation (WIPO). Therefore we think this would be efficacious in meeting its objectives. But basically, Sir, at the heart of intellectual property legislation is this matter of balancing the economic needs

of a country, whilst ensuring that justice is done. In other words, there is a balance between making the inventions of the knowledge and other aspects of intellectual property available, whilst ensuring that justice prevails for those persons whose work and efforts have been involved in producing this work. So there is a balance between society's needs and the needs of the individual.

No country generally favours moving in the direction of giving a creator perpetual ownership of work. So the legislation, as you will see, would tend to have time limits. It also basically seeks to ensure that unauthorised third parties are not the ones to principally benefit.

As indicated earlier, this legislation which we are debating today deals with one of the three main aspects of intellectual property. Other legislation will follow which will seek to streamline, upgrade and improve the legislation and practice in respect of patents and trademarks, but the copyright one is the one in question, today.

In the case of Barbados, Sir, our legislation was from 1982 and that legislation made the general provisions which were consistent with this time. But if we are to look at copyright matters, there are four broad questions within which I would propose to make my presentation this morning and these questions are basically answered by the Bill as it is presented before us.

Questions for example, does copyright exist in the social material? This basically is the section of the Bill which I will discuss in terms of the original, literary or dramatic works, some recordings, some films, broadcast materials and so on. These will be answered by the relevant sections as I will discuss shortly.

The question of infringement of the copyright is another major aspect which I will discuss. Ownership of the copyright is yet another area which I will discuss and whether there are any areas of defence against the claim of infringement.

The Bill before us, Mr. Deputy President, establishes the categories of work which are eligible for copyright and there are broadly speaking original, literary and dramatic works, musical works and other artistic works broadly defined as in section 6 before us. Some recordings, films, broadcasts and they have made reference to cable programmes which is a modern variant of transmission of materials. One cannot technically call it broadcast, published editions and so on, including all the appropriate references to computer software and computer generated material.

Basically, the Bill makes provision for the owner of copyright to have an exclusive right to authorise others to perform, record or otherwise do anything to the work. For

example, we know that one of the major issues that developed over the years are cases in the music industry, where major international producers of music have visited countries around the world. Let us say that you visited Barbados and you heard a good song sung by a local person and it sounded very good. When you return home, you may make one or two variations to it, if any at all, and the next thing the local person hears, is their song making a big international hit, and from which they get no royalties or benefit whatsoever. Not even a recognition that they were in fact the original producers of that particular work. This type of thing we want to stop beyond any shadow of a doubt.

The law is structured in such a way that there is no need, as far as copyright goes, for the registration of the work, because the copyright exists from the time it is created. There are also provisions under Part 2 of the Bill before us, for both moral rights as well as economic rights to be created.

Economic rights will relate to the matter of ownership and copying from the transfer of economic gain and the moral rights will relate to the right to have one's name associated with the work. If one is going to use work in an authorised way, or if one is going to make a critical assessment of the work, then one is entitled under these moral rights to have one's name associated with the work, but I will discuss that in a later section.

It also provides for the rights of an author to object against what is defined within the framework of the law as derogatory treatment of the particular work. An interesting variant in Clause 16 which speaks to the whole matter of authors having the right not to have work falsely attributed to them. That is important in the context of the reputation and standing of a noted author of works in relation to having some substandard works not of their own making, attributed to them.

So in this matter of moral rights, the Bill creates moral rights in respect of the right to be identified as the author, director, producer, *et cetera* and as indicated, the rights to be associated with the work by way of identification of ownership and of course, the rights for piracy in respect of certain types of photographs.

The matter of duration of copyright is one which arises from time to time. Under Clause 10 of the Bill which is before us, with respect to literary, dramatic, musical and artistic work it is for the life of the author and an additional 50 years after his death. For instance, in respect of some recordings and broadcasts, 50 years after the making of the particular item.

What about infringement, because infringement is really where the crux of the matter lies. We have

identified what items are eligible for copyright and created that framework, but infringement? The copyright gives the owner the exclusive right to use the work in specific ways. It is his work and that is his right. He can determine how he would want to have the fruits of his labour handled. An infringement occurs when one uses the work of the author without his consent. Plain and simple. This infringement can occur in many ways but of course among the best known forms of infringement are the elements of copying, reproduction and performing of the work in an unauthorised situation.

11.40 a.m.

We have seen in the past the situation and our artistes are becoming more aware where to protect themselves these days when you are attending shows. Very often you are instructed that no videotaping or still photography is allowed at the show. That basically is to protect the author of the work, the producer, the performers, the owners of the copyright.

We have had situations in the past in which someone who is seemingly a paying patron at the show, videotapes the show and then lo and behold the performers at the show, without getting the benefit of the sale, find themselves appearing in videotapes which are offered for sale or the footage is sold to broadcast companies whether television or radio companies, who themselves sell the performance of the work by way of advertising and other features.

The bottom line is that the owner of the copyright was not able to benefit because of unauthorised reproduction, copying distribution and this basically is an infringement under the particular legislation. We know of course of the frequent practice of copying things like computer programmes and that is also an infringement of copyright in respect of the owners of copyright. And while in the case of a country which is a net importer of these things some laxity may appear to benefit the general populace, in truth and in fact Barbados being in the position of creator and exporter of software will benefit from the fact that the owner must be able to benefit.

One of the fastest selling computer programmes of a company called Soft Key, a Canadian company, which used to have a small office here writing software 2 or 3 years ago, was created by a 21 year old Barbadian. I do not remember the name of the programme but they basically do programmes for the household and they pride themselves on being the supermarket software distribution company and you can pick up these useful programs at the supermarket check-out for \$30, \$40, \$50. The fact of the matter is that we have the intellectual, the skills which are required to produce things which are of world class value and which are widely

available and widely acceptable to the rest of the world and therefore we need to ensure that they are protected.

I know for sure, because I have been working with the Barbados Investment Development Corporation, that we have a number of Barbadian small businesses in the area of developing games for children. At least 3 or 4 board games and at least 1 computer game which has been developed by these persons. The IDC has given them assistance with design, getting a business plan together and getting a marketing plan developed. We would want to know that these young Barbadians are able to benefit from the fruits of their labour, that their work is protected by copyright and that whenever that product is sold whether it is in Barbados or elsewhere in the world that they are able to benefit. Whether we sell it or use it in Barbados or in Timbuctoo then they must be able to benefit.

Part IV of the Act, the whole issue of infringement is dealt with and I will perhaps speak a bit more on those in relation to various penalties shortly.

The whole question of offences and damages and so on, there are a lot of things that can be done. For example, in Clause 32 there are remedies which are given in respect of infringement. There can be damages sought. There can be an injunction filed against the person who is creating the infringement. Clause 33 provides as well for an order to be made to have the illegal copies of whatever the work happens to be delivered up and of course there are the similar remedies in respect of moral and related rights.

To give an example of the penalties associated with this Bill and with the infringements particularly in relation to piracy and related matters. The penalties for piracy are stiff.

The Bill provides for penalties up to \$50 000 for summary offences and for indictable offences up to \$250 000. In addition, of course, with the monetary penalties there is also the option for orders to deliver up the offending material so that you don't continue to sell it even though you paid the fine. There are also options for imprisonment if the judicial officer believes that to be appropriate.

There is also another interesting aspect of remedy in these offences in respect of imports because I should tell you that the matter of piracy is also an international affair. So that one can have Barbadian CDs or CDs of Barbadian artistes copied overseas and re-imported into Barbados. One can have imports of printed material from other destinations but the bottom line is that in the case of attempts to import pirated material, the owner of the copyright can also mandate the Comptroller of Customs to prohibit the importation of these items as well as to seize those items on entry into the country. So that those

pirated CDs for example would not be able to be secreted into Barbados and prevent our goodly musical ambassadors from getting their just due.

The matter of ownership of copyright also raises other questions in association with ownership. Can ownership of copyright pass from one person to another? It is important because the rights of the artiste, author or other literary person, the rights of an owner of intellectual property, must be no less secure than the rights of the ownership of real property.

Just as there are clear guidelines and a clear framework for the transfer of ownership of real property, there is also created the framework in transfer of the ownership of copyrighted material, transfer of the ownership of intellectual property.

Part III of the Bill deals with this matter of ownership. It provides, for example, as a general rule, for the first owner of the copyright to be transferred as personal or movable property. It also would make provision for assignment by will or other operation of law and that makes it clear beyond any doubt as to what happens with respect of the ownership or transfer of intellectual property.

There is a limitation however on the aspect of moral right in relation to copyrights and that basically is that the rights in respect of the moral rights can only be transferred by the author. Of course, as far as ownership is concerned, it is again reinforced in this legislation that the Crown will be the owner of folklore in terms of the intellectual property rights.

11.50 a.m.

In terms of defence, of course if you are going to create offences there must be appropriate defences. Basically, there is no infringement if reproduction and use of the material is given by the author. That is obvious. If publication of the material is justified in the public interest, and that aspect of the material is spelt out as well in the legislation. There is also the matter of fair dealing with the work because, remember that one of the moral rights that is given in the copyright is the right against derogatory treatment of the work, but that is not to say that if you produce a bad piece of work people cannot say it is a bad piece of work. That basically would be fair dealing with the work. If it is fairly bad, you would say it is fairly bad. But, certainly, the whole issue of moral rights and so on is dealt with. Therefore, it is a statutory defence of fair dealing with the work that has been created in the legislation. One could review the work for the purpose of criticism, for the purpose of review, for the purpose of reporting and generally dealing with the work which is only fair and reasonable.

Of course, the legislation seeks to provide some guidance to the Court in adjudicating on these matters. Also, as in the previous legislation, one makes exemptions of works for teaching materials and the like.

Materials for the administration of the legislation: Provision is made for the establishment of a tribunal, a three-member tribunal. One of the persons on the tribunal must be an attorney of not less than 10 years standing and that tribunal will basically adjudicate disputes which arise in relation to licences, royalty payments, rates and the like. Of course, appeals on points of law will be taken to the High Court for jurisdiction and their decision is final.

Now, Mr. Deputy President, in closing, because I think I have basically set out the rationale behind the reason to move a new Copyright Act. I have indicated that the 1982 Act was a pretty good Act. It is modern in the context of 1982 but some 16 years later much has changed in terms of the types of material for which copyright is required, particularly the software aspect, computer programmes and the like.

Also, the technology continues to move at quite a rapid pace and the technology for compact discs and other forms of storage, retrieval and copying of information is not the same today as it was then. This will continue to change and the law will obviously have to be adjusted from time to time where there is any doubt whether new forms of material will actually fall within the framework of the law. We are satisfied that the general form of drafting is broad enough to cover aspects of technology driven creations which would challenge the law as it stands.

We have expanded in the new Act the sections relating to definitions again to cover some of the matters that I have discussed so far. We have made clear the matter of the issue of future copyright. We have also dealt extensively with the matter of designs and this is a new area. Again, it is one of those important areas which we are pushing. The Bill gives much more detailed treatment to the matter of telecommunications related matters, works in electronic format and the like.

We are satisfied that this Bill will go a very long way in ensuring that what has become one of the greatest sources of economic growth and development, that is, intellectual property, will not result in the intelligence, knowledge and the innovativeness of Barbadians being of benefit to the world but not to those individuals, their families or Barbados as a whole.

We are satisfied that this legislation will ensure that our artists, writers, musicians, computer programmers, whatever may be the creators of intellectual property, will get their just due. As I indicated at the beginning, the

sweat of a man's brow is well protected but we also want, if one could possibly conceive of the sweat of a man's brains, Mr. Deputy President, to ensure that that is protected.

Mr. Deputy President, I commend this Copyright Bill, 1998 to the Honourable the Senate and beg to move that it be read a second time.

SENATOR Mrs. A. P. THOMPSON: Mr. Deputy President, I rise on behalf of the Opposition to support the Copyright Bill as amended. We recognise that this amendment has come as a result of a requirement of the IDB and is very much in keeping with some of those requirements which have to be met by countries which entered into arrangements with these international institutions. This is a piece of legislation that would be implemented in many countries around the world as the Leader of Government Business has said because of the pervasiveness of modern technology and the attempt by countries throughout the world to have the rights of their citizens protected not only at home but abroad.

I welcome this particular amendment since for me it seeks to protect the rights of a class of Barbadians who would not have been recognised before, the creativity of a number of Barbadians who have over the years done their hard work and it went unnoticed not only by members of the public but the fact that it did not contribute after its creation to their livelihood. Many of them created valuable works yet died in poverty, therefore, for me, the introduction of this type of legislation into Barbados at this time is very much welcomed.

I believe it was John Locke, the father of capitalist philosophy who said that whenever man applies hand and mind to the product of nature and by that application by hand or mind changes the raw material of nature to something it was not before, he creates property which is his. I support that.

Unfortunately, though, even with this amendment, those individuals who by way of their labour, by contract of service, are not considered authors of their work and as a result we find that in this capitalist society employees will still not be full beneficiaries of their own creativity because in the workplace, although the employee has used those creative talents, abilities and skills to produce this work, be it a design for engineering or architectural purposes, that employee does not stand to benefit other than by way of his wage or salary from that creativity and that is the unfortunate part of this legislation. It does not address that area. Only those individuals who provide contract for service stand to benefit from their creativity for not only their lifetime but their dependants can benefit even 50 years after they have

passed on. That concerns me somewhat because we are still a society of employees and although we believe that we are creating a new business owner class in Barbados, a very large percentage of our population is made up of individuals who sell their services to employers in the workplace.
12.00 noon.

I feel pleased about the Amendment also because the Copyright is now considered property. I hope the Government of Barbados would make sure that this legislation is not only on the books and passed and be used by the international business people, as we do from time to time, but that the Government would make sure that the correct public relations and educational material is put out there that those simple ordinary people who produce beautiful works, not only of art, not only in the recording industry and performers, but that other Barbadians will be aware that there is another right which they have and which they can use in order to enhance their livelihood and that of their dependants.

I think also that we must make sure that our financial and commercial institutions in Barbados recognise this also. That an individual could, now as an assignment for security, or as an application for a loan or for some other form of finance, use a copyright.

That is why I feel so pleased about it. A number of our entertainers and performers have not been able to really live a decent life in Barbados because first of all, they have little collateral, if any, and when they go to commercial institutions for finance in order to advance and make their little business, bigger and better, they do not have access to finance because they have no collateral.

I am pleased that by way of their creative abilities and talents and skills that they can now convert these into a piece of property which can work for them while they are at work. I really hope that the Government would make sure that the financial institutions in Barbados are aware of this.

It makes me particularly pleased too because it is the creation of property. I think we must recognise too that in the working class of Barbados there are still a number of individuals who own very little and who are still striving to become real property owners. It is in that class of persons that one can identify quite a lot of creativity.

If we observe the black experience in the United States over the past 15 or 20 years and we look at the Boys II Men and all the rap groups, Puff Daddy and that lot who were considered the ghetto and street children and the back alley children but who were born with naturally beautiful voices, which when blended, produced some of the most melodious and soothing music to which one can listen.

Asides.

SENATOR Mrs. A. P. THOMPSON: I love Boys II Men.

And here is an opportunity for individuals in Barbados who have some capital and who have an interest in investing that capital to now help some of these youngsters. And it could help us to stem some of the level of violence that we now have in our society because I have no doubt that one of the reasons that there is so much violence and restlessness amongst the youth in the society is because the youth believe that here is a society that does not understand them and the society is not responding to what they consider to be their most pressing needs. They want to be listened to, they need some attention.

I believe that here is an opportunity for individuals with capital that they want to invest to now pull some of these youngsters together, even to go and search out that creative talent in society and invest in them. Because now, here is an opportunity for them to know that they can get a return on their investment since these works, once produced, now have the protection of the law and protection for quite some time too. Protection not only at home but abroad. So the investor can now take the risk on these young people and assist them in developing their creative skills while at the same time helping us as a nation to stem this upsurge in restlessness and violence amongst our young people.

I am really hoping and I am hopeful that this copyright legislation would not sit here on our books to be fully exploited by those in the developed countries who understand its full usage but that we in Barbados as Members of Parliament and also all the Government departments, all of our linkages in society, will strive to make it a very active piece of legislation. Because I see that once it is fully utilised that there are many benefits which could redound to this society. That is why I really want to support this piece of legislation.

I love the idea that the property does not die at the death of the property owner and that by way of this property you can create an estate. You can create an estate which you can pass on to your dependants. So that you are saying that a next generation, the off-spring of a good artist, the off-spring of a good designer, the off-spring of a good performer, can at birth instantly inherit something of worth which is not really the norm for this class of persons for whom I carry this heavy burden on my heart.

Other than a life insurance policy proceeds from time to time, there is really no other inheritance that working class people get in Barbados. I am pleased that the sons and daughters of our performers and our writers can inherit an estate by way of the Copyright Act.

Therefore, I believe that this is a very positive piece of legislation. As I said earlier, I really hope that we would fully utilise it in the development of our people and of our country. But I would not want us to talk only of our performers because I recognise that even in the industrial work place there is protection by way of this copyright legislation. So we are now seeing that the copyright legislation is performing a commercial function and I think we need to make sure that this too is known abroad.
12.10 p.m.

I heard the Leader of Government Business refer to the works of Barbadians that have been exploited overseas and I was surprised that he got as far down as Krosfyah because we had RPB so many years before that with "Ragga Ragga" being produced in 14 languages around the world and I felt saddened at the thought that here was a piece of beautiful work that when heard around the world was accepted almost instantly and here was a Barbadian not really benefitting the way he should from that work. I, Since that record was released, visited at least 8 different countries and on each occasion that I attended a function I was really surprised that "Ragga Ragga" was the musical piece that people preferred when they wanted a good warm-up on the floor.

I am pleased that individuals of that calibre, real creative people, now stand to benefit from their work when it is performed by others, not only what they have done but when it is reproduced by others and miles away. Sometimes they are not even aware. In countries they have never visited, they can discover that their work is performed.

I think, since we have spent so much money in education over the years and since we are moving in a direction, as Senator Goddard reminds us all the time, of the information age, and since we seem to be striving to make sure that Barbados, in terms of technology, that we do not remain at the lower end but we want to be producers of sophisticated, top of the line software for the international market, I have been saying for a long time that I do not know how is it that we have not managed to take Suki King's moves and give them another name and put them on software and get them on the world market. Here is a Barbadian, he has beaten the big computers, he has shown that he has that natural, that intrinsic skill and to date, other than being born in St. George which added to that, to date he has not been able to make full use of that. I appeal to Senator Goddard and Senator Farley in the Trade and Industry department that we try in some way to put the work of this young man abroad. He takes his time and he volunteers to go around to schools and try to make sure that the other generation of Barbadians can understand. He sees this as an exercise of the mind. He has not seen it as any game at all. I talk with Suki very often and I am

totally taken in by his capacity to reason. I know it is as a result of his involvement in this, what we call a game, but in this intellectual exercise that he has been able to gain that type of success in this work of art and I would like to see us not allow Suki's work to go by. I think we can do something about it. He is one of the members of this society. He is from the lower echelons of our society, no sophisticated degrees, special education, but a beautiful intellect and we should not allow it to pass.

I played draughts as a child growing up with my brother which is referred to in the international arena as checkers but for us we call it draughts. I never thought that draughts would draw so much on the intellect, the ability to think and plan until I listened to Suki and observed him making his moves and I would like to see us do something about his work.

Therefore, Mr. Deputy President, I think the Leader of Government Business really covered this piece of legislation in very great detail but what I wanted to do was to try to see how best I could apply it and make it a very broad piece of legislation, highly ambulatory and not something that is fixed there on the statute books of Barbados but see how best it can apply to the active lives of Barbadians, especially those Barbadians who are still up to this point in a way not as enfranchised as they should be and who deserve ...

I know there is a lot of talk about 2000 but I do not really talk very much about it because to me it is just another year and unless we manage to really make some significant changes in eradicating some of the social differences that exist in our society, for me there is nothing to shout about as far as 2000 is concerned. I hope that this piece of legislation and other enabling legislation would assist us, the people in Barbados, in really tackling in a meaningful way what must be obvious to all as some serious social problems.

Whether we want to admit it or not, how else can one respond to a spate of holdups, robberies and shootings and stabbings among our young people. I am not one of those persons in society who scream law enforcement, who scream arm the police, who scream hang them. I am one of those persons in this society who believe that crimes are committed because people are angry. I believe that we have to get to find out why they are angry. I accept that in our society as in all societies around the world, there are some individuals who are lawless, there are some individuals who even get fun out of these acts no one can deny that.

I think that we have accepted to a point, as we present the profile of our young people in our only prison in Barbados, we have accepted that a very large percentage of those young people are not up to a certain level in terms of their ability to function and that is responsible, to a very

great extent, for those outbursts which we see from time to time. We must find a way of getting through to these youngsters who have skills and who have ability but who need some attention. We must find a way of tapping into those areas in which they can excel. As I said earlier some of them have beautiful voices. Some of them are artistic in terms of art work. Some of them are creative in terms of designs and I hope that by way of this legislation we could in some way deal with some of our very serious social problems which are again on the rise and which really threaten the stability of this beautiful nation of ours. I thank you.

SENATOR the Hon. Miss O. P. SYMMONDS: Mr. Deputy President, this Bill is very important and indeed necessary if one is going to encourage any kind of artistic work. Normally when one speaks of ownership one thinks of it in concrete terms such as houses and chattel but one tends not to think of ownership with creations of the mind, for example, poetry, paintings, dramatic works. Mr. Deputy President, when Paul McCartney first started recording and singing he thought that a song came out of the air. He felt that not being a physical object a song could not be owned and when he started a school for performers he realised by then that it was different and he insisted that the students learn about the copyright Act. In fact imaginative creations such as poetry are the only things that one can claim ownership of because one puts one's own unique stamp on a product of the intellect. If artists are to have the security of knowing that they own their works, then they must have protection through legislation and this is what this Bill sets out to do.

12.20 p.m.

As a lover of literature and music and as an educator and one who, in a very modest way has done a little writing, I can very much appreciate the efficacies of this Bill. And there is no doubt about it that the Government has to be highly commended for bringing it. If work is not protected, artists cannot exercise the exclusive rights of ownership so that they can sell and earn. The idea of starving in a garret or gaining fame posthumously is not only outmoded. It is highly impractical.

Artists preserve the heritage of a nation and they give definition to the national psyche. One can think of Vincent Van Gogh, Dutch; Pierre Auguste Renoir, French; William Shakespeare and Francis Bacon, English; Derek Walcott, St. Lucia; the late Martin Carter, Guyana; Frank Collymore and Edward Kamau Brathwaite, Barbados; and of course you can go on and on. But what is important is that the rights of all who create must be protected.

I also can appreciate, Mr. Deputy President, that for educational purposes, there has to be a special provision made and it is a very long Bill with many clauses and

some have already been dealt with. And therefore I chose particularly these aspects emphasized. It is with the greatest pleasure that I wholeheartedly support this Bill.

Thank you, Mr. Deputy President.

Mr. DEPUTY PRESIDENT: Senator Trotman.

SENATOR C. LeR. TROTMAN: Thank you very much, Mr. Deputy President. I rise to give support to the Bill before the Senate, but I wish to make the point, Sir, that as I see it the Bill speaks not mainly to entertainers in the narrow sense of that word, but that it speaks, in my view, beyond the entertainers to all those who labour to create. I think this is the point made earlier by the Leader of Government Business when he introduced the measure.

Those who create images of one kind or another, create music and through music they are able to do the job of soothing the society as Senator Thompson would have us remind ourselves, are those who create material things in one form or the other. They are working to bring genius to bear and to take note of what Senator Symmonds has said that they all then leave their mark on society so that we are able at some stage later, to reflect on what was the society in which they lived and moved and had their being, as the Honourable Senator would want to say.

I took note of the fact that the Leader of Government Business spoke to the subject of intellectual property and its importance, or the importance attaching to the control of knowledge. It is something which I believe we would want to take note of, especially since he spoke to that, in relation to our relationship with the World Trade Organisation.

I think it is a good thing to see that the Government has moved to bring this bit of legislation. It has been some time in the planning and has been spoken of for a while. But, I wish to say that in relative terms the swiftness of the Government in treating this subject of intellectual property protection must be contrasted with the slowness there is generally in this society, in treating equally importantly the subject of the freedom of association of workers.

They both relate to rights. They both relate to fundamental rights of individuals and I would believe, Mr. Deputy President, that during the course of the afternoon you will take my point and hopefully the Leader of Government Business will be able to do something as I will suggest it, later.

Property, I am pleased to hear and I accept, is not merely physical. It relates to knowledge and knowledge is part of property and I support that contention.

We, Barbadians are very pleased to be able to export our ideas and we will be all the more pleased to export these

ideas within the regime of a liberalisation of trade. We have, however, in noting the liberalisation of trade and expansion of ideas – what I would call expansion – explosion of ideas to take care to respect the rights of our nationals.

I am aware in looking at this particular aspect of the subject that we have in doing so to be looking at the new international Goliath, the World Trade Organisation (WTO). I am aware, Mr. Deputy President that this new institution, is bringing to bear some new movement called the Multilateral Agreement on Investments (MAI) which will impact very heavily on not mainly Barbados, but will impact heavily on Third World Countries particularly.

We have to be careful in recognising that in this particular measure, the MAI, that they will wish to remove any special or concessionary investment opportunities which we will provide for our locals. We will have to be able to realise that in that demand by the WTO, there could very well be a situation, not mainly within this particular measure, but generally for a reduction of the standards which we ourselves would enjoy.

Therefore the legislation before us, although it attempts to look toward to what the international community would generally want to have, I am suggesting, Mr. Deputy President, that it is very important and necessary for us to realise that our opportunities, those which we had hitherto for our artists and for those who create our society and build our culture, that those opportunities must be protected in the way that this legislation is endeavouring to do.

The property which there is in music, the property which there is in speeches and lectures, the property related to informatics, all demand protection. The protection which there will be, is coming in this particular part of the legislation. This protection, as I understand it and as I would wish to agree is fundamental. But I would wish to make the point that there are other matters equally as fundamental regarding the rights of our people. And as fundamental issues, there needs to be as critical an approach as the approach which we are taking to intellectual property.

The Leader of Government Business, Mr. Deputy President, was very careful to define the subject of intellectual property. He spoke to the question of ownership of that property. He spoke regarding the offence against infringements and he spoke as well regarding the penalties which attach. There are two things which that aspect of his presentation brought to my mind. One of them has to do with the need that there seems to be for fuller training of citizens regarding what is their right.

12.30 p.m.

When a relatively unknown person takes an idea to someone else only to have that idea taken over and used for personal gain by the second person this should be something liable for redress. The presentation speaks to it but the point I wish to make, Sir, is that very frequently the individuals do not know what it is that they have. They have no real knowledge of what to do with it and what to do about it.

I am making the point therefore that there has to be a greater effort on our part as a society by the Government, by institutions like mine and others to prepare people and cause them to understand exactly what this piece of creation that they have is, what to do, how to defend it and how to protect it. It is not going to be enough for the Government to bring this bit of legislation, put it on the books and have it stand there, nor is it going to be enough for an attorney to wait for somebody to come because an attorney will not know what is happening. The individual has to know the point at which he or she is going to act.

Therefore, the training that I speak to has to be an enlightenment process that is wide enough, broad based enough to involve everybody, for each of us has genius. Each of us has a little bit of the God in us and I hope I am not being blasphemous when I put it that way. Each of us have a little bit of that God in us that will cause us to create things at our various levels and therefore give each of us the capacity to be able to bring about the intellectual property that should be ours and our families' unto the third and fourth generations, as a member of the cloth would put it.

The Bill speaks, and I am pleased about it, but I am saying that there is the need for us to move beyond that by using the various aspects of the media to be able to engage in this exercise.

I only stopped at the media, Sir, but I am saying that institutions like mine, the Trade Union Movement, and I am talking about other institutions as well, those clubs that people go to, enlightenment clubs that have lectures from time to time. They have to be able to address the issue.

Similarly, Sir, at the workplace the individual worker who is denied a comparable entitlement to speak through an agent regarding the conditions under which he or she works must be able to express that opposition. The two things seem on the surface of it to be unrelated but what I am speaking about is the fact that an intellectual right to our property is a right that is fundamental. I do not know that I can call it a human right, but it is a basic right and it is a fundamental one.

I am saying Mr. Deputy President, that fundamental rights have got to be treated in a very basic and fundamental

manner and that we must therefore act to ensure that all basic rights, including the freedom of association as a basic right must be handled with the same degree of alacrity and despatch and that people should be able to exercise that basic right wherever they are and whenever.

I am not permitted to stray from the hard lines of the presentation, Sir, and therefore I cannot go beyond that except to say that we have in dealing with the matter of penalties as led by the Leader of the Honourable Senate to be careful not to structure our penalties in such a way that we give the impression to the uninitiated that we have a class of basic rights and we have a class of rights divided into class A rights and class B rights and that class A rights are for intellectuals and academics.

Senator Thompson made the point that Suki King is a simple person, not an intellectual in the sense that he did not have a degree. I argue that he is an intellectual in the sense that there has been a certain element within his brain that has given rise to a creativity that makes him an intellectual par excellence. That is not because he, like me is a St. George person, mine by adoption.

We must not give the impression that we have class A and class B with a class B being for non-academics. I would wish that we would take note of this, because the penalty is \$50 000 for summary offences and \$250 000 for indictable offences and that is the way it should be. These are maximum penalties of course but the penalties for the violation of a worker's right is less than \$500. So we have to be very careful to take note of the different levels that we are speaking about and endeavour to do something about them.

I am not trying to deliver any tirade against the Government lest somebody goes somewhere else now and tomorrow somebody says that Trotman attacks the Government. I am not attacking anybody. I am making a simple point regarding the need for us in discussing subjects of this importance to realise that rights are divided. I accept that property rights are basic and fundamental but equally basic and equally fundamental are the rights of other workers.

I make the point, Sir, that an artiste is a worker in the same way that somebody who drives a bus is a worker, in the same way that a Minister of the Crown is a worker and that we all have to have some level of protection and that those protective elements must be provided by the society, must be provided through agencies and must be provided by the law.

When I look towards the difference of \$50 000 on the one hand, \$250 000 for indictable offences but less than \$500 for violation at the workplace it underscores the point I am making that we are into a good thing when we seek

to ensure that infringement of rights should be discouraged but that discouragement for the vast majority of situations where violations now occur is in fact minuscule and I refer to the violations of the workplace.

An employer can laugh and does in fact laugh at the penalties we attach to violations which there are at the workplace against workers' rights. We all stand to attention at the penalties associated with property and I say regarding this that my job is my property, your job is your property and we need to have a similar kind of protection which is at the same level and at the same kind of appreciation of the representation for artistes who create paintings, or otherwise help to make our lives sublime.

Some further comments, Sir, about WTO and some comments to close. The World Trade Organisation is, as we were told, along with other international agencies exercising what I call an overarching control over our lives. We have now reached the stage where, the barriers to the Cold War being removed, the world is now one little village and the international agencies are grouping together and are taking stances which serve the interests of capital at large but which do not seem to meet the needs of small emerging societies such as our own.

12.40 p.m.

Although we would wish to be supportive of the legislation that there is coming before us, and although we would be supportive of seeing our artists being able to take their place in the international arena, we still have to take note that the WTO and agencies like that will endeavour more and more to marginalise countries like ourselves. They will want to impress upon us and instruct us how to use our resources and land, how to use our resources and sand and the beach. They will want to tell us how we should go about paying our people wages in the same way that if we are not careful they will want to control our artists and those others who helped to preserve our heritage and create the culture which we have in this society.

We in the Third World, and particularly in this region, have to be able to group together to answer that threat to our sustainability as a nation and as a region. This particular bit of legislation provides the opportunity for us to commend the efforts being made by our own Government and other Governments in the region to look again to this region as one in need of being brought closer together into some cohesive oneness, into some cohesive entity. You call it a federation. You call it whatever you would want to call it but we are one people and we cannot speak with 250 000 voices. We have to begin to speak in voices of millions to be able to have a countervailing voice against the voices of the narrow interests which they are in North America, which they are in Europe and which they are in other areas of the world.

In that regard, I think that our artists are doing a good thing. I think they have unionised to protect themselves and that is Stage 1 in what I think is part of the job. The Government is doing Stage 2 in that they are bringing legislation to protect the creation of these artists and I refer not only to music artists but I mean artists generally. We have to work more fully in this measure which is before the Senate to take the matter a step further. We have to urge the Government to give full support to all workers so that those other workers who do not now have the benefit of this protection might also be able to see a measure of protection for themselves and, clothed in that protection, can realize their full protection at their workplace wherever that workplace happens to be.

I thank you, Sir.

SENATOR J. A. WORKMAN: Mr. Deputy President, I rise to give wholehearted support to the Copyright Bill before us today because I think that the passage of this Bill in this Chamber which will take place today has significant effect which must be noted by all and sundry in our community.

I would like, Sir, to give expression to the terms of the Bill, if I may, under a theme because I believe it is necessary for us to look at legislation, not strictly in terms of laws, but as tools for social change, social justice.

I would think, Sir, that a good theme for this piece of legislation would be "Our Walk to Intellectual Economic Freedom" because I believe that when we look at the 152 sections embodied in this Bill and we interpret them, we should see a social change. We should see not just a set of rules which we are to follow as laws of Barbados. I believe, Sir, that it is this aspect of the proposed legislation to which all of us must turn at this time and which must be properly ventilated within our society so that those persons in our midst who have great intellect can understand how they can use that tremendous intellectual wealth to generate economic wealth.

Successive Governments have stressed and promoted the need for education, and as Senator Trotman was rightly saying, and he certainly was not trespassing on blaspheming God, each one of us has God in us. We are created in his image, in his likeness and it is as we strive to live, move and have our being in his likeness that we discover the great intellect that is planted within us and which has been given to us, not to show off as intellectuals as we understand the word intellectual, but to recognise that in each one of us there is that uniqueness to which we need to give expression and this is the crux of copyright. Copyright is to redress copy wrong. It is to give protection against those who would seek to rape and plunder us of that inherent divine attribute which is ours for life as well as for living. This brings social change. It ought to bring

social change. This piece of legislation must have an impact on our society as it seeks to be the catalyst for giving opportunity to those who have intellectual ability but who do not have financial ability. It gives to them that opportunity to use that intellect for financial and economic advancement.

I would like, Sir, to make reference to some words of two men, one who has gone already to the great beyond many, many years ago, and who has penned for us words which we of this age now understand and seek further to understand. The other man is very much with us today.

The first man, Sir, is the Prophet Isaiah who said:

"Before, these my people lived in darkness but now they have seen a great light. They lived in a dark land but the light has shined on them."

I believe, Sir, that this piece of legislation is a light to shine upon the darkness of those of us in our community who have hitherto had, but have not been able to use for various reasons, the great intellect God has given them. Many of our people in the past and in the present have had and do have brilliant ideas; ideas which they have been dreaming about for many nights, for many weeks, for many months, for many years but have not been able to give expression to those ideas.

Very often they do not know to whom they should turn to give expression to those ideas and at times they have turned to persons who have become sharks and have used those ideas to their own personal advancement at the expense of those who had the intellect. So this legislation brings light to that type of person. We need to educate our people to understand when to divulge their idea and to whom they can divulge their idea; whether Mr. A or Mrs. B is a trustworthy person to whom you can say: "This is the expression of my intellect, how can you assist me in it for my benefit and not just for yours."

The other gentleman who wrote prophetically, as I said, Sir, is very much with us today. I would like, Sir, with your permission, and I will make this a document of the House, to quote from words written by the Minister of State in the Prime Minister's Office, Senator Glyne Murray in this booklet "A Walk for Freedom".

I say this, Sir, because very often the prophets have written and spoken not understanding the depths of what they have said. In it, Sir, he says that "The celebration of Emancipation Day was, among other things, of unprecedented historic, sociological, political and psychological significance." With his permission I would like to add "economic significance" because so often we forget that our emancipation must come economically too. He went on, Sir, to say:

"For some, it was the eventual fulfilment of a long held dream and goal."

12.50 p.m.

Such, Mr. President is the rationale behind Copyright. It is, for the individual, the fulfillment of long held dreams and goals and we need, in addition to what the scriptures say, not only to say that "our old men will dream dreams" but we need to teach our young people to keep dreaming and to aim high with those dreams and to give expression to their dreams because in those dreams we can receive the reality in economic life.

Senator Murray went on to write:

"For others, it was the long overdue repair of a serious factor in the national psyche and sense of self. "

This legislation, Sir, does just that. It is an overdue repair of a serious factor which has existed in our economic framework for years.

The 1982 Copyright Act replaced the 1911 Copyright Act of England which we had been following for many, many years. It was a tremendous improvement, but this Bill before us today, Sir, goes beyond that and takes us into new realms of endeavour and understanding and protection. So Senator Murray's words have been prophetic without his knowing it and I am drawing it to his attention today.

Asides.

SENATOR J. A. WORKMAN: He also said, Sir, that "this Emancipation was the opening of a new era in the way this country sees its past and how it has conditioned its present and will determine its future". This legislation, Sir, does exactly that. It helps us to look back on our past, it helps us to look at the present and it is now charting a new course for us as we go into the future.

He ends, Sir, by saying, "We hope that this published keepsake will now chronicle this important milestone and forever keep us on the never ending strive for emancipation."

Sir, this Bill must not be seen as the end all. We need to recognise that all legislation is for a time and there will be need from time to time to revisit this legislation so as to give fuller and more meaningful effect to its provisions as we seek to protect the intellectual ability of our children and those to follow after so that they may give full expression to it for their benefit and for the benefit of our country.

So, Mr. President, such are the aspirations and the hopes and the interest and the content of this Bill. For this Bill must be interpreted by this generation and by the generations to come as an instrument which brings freedom and control and economic rights to the intellectual landscape of every man, of every woman, of every young person of this society.

Sir, my first call to attention lies with my Barbadian brothers and sisters who have hitherto been kept in economic captivity. Those who have the brain but who do not have the financial brawn to enter into the realms of that type of economic activity; who do not have the financial brawn to enter into the traditional form of economic activity to which we have become accustomed and indeed entrenched.

So, we need to see this as a breaking forth into new areas of understanding, and breaking forth into new areas of expression. A breaking forth into bringing into reality, and bringing into captivity our thoughts which we project into meaningful and financial reward. I believe, Sir, if our people understand clearly the rationale and the motivating factor behind this legislation, they should find great opportunities for economic advancement in terms of intellect.

Sir, I see the legislation as being persuasive because it persuades the individual to use that intellect. This legislation, Sir, should be a catalyst and the motivating factor and the motivating framework behind this thrust for intellectual upward mobility.

I find, Sir, that I can support the Bill because it has within it what I call 'certain qualities'. What I call the 'seven-fold qualities'. If any economic activity is to be successful, there is need for creating the proper atmosphere and the proper climate within which those who seek to engage in that activity can work. I find that this legislation does just this.

The first quality I would like to refer to is that the legislation is "Inventive". These are things which we need the public to understand; it is inventive. Inventive in that it begins with an idea to which we give expression. We need to remember that ideas can be shared. If I share my idea with you, you can use that idea and it will not be an infringement of my right. It is when I give expression to the idea, that that expression of the idea becomes mine. That is where the Copyright begins.

It has qualities which I call 'Incentive qualities'. I referred to that just a while ago as the motivating force, calling upon us to look inwardly so that we may stir up that genius which God has planted in us. As the Apostle Paul said to young Timothy, I say today, also to the youth of this country, 'Stir up the gift which is in you'. Each one of us has

that unalienable right to utilise to the maximum the genius that is in us. It is because we fail to utilise this genius that many prefer to sit idly by and pick a lime and then they are allowed to be channelled into destructive activity.

I believe, Sir, that we need to have a serious onslaught on the thinking of our youth. That they may think inwardly within themselves to discover who I am and what I have and that there is in this Copyright Bill sufficient legislation and sufficient provisions to allow them to go forward and give expression to who they really are.

The third quality, Sir, is that it is "Possessive". Possessive in the sense that each one who gives expression to that genius can say, "this is mine, I own it, it is mine". If we may express that, Sir, in terms of an old time calypso which says "don't let nobody steal your joy", that intellectual ability is the joy and the salvation of the individual. This legislation ensures that it cannot be stolen. Therefore the legislation is not only possessive but it is also "Protective".

Senator Farley in his presentation has outlined very carefully and very lucidly for us the protective rights under Section 101 by the establishment of the Tribunal. So that all and sundry can have redress when someone seeks to infringe that great intellect to which they have given expression. Another of its qualities, Sir, is that it is "Tradeable". It is an economic commodity and this is the thing we must get over to our people that copyright is an economic and a tradeable commodity. Just as somebody deals in motor cars and others deal in informatics, everybody can deal with and trade in that great intellect. So it is not only tradeable but it is also "Transferrable".

1.00 p.m.

The Act gives expression to the ability to pass on this ownership under your Will and that it lives on after you as an economic enterprise for the benefit of your children and your grandchildren. So all in all the overall quality of this Bill is that we can say it is "Treasurable". It is a great treasure which we need to claim, a treasure which we need to guard, a treasure which we need to use, not keeping it under a bushel but have it exposed in the world of economics, the world of intellectual property, that it may bring advancement for us as individuals and advancement for the country as a whole.

So, Sir, I have great pleasure in supporting this Bill and it is my prayer that as we seek to bring about this new area of intellectual emancipation we, as a people, will seek to so educate our young people that they may look within themselves for this great treasure which has been given to them and to give fullest expression to it for their economic advancement and for the advancement of those who will come after them.

SUSPENSION

SENATOR THE HON. R. R. FARLEY: Mr. Deputy President, I beg to move that this Sitting be suspended until 2.00 p.m. today.

The question was put to the Senate and agreed to and Mr. Deputy President suspended the Sitting accordingly.
1.10 p.m.

RESUMPTION

Mr. PRESIDENT: This Sitting is resumed.

HIS HONOUR SENATOR C. L. BOLDEN: Mr. President, I want to make my contribution to this Copyright Bill but I want to take it from a very different angle from which most speakers have dealt with it this morning.

I am happy to see that there is a new and improved Copyright Bill which would take effect in Barbados as soon as possible.

My basic reason is that under the old Act there were several uncertainties under the Act which has caused quite a lot of disruption in our society. A lot of people seem to think that copyright only exists in musical works but copyright exists in anything which can be created by man and he has a right to protection. What has affected us most in Barbados is the copyright in the musical aspect of the Bill.

I want to say something and I hope all of those artists out there would try to understand from where I am coming. Let me deal first with the calypsonians. It seems to me that a lot of people are afraid to tell the calypsonians when they are right and when they are wrong. A lot of people are afraid that calypsonians will sing about them. I am not so afraid. The calypsonians are the ones who have been shouting most about protection of rights and their ability to create. Nobody is looking out for them, everybody is leaping on their backs, taking away their rights etc. But they are the very ones who fail to understand the nature of copyright and what is involved. They fail to understand what they must do if they want to get back what they are asking for. They like to copy part of things that suit them and forget the other part that does not suit them. This is what I mean.

Every year and I am sure 50% of us in this Chamber will agree that I am correct, these calypsonians walk from store to store, business to business asking for support to produce their work. When you go to the tents, you hear of the tent which is sponsored by Firm A in Bridgetown, Company B, Company C, etc. The managers of the tents will tell you that it is impossible to run a good calypso tent unless you have massive financial support from the businesses in

Barbados. Some of them will tell you that businesses do not want to put money in calypso tents.

I ran a tent for 2 years and I had a business house in Bridgetown that helped me finance the tent and the manager would say to me, send me a bill for legal services because he could not allow his board to see that he was putting money in a calypso tent. Now I say that to explain what I mean. At the end of the day, even before the end of the day, you meet one of these chaps who will come to you and say, I have two tunes but the man who is putting the music to the tune is demanding \$1 200 for the two tunes. You cannot pay him for one, you have to pay him for both. Can you help me raise the \$1 200? What are you going to contribute? At the end of the day when these people have reached the calypso tent, at the end of the day when the tents have gone through and the music is in the air these are the very people who are shouting and bawling you must not play my music, you have got to pay me for my copyright. Now that is why I say, they pick the part that suits and ignore the part that is not pleasant to them.

I would want the calypsonians and the song writers now to establish themselves in the business of creating. In the United States if a boy, a girl or a group of persons decide they have a musical talent or whatever it is, the first thing they do is look for a manager and that manager enters into an agreement with them about what they produce, when they produce, where they appear and what the returns are and he gets a percentage of that.

Many of you who know the musical industry will know of the great fight in Jamaica with Bob Marley over a lot of his unpublished works and who held the copyright to them.
2.10 p.m.

You will remember our own Jackie Opel because Managers took those persons and invested in them and became part owners of what they produced. The present crop of calypsonians in Barbados do not understand that. They want to beg for money, collect money, but they do not want to share them in the property or benefits. They do not want anybody sharing that, Sir and that is where all the problems in Barbados have come.

I hope that now the Bill is before the Chamber and when it is published, they will understand the business of copyright. They cannot collect to create and then say, "it is all mine." This is the typical Bajan attitude that the Trinidadians sung about. "All is mine. All is mine." The Trinidadians said, "not this time." That it what it is.

Asides.

Every Government organisation in this country and most big businesses in this country have had to import software from the United States and then doctor it here in Barbados to suit our own conditions. If you doubt me, go and ask the Port Authority. I can call a number of Government organisations that have had to do this and I think that it is about time. Not only Barbados, but the Caribbean as a whole, because we have got an intrinsic situation.

If you look at the Caribbean, people ask, "how come you are British, but you are so attached to the United States?" That is our problem. I believe the Caribbean as a whole must look at itself as one entity. I believe Barbados is the leading light in these developments. If Government could find it possible to make things like computers, and you will have to put some sort of limitation on them, you can say a 'personal computer' to one in a family, or something of this nature. You will create that sort of environment and those sorts of personnel who will start creating software to sell. Educational software sells all over the world. Gardening is now a big thing all over the world and if we have Barbadians who can create the software and have it protected under the Copyright Act it will bring foreign exchange into Barbados to provide self-employment for a lot of our people.

2.20 p.m.

Mr. President, I support this Bill and I hope it is given all the attention as needed, not only by Government but by those persons out there for whom this will bring benefits. Thank you.

SENATOR THE HON. P. C. GODDARD: Mr. President I rise to commend this Bill to this Honourable Chamber and to make a few comments, not about technical aspects, but about the importance of this Bill to the development of our economic activities in this country. I must commend Honourable Senators for the previous comments that have been made about the Bill. It has been a very interesting and insightful discussion. While many of the comments focussed on artistic talents, both in the musical and painting areas, I would also like to say that the Bill has application to software development primarily, as has been stated by other Senators, but also in industrial activities and many other areas of economic activity that takes place within this country.

This Bill strongly supports the international financial services that we provide for global business activity with the administration of intellectual property rights around the globe for many corporations not just within Barbados and the Caribbean but corporations from around the world. This Bill settles and strengthens our ability to administer this valuable intellectual property.

The need for this Bill was not driven by WTO or driven by external forces but primarily evolved from a recognition by the Government that for our economic activities to expand and develop that enhanced intellectual property legislation was absolutely necessary. Yes, it complies with the WTO's TRIPS condition and, in some instances, it surpasses the TRIPS requirement.

I would also like to state as has been recognised previously that this is a living thing and copyright legislation will have to be updated and amended, particularly in the light of the new digital environment that we find ourselves where it is so easy to replicate absolutely faithfully something, either a copy of one, or a copy of a million without any degradation from the quality of that copy.

In this new digital environment we are wrestling with many different issues at the same time that the developed world is wrestling with those issues and it is in Barbados' interest to be proactive and to define the ways in which it would like to see copyright law develop because we must balance on the one hand the right of the individual to earn and on the other hand public interests and the right of people to have access to information. This is a very significant aspect that countries like ourselves must be involved in.

There is a considerable body of information and considerable debate taking place in the developed world and, unfortunately, not so much of it in the developing world that addresses this issue of getting the right balance between protection of intellectual property and the public interest.

As we develop this legislation, Mr. President, I feel that it will strengthen our ability to enhance the economy of this country. This is yet but another piece of legislation that has been brought before this Parliament and this Honourable House by the Government that has driven the economic development of Barbados, creating Barbados into a modern day state in a way that will make it indistinguishable from the more developed country in the new digital environment that we are finding ourselves.

In the discussion about intellectual property and the vast sums of money that intellectual property brings there are a few statistics that might be very interesting and it is interesting to note that in 1996 the market in recorded music was worth US\$39.8 billion. Now, Mr. President, this shows the tremendous value of intellectual property just in the area of recorded music.

Barbados is embarking on promoting itself as a location for the development of visual arts, creation of film, creation of designs, creation of software. We are promoting the painting sculpture, all of these areas of activity can

take and afford the protection of this Copyright Act. At the same time, Mr. President, we need to educate our people to understand that while people demand and should get the protection of their intellectual property we should not also be stealing the intellectual property of others.

We have to understand that the illegal use of copying of intellectual property is against the law and it is morally indefensible to take away somebody's intellectual property without due compensation within the economic structure that we have developed.

Mr. President, I think that we need not only to make sure that this legislation is administered well and to ensure that the sense of this legislation is imparted to the community. We have to start in the very basic level of schools to explain to students what intellectual property is, what its value is and let individuals understand that it is as much property as is a tangible thing like a book, a pencil, a ruler and a pen.

Mr. President, this is an extremely important piece of legislation. It has great value to the people of this country. It will enhance our economic activity and I look forward to other pieces of legislation in this same area that will be shortly coming to Parliament to further bolster our economic environment. Thank you very much Mr. President.

SENATOR THE HON. G. S. H. MURRAY: Mr. President, in joining this debate I would like first of all to thank Senator Workman. I am glad to see that he is back in his seat for his very generous, surprising and overwhelming recollection of something that I had written in a booklet. Because very often one writes these things as the muses inspire, so to speak, and without any thought of any kind of reward, even public praise. But one does one's duty and, therefore, I am glad to see he has made reference to it and I can hear it from this end of the world and not from above.
2.30 p.m.

Sir, this whole question of intellectual property is a very fascinating subject. When I am dealing with intellectual, what is an intellectual and what is intellectual activity, I like to refer to a definition given by a modern-day philosopher by the name of Eric Hoffer who has written a book called "The True Believer", and who was a waterfront worker. He worked on the docks of the United States, but was a great thinker. He defined an intellectual as one who just dabbles or is involved in ideas, wrestles with ideas.

You do not have to be a Ph.D. dealing with a lot of esoteric subjects, but once you are in the whole process of examining issues, dealing with ideas, therefore that makes you an intellectual, according to Eric Hoffer's definition. I like that definition because it is bereft of any semblance of

snobbery, prejudice or class and therefore I am very comfortable with it.

That brings me to the point that when one is talking about the mind, the mind is an interesting, intricate and absolutely limitless commodity, I like to think. Milton in "Paradise Lost", I think Book 9 or 10, said of the mind: "The mind is its own place and in itself can make a heaven of hell or a hell of heaven." That is the unlimited capacity that the human mind provides for one.

Aside.

SENATOR THE HON. G. S. H. MURRAY: I am merely quoting. I am not coming down on either side. I am making a personal reference, Sir.

Therefore, Sir, where the intellect is concerned, as I said according to that definition, man has infinite capacity to utilise it. I see the Copyright Bill, not so much as dealing with intellectual property, but dealing with what I see as intellectual capital, something that has its own worth and especially in this day of quick transmission by telecommunication and what's not, it makes for even speedier moving, usage, manipulation and transfer of that intellectual capital.

Barbados has had more than its fair share and I think this Bill will go a long way toward protecting that intellectual capital which is more like a chattel. It has no fixed place because you can move it around. You can toss it around. You can transfer it from here to there. You can do all kinds of things with it, so it is important that we have some kind of legal ground to protect the work and effort of those who would have conceptualised whatever work that would have emerged from that intellectual effort.

Sir, my pleasure also in supporting this measure takes on added significance when I recall that it really represents a further example of this Government fulfilling one of its pledges in its Manifesto of 1994 which, among other things, writing under the caption of Culture on page 20 "Your Choice for Change", it says: "Enact new Copyright legislation" and I am glad to see that we have fulfilled that pledge and that we are, in doing so, making life better for some persons, particularly the entertainers, who for a long time had been seen as being at the lower end of society.

As one who has some involvement with entertainment, not necessarily as an entertainer, although, Sir, I must confess that I have been known to sing at the Gymnasium and I have been known to sing as a back-up singer to The Mighty Sparrow last year on CBC radio, but that is some of my track records as an entertainer. But be that as it may, Sir, from the time I entered journalism in late 1963 I have always had a close association with entertainment and entertainers.

I remember rubbing shoulders and being taught some of the ropes by the likes of Al Gilkes and Mark Williams. And being able to stand here today and give support to this measure to me, really, is a tremendous step. For one, society has come a long way because, historically, our entertainers have been seen basically as "bread and fish people" where they sing, dance or perform otherwise, but they really had no status. They had no real being in the society. They were seen at the lower end, just somebody doing something to amuse and titillate, but not really as making a substantial contribution to the culture of the society.

In fact, in those days in the 1960s it was very easy and popular to hear people say that Barbados "had no culture", so we have come a long way now where people talk readily and spit out Barbadian culture saying this is our culture or "we culture" easily, to the point where now we have the opportunity where we can codify things that would help to give monetary and tangible reward, and reward people in material ways for their efforts.

It takes us, Sir, a long way past the day where entertainers would die, not even in dignified poverty but just in absolute poverty, including some of our better brains, some of our better creative persons like Shilling, for example. Earlier mention was made of Jackie Opel. He died tragically in an accident, but he did not even himself reap the full rewards for his efforts as an artist. A lot of what he worked for and the efforts he made particularly in the creation of the spouge beat, a beat which I am afraid Barbadians never took to their hearts and never really gave them the support they should, but which, thanks to the very same records and the ability to record, will never die because there will always be records and recordings of it. And who knows some day it might be rejuvenated and that in itself would make Jackie even in death, happy.

This measure, Sir, would mean a lot to entertainers particularly where piracy is concerned and piracy is nothing new. It has just taken on different forms, different dimensions. The pirates today might be using computers, wearing suits, dressing very fashionable and driving Mercedes Benz, but the pirates have always been there.

I remember, Sir, people like the Merryman suffering at the hands of pirates in Sweden when they had the "Big Bamboo" hit record. It was on the Top 10 in Europe and they never got a cent out of it. Somebody just latched onto it. I think somebody changed the words to one of their songs, used the music and made millions from it and the Merryman had no recourse. I suspect that if we had this kind of legislation around then we might have been able to at least salvage some of the rewards.

Jackie Opel was another one Sir, as we heard earlier, who suffered in earlier times from not being able to be

protected in this manner. The Honourable Leader of the Senate made mention of Krosfyah and other modern day artistes and performers who themselves are even today suffering at the hands of pirates who take full advantage of their vulnerability to enrich themselves and in so doing, impoverish our performers.

We have, Sir, in Barbados a number of organisations which seek to protect both the interest of the performers, the various artistes and contributors to these intellectual works and reward them in so doing. We have BAMCI. There is also CES, the Copyright Entertainment Services, and there is PRS.

I am very pleased that this Copyright Bill has come about, if only because it will help to give legitimacy to some persons who have been struggling hard and long to try to enhance the status, image and the standing, and try to improve the financial wellbeing of some of our performers. I must mention by name, Sir, Sach Moore from BAMCI whom we may fault for some of his methods. We might question his interpretation of the law. We might question a lot of things but the point is that he, perhaps, is the single most person who has gone out of his way to show that the whole question of copyright and intellectual property can be taken seriously and that people can be made to benefit from it. I am very happy at this because I was very fortunate to have been involved and helping to bring about an agreement between the radio stations and BAMCI who had been quarrelling for about four years over neighbouring rights and how they should be rewarded, *et cetera*. There was an agreement in July 1995 that accorded certain benefits to the entertainers who were supposed to benefit through BAMCI whereby the radio stations and Channel 8 Television Station were to pay a percentage of their advertising to BAMCI for passing on to the entertainers.
2.40 p.m.

If I may make quick reference to that agreement, Sir. That agreement which still holds today was for four years back dating to June 1993. In the interim, the *status quo* obtains because it was felt that it would be wise to wait and see what this Copyright Bill would entail before they sought to get a new agreement. That agreement is still in effect. In the case of radio, it provided for BAMCI to get 1.61% per year of net advertising revenue and where television was concerned, BAMCI would receive 0.4% of net advertising revenue for 1993/94; 0.5% for 1994/95; 6% for 1995/96 and 0.7% for 1996/97 for Channel 8.

I quote those figures, Sir, because in the interim, I was able to do some checking with the Caribbean Broadcasting Corporation and BBS. I was not fortunate to get the information out of Rediffusion to show the kind of contribution that has been made by the radio stations,

by the advertisers and by the general public who support these radio stations. Since the agreement has come into being, BAMCI has received from CBC \$108,506.92, from BBS they received \$24,654.00 making a grand total of \$133,160.92. I know that sounds like a lot of money but then when one compares that to what has been paid to PRS in that time, PRS in that same time, Sir, has gotten from CBC alone \$238,265.55.

There is a lot of dispute about the disparity and Senator Bolden made some indirect reference to it, whereby it is felt that PRS does not represent Barbadian artistes and performers in the same way that BAMCI has attempted to do or with the same effort. The point is that BAMCI has been able with that sum of money to give some meaning...

Asides.

SENATOR THE HON. G. S. H. MURRAY: I have some friends and entertainers who tell me that they are very happy to receive the cheques periodically.

While a lot of people on the outside of the industry have been questioning how things have been done in that whole area, I think, all in all, the entertainers see themselves as having entered a new phase through the efforts of BAMCI and they are seeking to improve the operations of the organisation and in that way improve the accountability and improve their rewards. The point is that we have entered a new era where we are beginning to reward our performers in a way which was not thought of 30 years ago.

I am very pleased and glad to have been playing a part in making that possible and I am pleased to see that at long last some of our entertainers are being rewarded in a way that they should be and I look forward to the day when they can be more amply rewarded through all the organisations that seek to better their cause.

While I am happy that this is happening and while I am happy that this new Copyright measure has come to enhance the earlier one, I think that I should issue a warning to our entertainers that this is a very complex area, the field of Copyright and Intellectual Property. Even the organisation that administer these things internationally dispute amongst themselves as to what is what, what is to be interpreted as what, who gets what *et cetera*, what is the proportion or do you really have any rights?

It is a very complex, fast changing and evolving field and therefore they have to be very, very careful about how they get themselves involved with other persons who would look after their interest, particularly managers, agents or

whoever and they should be careful not to sign their lives away because some quick talking, smooth talking, slick, well-dressed person might seek to capture their interest and they might go for the short-term and in the long-term they might become victims of unscrupulous operators.

This Bill, as welcome as it is, will not change human nature. It will not eradicate greed and the evil that will make some person seek to exploit their fellow-man, even the entertainer. Even though the blandishment might be great and it might seem very attractive to them, I think they have to look beyond that and learn as much as possible.

While you might not be an expert in this field, I think that it is incumbent on every single person who contributes to artistic effort, who has intellectual property and who has intellectual capital to disburse, they should at least become familiar even in a cursory way to what is possible and what obtains in the legislation. They should not just leave it to a manager or an agent or some other person to look after their interest, because they could end up being taken great disadvantage of, even in spite of this legislation.

Therefore, Sir, I think that we have now paved the way for even greater reward and enhancement of status and effort on the part of persons in intellectual pursuit. While I have been concentrating on entertainers because they are the most outstanding of these persons in this day and age, I would like to think that we also, some day soon, will be seeing similar effort being made and similar rewards being achieved by not only our computer software producers but also our artistes in the sense of our visual artists and writers. I think there are tremendous possibilities for persons to write more and produce more as part of their artistic contribution to Barbados' heritage and Barbados' development.

I look forward to seeing further amendments even to this legislation in the future, to make it even better for our artistes. Because if we make our artistes more comfortable and reward them more, if they can make a good living, they will produce more, if they at least have something to bequeath to those who come after them, I think the society will be a better place for it.

I look forward to some day being able, in some form or fashion, to give support to added measures which I am sure will come as the field continues to evolve to make the world a better place for those of us in society who produce intellectual property.

Thank you, Mr. President.

SENATOR C. K. LAURIE: Mr. President, just a few remarks. I am a little bit worried about one aspect of the legislation in relation to the sort of grey areas like if

for instance when a church is holding a fair and they play music. Is that subject to Copyright charges? If a person is at the beach, at an excursion and they play music. Is that subject to Copyright charges? Within the church itself, if people sing hymns within a church which is a public place of worship. Are they subject to Copyright charges?

These are some of the areas that are of concern to some people.

SENATOR D. T. GILL: Mr. President, the salient parts of this Bill occupied an inordinately large time span between the Uruguay round of talks and the final WTO document. The mere fact that it occupied such a long time frame, is living testimony that Copyright and Intellectual Property are of optimal importance to a country's wealth.

We would have seen that as those rounds of talks to which I referred drew to a close, the Americans and the Japanese were brisk and fairly serious about protecting their literary and performing artists right up to the hilt. Sir, the best quotation I could find to sum up what we have been discussing here or what we have been debating here for the entire day is that of the South African writer Nadine Gordima in which she said that the creative process is an imaginative leap and then she went on to say it is not the real quotidian performance, Sir, that brings one this renowned glory. Therefore one should be compensated for this investment of energy, the investment being the intellectual leap to which she does refer and no price seems too much. 2.50 p.m.

Barbadians over the years have taken such basic rights as copyright and intellectual property as being just another aspect of life, but the mental transformation which one has to put oneself through in preparation, Sir, and in perfecting a product as I have alluded to, Sir, is worth the compensation.

In the Caribbean, Sir, we are known for our primary rhythms, whether they are meringue, the cadence, calypso, or tuk band and in more recent times, Sir, there is a lot of scope by the mixing or hybridising of these basic rhythms to come up with new and interesting rhythms. We only have to look, Sir, at the zouk which is performed in many of the French African Caribbean Islands which is new, which is interesting.

Not so long ago we had the little conflict between a local performer/writer/artist and another regional performer/writer as to whom the tuk rhythm belonged and our local performer was unable, as he puts it, to really defend his position in a court of law because the main reason was he was not financially strong enough and it was not so clear cut a case as one may have seen it. Therefore, Sir, with

legislation like this, although Senator Murray did go into the mechanics and the clarity of the interpretation of the law, but because of legislation such as this contained in this Bill, one would now be able to have a much more strong footing and understand and be able to appreciate one's compensation, should a competing author/writer/performer infringe or deprive another of his or her basic right.

So, Sir, as the world gets smaller and trading blocks get larger a member country's citizen has to simultaneously know more about his regional brothers style as the French/English refer to it, the *droit d'auteur*, the right of the author and simultaneously understand the happenings of his brother in the world at large.

Sir, this signals a great step forward in our local performing rights for our local artists. This signals the correct direction for us as citizens to take and overall it would redound to the benefit of all those no matter how small a way you contribute, be you at the level of our local Shilling or be you at the level of the regional Sparrow. So, Sir, I am rather pleased to be associated with this Bill. Thank you.

SENATOR N. A. LYNCH: Mr. President, I want as a matter of importance to be associated with the likes of Bills like this that create, in my opinion, a whole different concept of how we look at the rights of Barbadians both at home and abroad and in the wider context as citizens of the world.

It goes without saying that apart from the talk about the IDB and all the requirements for what comes about now as a part of all the contracts and agreements that we are party to in the world, that we as Barbadians had been talking about major amendments to the existing Copyright Act even before this new Bill was laid.

It is important, Sir, because those who understand copyright in a very small sense, not in the realm of the legal minds, understand that copyright in itself is a very vital part of any society's infrastructure, that generally it is the foundation on which all of the transformation or the transfer of information is based and that being knowledge, ideas, understanding or even entertainment.

Now any serious malfunction of that intellectual property system is a significant erosion in itself of the rights upon which the whole society is based and it affects the whole society.

Now, I believe, Sir, that this legislation broadens and lengthens the whole reach in terms of protecting the rights of all Barbadians whether they be at home or abroad. I believe also, Sir, that it speaks to a higher ideal and that

is that the importance of the psychological well-being of our citizens is equally as important as the broader social and economic side. The fact that Barbadians believe that they are being protected and that they are not being displaced, I think is fundamental to any concept of looking at something as broad as a copyright Bill.

It also, I believe, Sir, in this day speaks to the concept of bringing out what is inside of every human being. I believe it was the Greek poet Aritus that spoke about the divine nature of every human being but how that divine character is manifested is really the important issue and I think Bills like this, the concept that your inner being can come out, can be defined in some broad way and that you can retain ownership of it or your family or whatever is fundamental, I believe, to the concepts of this Copyright Bill.

The fact too, Sir, that the common man, the pawn in this global chess game can also be protected, that it evens out people one against another, that it is not about riches or what you own that you can only buy but your ideas. That you can compete on a global stage with other people and that that can be protected is in itself very, very important.
3.00 p.m.

Of course, Sir, the whole concept of transfer of information, satellite technology, the whole concept of how easily things can be transferred, cable and whatever, also lend to another point. Obviously, before when the original Bill was tabled, it obviously did not speak to anything according to how easy it is now to get information across to other people. People can generally feel now that they are protected even outside of the boundaries of this 166 square miles.

The concept, Sir, however that I really want to put emphasis on is this whole aspect of piracy as it relates to intellectual property. I know for many years, Barbadians felt that they were out in the cold in terms of how they reacted to piracy. I believe, Sir, that there were many, many ways of reacting to it. People in Barbados felt that you had to get the police involved or get a criminal lien against someone in terms of the piracy of intellectual property. But there was always a concept that you could bring a civil action against someone. I think that needs to be made clear. We have a lot of laws in Barbados that protect us against a myriad of things, but the concept of the enforcement of the law is what I believe, is causing a problem in these areas. I want to see, that as it relates to the new Copyright Bill that we enforce a lot of the parts of this law and not just have them out there. It is alright to pass laws and have a million laws, but unless we enforce them, we are not going to be doing anything better for our citizens.

In this whole concept of how you protect, as one of the sections in neighbouring rights, which is the rights of broadcasters, producers and performers, in very recent times there has been the formation of BAMCI and that has caused all kinds of misunderstandings among Barbadian citizens, even the actual entertainers themselves about the rights and whether or not the concept of BAMCI should exist.

Regarding this Bill and the protection of those rights, organisations like BAMCI must exist if we are ever to properly police or enforce the law as it relates to this Copyright Bill. There is also, Sir, the concept of having the rights of authors, which is what we do in Barbados under the Performing Rights Society – PRS. In very recent times there has been a new agency CES which I believe is the Copyright Entertainment Services which is only looking after a few, five or six, artists.

Generally, concepts like CES need to be broadened so that we have, something like a local PRS. This body only becomes strong if it is associated, obviously, with other international pacts and international people. We know for a fact that only certain people are in the CES and they are only looking after four or five of the artists that we have in Barbados. I obviously cannot call their names. It is necessary for us to set up another agency somewhat like CES. Entertainers need to get together and have a concept where they can actually claim their monies in terms of the author and the composer here, at the national level.

There is very, very little that has trickled down to authors and composers over the years, coming out of the Performing Rights Society. That is a fact, because I believe just a couple of years ago, they had something like £200 000 and they were reporting in terms of what they got in PRS, but I understand that very little has trickled down to people. It is necessary therefore for us to examine and create a whole new earnings allocation scheme for people in Barbados so that the composers and the authors of works, particularly entertainment, can be protected at the local level.

I obviously am in support of this Bill. However, there is one section in this Bill which I have a little bit of difficulty with. This is section 79 that deals with the free use by charitable organisations of people's music. I think, Sir, that is an area that really needs to be looked at and rethought. The whole concept. I fear that there might be some high level of exploitation, as it relates to the definition of what a charitable organisation is.

For example, Sir, the organisation for which I work is obviously a non-profit organisation. I do not know if that is considered to be a charitable organisation. We put on a big gala every year and I was wondering, as we are

giving this money away, if we fit into the whole concept of using somebody's music and not being able to pay any types of royalties on it.

I think, Sir, it is an area that needs to be looked at a lot more closely than what appears in the original Bill. What happens to the artists receipts in that area while a non-profit organisation uses their work. We have many proliferations of these non-profit organisations in Barbados today and it is something that we need to look at a lot more closely.

In terms of now we deal with it in the future, it needs to more narrowly define what is a charitable organisation and cut out some of the people whom I believe, may have the occasion to abuse this particular piece of legislation. It is section 78, Sir, that deals with the whole concept of an organisation using this information.

With those words, Sir, I have absolutely no reservations of being associated with a Bill like this. It has been long in coming. It should have been here a long time ago, and no international organisation or otherwise should have had to make us or prompt us to even be a party to something like this. It is something that was needed in our society and I am very pleased to be associated with it.

I thank you.

SENATOR THE HON. R. R. FARLEY: Mr. President, I rise at the conclusion of the second reading of this Bill. I think we have had a very wide and varied discussion on this very important matter of intellectual property and more particularly, the copyright aspect of this particular legislation.

As I indicated at the beginning of this debate, the Government is proceeding to reform the entire range of intellectual property legislation and in view of intellectual property one speaks to three main pillars in terms of the legislative components. These relate to patents, trademarks and copyrights. This copyright aspect is the first of those reforms to come.

I am pleased that Honourable Senators contributing to the debate have recognised not only the importance of the steps that we are taking in allowing the creators of works to be able to benefit from those creations, but also in recognising the very wide applicability of the legislation and the need to ensure that we encourage and actively promote and facilitate the use of the legislation by those persons for whose benefit it was intended.

We, certainly from this side, will be taking active steps to work with the relevant interest groups, the musicians, the artists in their various endeavours, the computer software developers, the writers and so on to ensure that they make use of the legislation.

In fact, I am particularly pleased that we would be able to debate this legislation today with the benefit of at least, two authors in our midst. There might very well be more, but certainly, the two that I am very much aware of who have actually...

Asides.

3.10 p.m.

SENATOR THE HON. R. R. FARLEY: Certainly the two authors of substance – other persons are claiming to be authors who publish books – I am aware of, would be Senator Davis and Senator Symmonds. At least Senator Symmonds has 4 books. I know of one so far by Senator Davis and 2 are coming as well.

So this debate has been also informed by a level of practicality and persons who have been involved in publication. I know Senator Laurie has been involved in much research activity in sugar technology in particular and agriculture in general and he would be aware of the importance of intellectual property as it relates to the applied sciences and applied technology and that things like the Barbados black belly sheep, for example, which you know we are exporting all over the world and so on. We may very well have to look closely at the intellectual property legislation to see what particular and peculiar benefits or what features are peculiar to Barbados and what we can do to ensure that in 2015 we do not hear that the Barbados black belly sheep is indigenous to Timbuctoo. It may very well happen. You know it is said that there is a danger one day that school children might be taught that the steel pan is indigenous to Japan or England.

Very often we create these things, but then we do not go through some of the formalities of protecting our interests and that certainly we hope to be a thing of the past. It is thought that we would actively seek to promote this. We were actively discussing with the English groups and letting them know what they need to do.

The whole aspect of the matter which is of particular keen interest to me is the fact that the Bill has made provision for the ownership and the transfer of ownership. As Senator Thompson would have noted in her contribution, the fact that this has created another wealth stream where the estate of the individual can be enhanced makes the future particularly bright for the descendants of Barbadian artistes who previously found that they had nothing to look forward to on the call to the Great Beyond of the original owners of these works of art.

Sir, what is left really is for the relevant institutions and professionals involved, either directly or peripherally, in matters which are impacted by the Copyright Act, to ensure that they use their superior knowledge of this matter to help the artistes and the producers to get full benefits.

The unfortunate truth is that in many cases artistic genius does not often seem to reside in the same individuals as an interest or direct involvement in hard core business activity. Very often, therefore, those persons who are both inclined towards business are better able to exploit those persons with true artistic genius and we therefore need to ensure and to encourage our professionals, our attorneys, our accountants, our business development organisations.

I certainly will be going back to let the Barbados Investment and Development Corporation know that this is an area that they have to actively promote with the small businesses with whom they work, the entertainers, the authors and the craftsmen to ensure that persons all over Barbados are able to benefit from this supervision.

I would also want to urge those persons involved in the professions I have called to ensure that if they do not already possess the expert knowledge that they develop it.

This whole matter of intellectual property is an area of law in which there is significant potential. It is also one of the areas in which there is a significant lack of expertise as it currently stands. I indicated in my opening presentation the problems that our local beer and pepper sauce producers and some other persons have had in having their products copied and sold overseas as the genuine thing. Also, there are a number of persons who proceed to sell products overseas or to do business overseas without recognising that the first step would be either to register your trademarks, secure your patents or do your appropriate copywriting in the destinations that you are proposing to enter so that if your products take off there is no opportunity to challenge it.

You will find that small business is for small business and entrepreneurs are for entrepreneurs. The entrepreneurs in the United States, for example, tend to be more in tune and aware of the intellectual property legislation which is applicable to their invention.

From time to time, you buy a product and you see listed on the product United States - Patent Pending or Patent Pending in the United States, France, U.K. or whatever. You go through a number of research papers, you go through international libraries and you see indications of applications for patents and copyrights. They recognise the importance of doing that.

All of the universities that have inventions, the individual scientists always know that the first step is to secure ownership and to ensure that everyone knows that you are the owner of that creation so that when the stage of commercialisation comes you would be able to obtain the benefits.

I will certainly be urging the Barbados Investment and Development Corporation that falls under my responsibility that as part of its mandate for the development of the small business sector and the providing of professional advisory services to them that we will be working closely with them to ensure that they secure their ownership rights and their rights to exploit their intellectual property.

Mr. President, in conclusion, I want to urge all those professionals out there, particularly the attorneys, but also the accountants and the promoters of business to become themselves familiar with this. I want to urge the musicians, the artistes and other talented persons to recognise that talent alone in today's world will not guarantee that you will be financially successful, that one needs to augment talent with appropriate protection of your interests, avoidance of piracy, avoidance of having your live performances taken by unauthorised persons and subsequently sold, avoidance of having your creations copied and sold in distant markets. And that there are mechanisms which already exist both in Barbados law as well as in international law and that if one is going to embark on any adventure as creative and as artistic as it might be that one needs to consider not only that they are adding to the wealth of the world by the addition of something beautiful but that you must also seek to add to your wealth and the wealth of your estate, your family, your community and ultimately to the benefit of Barbados.

Mr. President, I submit that this Copyright Bill will assist in doing all of those truly laudable things.

I beg to move that this Bill be now read a second time.

On the motion of SENATOR THE HON. R. R. FARLEY the Senate resolved itself into Committee on the Bill, SENATOR THE HON. Miss O. P. SYMMONDS in the Chair.

COMMITTEE

MADAM CHAIRMAN: The Senate is in Committee.

Clauses 1 - 3 were called and passed.
3.20 p.m.

Clauses 3 and 4 were called and passed.

Part I, Clauses 5 - 13 were called and passed.

Part II, Clauses 14 - 21 were called and passed.

Part III, Clauses 22 - 28 were called and passed.

Part IV, Clauses 29 - 49 were called and passed.

Part V, Clauses 50 – 84 were called and passed.

Part VI, Clauses 85 – 100 were called and passed.

Part VII, Clauses 101 – 104 were called and passed.

Part VIII, Clauses 105 – 134 were called and passed.

Part IX, Clauses 135 – 152 were called and passed.

On the motion of SENATOR THE HON. R. R. FARLEY, Mr. 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 separate motions of SENATOR THE HON. R. R. FARLEY the Bill was read a third time and passed and cited as the Copyright Act, 1998.

ORDER NO. 2 – THE VALUE ADDED TAX (AMENDMENT) BILL, 1998

SENATOR THE HON. R. R. FARLEY: Mr. President, I rise to move the second reading of this Bill to amend the Value Added Tax Act. This Bill, Sir, is intended to give effect to a range of matters which were addressed by the Prime Minister and Minister of Finance in his Budgetary Proposals in respect of the VAT which were addressed in the Budget of September 29, 1997. The Bill basically makes the necessary adjustments along with a Value Added Tax Order which is to be made pursuant to the Bill.

Now, Sir, the matters which were addressed by that Budget of 1997 which formed the basis of amendments to the Bill as well as the Value Added Tax Order, 1998, were addressing the issues in relation to the treatment of books for education, complimentary rooms, a basket of food items, transportation, charities, resolution of a matter in relation to the Pommarine Hotel, used cars imported by Barbadian diplomats serving abroad, goods on consignment, registration of applicants, the Minimus Rule, revision of one section of the Act and dealing with the issue of failing to display VAT prices. I will, of course, deal with those items specifically as they relate to the Bill.

This matter, Sir, of the Value Added Tax, its performance and application, has been of significant interest since the tax was introduced. This Value Added Tax has been the most misunderstood, misrepresented and maligned tax, perhaps, in the history of taxation in Barbados, I should add.

I think most comments which have been made on the Act and on the performance have been informed by a spectacular level of unawareness of the facts of the matter both in relation to the principles of the VAT and how it

functions in an economy, as well as in relation to the specific provisions in the case of the Value Added Tax Act in Barbados.

We had a number of figures floating around recently, for example, about the performance of the VAT. We have also had some suggestions about what is to be done with what is now called VAT money. I do not know if that is a new currency that has emerged but they now talk about VAT money. One would begin to think that when people start saying what should be done with this VAT money that there is only one item of tax which is collected and that therefore if one performs well in that particular sub item of tax that one is awash with money and therefore what and what one should do.

Let us start with the facts, Sir, because the facts in matters in relation to taxation usually will illuminate a situation in much the same way how the dawn serves to give some illumination and illuminates the darkness of the night which had preceded it. In relation to the performance of the Value Added Tax. The first point of illumination that I would want to provide and hopefully that illumination will eliminate some of the approaches that have been taken.

3.30 p.m.

The Value Added Tax was introduced to replace eleven taxes. It did not replace Excise Tax. The Excise Tax was always there. Adjustments were made to the Excise Tax for particular products. The projections made for the VAT were always for VAT and any comparisons that were to be made, were to be made between the VAT collections and the collections of the eleven taxes.

What has emerged, however, is that when persons speak now of this VAT money, they are combining VAT and Excise Tax. And it gets worse, you would not believe that it gets worse, Mr. President. Then they proceed to compare the combination of VAT and Excise Tax with what the VAT projections were to be alone and they come up with these spectacular figures. Remember that VAT and Excise Tax are not one and the same. They were never projected to be, they were never intertwined. Yet, when we look and we hear the commentaries, people are saying that the VAT and the Excise Tax will yield these figures – about \$500 million here and there – combined. Then they compare that to the projections for the VAT. What were those projections, Sir?

Asides.

SENATOR THE HON. R. R. FARLEY: If we go back to the Budget presentation of 1997. This is already a document of the Senate. You will recall, Sir, that the revised Estimates of the VAT on that date, September 29, 1997 were \$437 million. As a result of that optimistic

projection the Minister of Finance was able to grant some easement in the tax to the tune of \$45 million, which would have resulted in a revised projection of \$392 million.

The Excise Taxes were going on trend. Projection was \$171 million.

Asides.

SENATOR THE HON. R. R. FARLEY: There are two separate taxes. I have here revised projections to the end of the current financial year. The revised projection for Value Added Tax is for collection of \$445 million. The financial year being April 1st to March 31st. So projection for 1997/1998 were \$445 million. For the Excise Tax, which is a separate tax, projection was \$170 million.

I should add that Members have to be careful as well when they are talking taxation matters, especially in the context of Barbados. That a year is not always a year. As contradictory as that sounds, it is very important. At the end of a calendar year, the approach that the average person takes is to review what they do; they review their lives at the end of a calendar year.

In January, one will probably ask, how did the economy perform in 1997, what taxes were collected, what was the expenditure like and so on? The Central Bank in their first-quarter Press Conference for example, would discuss outturn figures for a calendar year. However, Government's financial year is April 1st in one year to March 31st in another year. The quarter sometimes do not always balance out. So the first-quarter 1996 may not be a mirror image of the first-quarter 1997 but both measurements are valid, but they are only valid for as much as they are good for.

Basically in Economics – in Economics 101, you are reminded that one has to compare oranges with oranges and not apples with oranges and that if you want to compare those items, you have to find some element of commonality. Reduce the oranges to apples or the apples to oranges and then you can compare, but you cannot compare them as they are. So that, for the Government financial year, that is what we are projecting. How does that compare with the original projections? The original projections were for Value Added Tax of some \$329 million projections at the beginning of the financial year.

Remember I quoted a figure which said that in September based on the few months we gave a revised estimate of \$392 million. We have now further revised that to \$445 million. The Excise Tax, however, was projected at \$171 million and we are projecting that to be \$170 million. So we are expecting the Excise Tax to fall by less than

\$1 million in terms of projections versus what we expect the outturn to be and we are projecting the Value Added Tax to yield \$115 million more than projected. That is basically what we are projecting so I really do not know where some of these spectacular figures have arrived from. Again, this is an element of tax within an overall system.

You will also be interested to know that current expenditure is projected to increase by some \$107 million.

Mr. President, the basic point that I am making is that let us not be carried away by the performance of this single tax as if that tax were the be all and the end all in the matter. But I give another dimension. The robust performance of revenue in any given financial year must be analysed to determine what is the source of that robustness of performance and the components would be the rate and the other component would be the base on which the rates apply.

3.40 p.m.

In an economic system one does not want to tinker with a rate. A rate has to be carefully set to serve you in good years as well as in bad years. When you start to tinker with the rates it makes it difficult for people to plan, people begin to get jumpy because although the rate might work for you one year if it falls you might expect that it will go through the roof at another point in time. Stability is an important component of taxation. People must be able to plan and that is fundamental but the reality is that taxes which are based on trade ... Taxes on goods and services are subject to the most gross variation from time to time. Taxes on income are relatively stable once you do not have major layoffs. If you look at the figures in the breakdown in the Estimates, in every Estimates document there is a section on estimated revenue and it goes back over the previous 10 years for example and is broken down by economic classification, as well as by collection agencies, and type of tax, and the taxes on goods and services are always the ones subject to fluctuation, particularly taxes on international trade.

One of the bases on which the projections are made for things like VAT and import duties and so on is the projection in the growth of GDP and the projection in the growth of retained imports. One of the bases on which the projection for \$329 million was made in the first place for example would have been a GDP growth of 3.5% which was projected at the time. That turned out to be 4.3%. And growth in retained imports of 7.3% turned out to be doubled, increased by 100%. The growth in retained imports was 14.4% so you basically have a larger base.

Now there is no guarantee that that trend in the growth of retained imports will be continued into next year because part of the phenomenon that one has to watch

is whether there was some pent-up demand. People were restocking inventories as a result of the planned reduction in inventories prior to the introduction of the Value Added Tax. Similarly the impact of the tax on sectors of the economy will vary between 1997 and 1998.

One of Barbados' leading conglomerates which reported in its just released annual report that it got clobbered during 1997 mainly as a basis of the Value Added Tax will not report that next year. In fact they are projecting that next financial year 1998 will be one of the best years that they will have. In fact their first-quarter profits for 1998 are on trend. You have the first 1½ months but on trend their first-quarter for 1998 will exceed their own projections for the first-quarter.

They noted that the failure to attain profit objectives related to the fact that everybody knew about, as part of the implementation, that these businesses were required to absorb the cost for the goods in stock, plus they had to bring some other matters to book. They had to bring some investments in their hotel plant to book. But basically the experience of the fact, the matter of having goods in stock that taxes were already paid for, having to pay VAT on them and the competitive forces not allowing them to be able to increase their prices to recover that cost, meant that in their two major retail subsidiaries which are among two of the larger subsidiaries, if they have inventory then they end up having the largest set of inventories. But that would not be repeated in 1998. So I trust that no one will rise today to suggest that VAT has resulted in the demise of business based on this report because the report goes on to say otherwise.

So, Sir, this tax has been implemented, the performance will vary from year to year and we should not get carried away with wide and wild expectations based on the robust performance of the tax in a year. As a matter of fact we are fortunate that we were able to introduce a new tax in a good financial year, in a year when the economy was performing well because it meant that the transition arrangements resulted in a surplus rather than a deficit. Because remember taxation at the end of the day is not just a numbers game, taxation is the means by which the Government of the day is able to provide the goods and services that the public need.

Let us not fool ourselves. There are many persons out there who would not be able to partake in the gains of the society were it not for the transfer mechanism by way of taxation. So that our social commitment, our social contract without people to provide free education from primary to tertiary level, we reversed the decision of the Democratic Labour Party to charge fees on university education for example, that comes at a cost.

There is a clear understanding amongst the people and the Government. The people of Barbados generally want the continuation of free health care in Barbados. We have a unique system in which there is a unique mix of free services and paid services. Those persons who want to can opt to go into private care. You can go and see your private doctor and pay him or you can go to a polyclinic and pay nothing. You can go to the Q.E.H. or you can go to Bayview for elective operations. At the end of the day the Q.E.H. remains the only acute care facility. Nevertheless proceeds from the Value Added Tax and other taxes are the means by which services are maintained. So when we talk about taxes and so on, let us remember that there are people at the end of those numbers and that the introduction of the Value Added Tax was not a new tax in addition to the taxes you had before and that this is new money, you are replacing some dysfunctional tax collections systems with a tax with a broader base, a lower rate to be applied to many areas.

So, Sir, I want to set this amendment to the VAT in that context and also I have used the opportunity to provide an update to Honourable Members on where we are at with respect to the VAT.

Now, what about these amendments, Mr. President? The amendments as they are conceived relate to a number of areas and I will probably start with the big one first. The big one of course related to the treatment of a number of food items.
3.50 p.m.

The Minister of Finance in his Budget of September 29, 1997 in reviewing the performance of the grant, recognised that there was room for adjustment and he zero-rated a wide range of food items to a tune of some \$45 million.

There were 33 categories of items which were zero items. It is interesting that this 33 categories of items which were zero-rated, represented the vast majority of food items which are consumed by the average man or woman in the street.

Sir, those 33 categories of items based on the customs classification, translate into 2 000 items on the supermarkets shelves, when one applies all of the types of products, the brands, sizes and so on, so this is no means concession. This is a whole range of products.

What this meant was that there was an immediate reduction in the price of a whole range of commodities. You will recall, Sir, and even if you do not recall, I would like to help you to remember that we were monitoring the prices of these items before the introduction of the VAT and ever since. It will be interesting to note that when

we look at a basket of food items which coincides with the vast majority of those items which have been zero-rated, for example, Sir, fresh milk, biscuits, cheese, corned beef, sugar, flour, Milo, macaroni, pork, lamb, chicken, tuna, minced meat, eggs, sardines, sausages, black-eye peas, pigeon peas, pigtails, and so on...

Asides.

SENATOR THE HON. R. R. FARLEY: ...when we examined those items and looked at the actual prices faced by the consumer on a day by day basis, we observed a few things I want to mention, Sir.

The 43 food items that we were monitoring, the typical things that you and I, Sir, I do not know about the other Senators, but I am sure that an ordinary man like you and I, Sir, would put into our basket, the average cost of the basket of 43 food items, Sir, in December 1996, was \$205.67. After the adjustments which were made by the removal of the VAT on those food items, in November 1997, it was \$201.42. So, those baskets of items actually cost less in November 1997, than they did in December 1996 prior to the VAT.

We recognise that the cost of the items increased after the implementation of the VAT. We are not adamant people. We would rather be correct than consistent.

Asides.

SENATOR THE HON. R. R. FARLEY: I will give you the prices of the items as they changed because we monitored right through. So, in December 1996 it was \$205.67. In September 1997, just before he made the changes it was \$222.95 and then the reduction afterwards was \$201.42.

What we have been basically monitoring, Sir, is the change in price of those items which we have zero-rated to ensure that the benefit has been passed on to the consumer. When we looked at a number of products, Sir, the range of reduction in prices has been between 12 and 32 percent in terms of the reduction.

Lamb went down by 15.21 percent. Minced meat by 22 percent, tuna by 20, eggs by 15, sardines by 23, black-eye peas by 28, canned soup by 16 and so on. What we have also noticed, Sir, and this is perhaps what confuses the issue somewhat, that everyone sees prices in relation to what they pay at the check out and this varies depending on where you shop.

I have given you, Mr. President, an example of some of the average prices for these commodities. I would want to

also give you examples of what were some of the lowest prices and the highest prices for these commodities. It is a huge range, depending upon where you shop. So that the lowest price for these items in 1996 for example, Sir, was \$186.71 for that same basket that had an average charge of \$205.67. In November 1997, the lowest cost of that basket was \$177.70 compared to the average price of \$201.42. In terms of the highest price in December 1996 for that same basket you could also have paid \$234.41 and at November 1997 for that basket in terms of the highest price, you could have paid \$231.81.

Again, Mr. President, in relation to the VAT and the impact on prices, one would have a situation in which the prices which you will face will depend on where you shop. But in the aggregate, the removal of the VAT on those items of food has resulted in reduction in prices and significant savings to consumers on a very wide range of food items, basically, on all of the regular food items that one would have purchased. So that was a major aspect of the proposals.

The other aspect of the proposal that is addressed also, is the VAT Order. The Order basically is the mechanism by which the schedule is amended. So that to give effect to the change in the tax on food, the VAT Order which is the first schedule of the VAT Act of 1996 would be amended by including those range of items. Similarly the VAT Order would be amended by deleting paragraph 11 and substituting a new paragraph in respect to the treatment of books.

You will recall, Mr. President, that when the VAT was introduced in January 1997, a provision was made for the zero rating of books for primary, secondary and tertiary institutions and it depended on having an approved list of books submitted by the Ministry of Education. That proved to be difficult and cumbersome to administer and it was decided that generally speaking books of an educational and scientific nature would be zero rated. Sir, that would not include some of the novels and so on, but the interpretation is fairly broad and handsome. So whether you are in a secondary institution or out of one, whether you are "an official student" or not one but, generally, where you buy books of an educational or scientific nature, they are zero rated. So the administration of this is made more simple. 4.00 p.m.

The other matter is the treatment of complimentary rooms. Strong representation has been made by the hospitality sector that the provision of complimentary rooms are a major opponent of the marketing of Barbados as a tourism destination and they form part of the typical package for promotional purposes. Even though a room was being provided free to the particular guests, the hotel had to pay the VAT on what would be the normal room

rate and that basically proved to be a source of cost because not only are you foregoing revenue to give the room free but then you actually have to shell out some money to pay for the VAT and whatever the standard room rate would have been. So the complimentary room issue for promotional purposes has been resolved.

An anomaly which was not intended has emerged in respect of the provision of transport services. As you will recall, Mr. President, transport services are generally exempt. However, the way the Act read, it would appear to have suggested that provision of tours and similar non-public transportation, non-commuter transportation would have attracted VAT. That was not intended. The Act has been amended in such a way as to make it quite clear that persons providing full coach service and limousine service and so on are also in the exempt category.

Charities. There has been an amendment there as well to exempt registered charities and these are charities registered under the provisions of the Charities Act not just do-gooder organisations. You have to be registered as a charity for the purposes of the Act. Charities would also be able to have their imports exempted from the Value Added Tax.

An issue arose as well with the Pommarine Hotel which as you know is really an educational and training institution which is operated by the Barbados Community College Hospitality Institute and is a 20-room hotel which basically provides a training environment for the students. That issue could not be resolved given the way the Act was written and we have decided to add the Pommarine Hotel or services provided by the Pommarine Hotel into the exempt group. They are exempted from Value Added Tax and basically it would mean that they would not charge Value Added Tax but it would absorb the VAT into their costs of operation.

The Value Added Tax Act as it has been drafted as well did not make particular provision for the zero-rating of cars of Barbadian diplomats serving abroad. It has long been a part of the normal course of doing business not to impose additional hardships on persons who were serving Barbados abroad and who were importing their personal property used, including their car. As it stood those persons would have had to import their vehicles, pay the VAT and then appeal to the VAT Tribunal for reimbursement. And I am sure the average civil servant serving abroad as a diplomat might not necessarily have that disposable income to pay in Value Added Tax on their car and then wait to go through the process of getting it back. They are entitled to get it back in any case. So we thought it more fair, having recognised that problem, to amend the appropriate legislation to take account of that.

Goods on consignment. This matter had also been one which was not taken care of well when the original Act was written up and there has basically begun to cut into an important source of business, an important opportunity for small manufacturers and craft people. Many of them only get their chance to get their items sold by getting into consignment arrangements with stores in Bridgetown and elsewhere and what it does is that some of these items are items for which there are no guarantees as to whether they will move fast or slow. The stores are not necessarily inclined to put out hard cash on them but they do not mind giving them some shop space and they would take their profit when the item is sold.

It is an arrangement that has worked very well in the past. However, under the general writing of the Value Added Tax Act the sale was deemed to have been made once the goods exchanged hands and therefore again, the store was liable to pay the Value Added Tax once it received the goods on consignment and therefore that became a disincentive to carrying these goods.

In order to ensure that we do not stand in the way of the crafts people and the small manufacturers in this regard we have made the necessary adjustment to take into account also goods on consignment where the VAT will be payable when the consigned goods are actually sold as opposed to having to pay because it passed from the crafts person to the retailer who would then have to deal with that subsequently.

A very important aspect of amendment was the treatment of businesses which are about to be established. Again, the way that the Value Added Tax Act was written it basically indicated that one had to be already doing business in order to register. But, Mr. President, we all know that one of the greatest periods of expenditure of a business is the period before the first sale and in certain types of businesses you will have to expend anything from hundreds of thousands or millions of dollars before you are able to make that first sale.

Particularly for small business people, that expenditure of \$10 000 or \$25 000 up front for your equipment, for your leasehold improvement, for your raw material having to put those in place before you can open your doors to the public and say you are a business and having to pay VAT on that which you have to absorb, works hardship.

In recognising that, we have ensured that there is no doubt. At the end of the day it really was left to the discretion of the Comptroller as to whether they should register you or not. This question is a funny thing. It could go for you or against you. We do not want to leave the fortunes of business start-up to any discretionary element. We have basically amended the Act to make provision

for the registration of entities which intend to go into business and to satisfy the person at the Registry that you are about to do that with the provision of course that if you do not actually then go into business as you had proposed... For example, you say I have started a clothing store and I am going to open this clothing store in Cave Shepherd in April and I have to get the full approval or you are hiring a big construction firm that makes over \$50 000. So you are paying VAT on your leasehold improvements, you are buying new raw materials, bolts of cloth and you are going to pay VAT on those. You will now be able before you actually do business because the way the Act read it seemed as if you would have had to prove that you have already done \$60 000 of business or at least \$5 000 a month and therefore you would do \$60 000 for the year to be registered.

We are saying now that you can now register even before you start to sell and what the VAT office would do is to monitor you. So therefore if you are only pulling a fast one and you did not in fact go into business then you will be liable to paying the VAT which you would have been refunded. There is no opportunity here for anyone to default the Treasury but we are making it easy for those persons who are actually in the process of getting themselves established not to have to spend more money than is necessary by tying up money in the Value Added Tax and that amendment is there in the Bill today.
4.10 p.m.

The matter of what is called the Minimus Rule had been restricted to financial services. It basically had said that if less than 2% of your taxable supplies, basically the business you were doing, related to financial services, then you treat it as if none of that exempt supply had actually been engaged in. We felt there was no need to limit it to financial services alone. If less than 2% of your overall taxable supplies are in another exempt service, then you can treat it as if it did not occur for the purposes of VAT. So you will be able to reclaim the VAT on expenditures in those areas basically if you are in a taxable supply but less than 2% relates to any of these areas.

The one area which the Bill proposed to delete a previous provision is section 60 where the requirement for implementation of the decisions of the VAT Tribunal was subject to affirmative resolution. What that basically meant was that where the Value Added Tax Tribunal agreed that the Shotokan Karate Club, for example, was fit, proper and eligible for a refund on VAT paid on some particular project, that in order to implement that decision a resolution had to be prepared for Parliament and then you go through this long process. It was felt that really would have delayed the process too much. It would have bogged down the whole matter in bureaucracy. So that section is deleted so that all that is required now for the implementation of the decisions

of the VAT Tribunal which, as you know, deals with any appeals against decisions, would be for the matter to be gazetted through publication in the *Official Gazette*.

The last amendment to the Value Added Tax Act deals with some penalties in relation to the failure to display VAT inclusive prices. You know that is an area where there had been some issues raised. You know that you can have the plain price. You can have the VAT but you also need to have another line showing what the combined price happens to be or you can just have the VAT inclusive price. The only option there is to have an additional break-out but you cannot place a price and then have the VAT added at the cash register. In terms of the display you can just go with the plain VAT inclusive price or you can have an additional break-up to show what is your price and what the Government's piece of the action happens to be.

There is no flexibility on the matter of having the VAT included in what you purport to be the selling price. The penalties for not taking that approach are spelt out. I believe there are some \$5 000 up front and \$2 500 a day for every day beyond the failure to comply with the directions of the Comptroller of Customs in that particular regard.

Those, basically, Sir, are the amendments and refinements which we are proposing to the Value Added Tax Act at this time.

Mr. President, in closing the introduction of the second reading of this Bill, I would just want to remind Senators that the Value Added Tax is part of an overall reform of the taxation system. The Value Added Tax has replaced some 11 taxes applied in various areas. Its intention is to have a broad-based tax with a fairly stable rate and to spread the burden of taxation across but its performance must be seen in the context of the performance of other elements of taxation.

It must be seen in the context of what rebates would have been given both at its introduction at the beginning of 1997 and subsequently because I would want to remind you, Mr. President, that in addition to the \$45 million adjustment in the Value Added Tax that was made in September 1997, that there were also adjustments in other taxes as well.

You will recall, Sir, that there was a reduction in Income Taxes by way of the increase in the amount of tax free allowance from \$13 000 to \$15 000. The full benefit of that will be felt coming in this financial year. There was also a reduction of some \$17 million in Income Taxes in September 1997. So that the overall adjustment given on September 25, 1997 was some \$62 million. The Value

Added Tax is providing the opportunity for adjustments in the rates of taxes in several other areas so we must be careful not to attempt to eat our cake and have it too.

The Value Added Tax is proposed to be really the major plank of tax reform and if we are able to have the tax adjusted well to ensure its adequate performance then we will be able to give the appropriate ease in several areas and I have quoted some \$62 million in taxation already, with \$17 million in Income Tax alone.

The impact of that Income Tax is at the point where it needs to be felt first and most, that is, on the lowest paid workers. We have not touched the top rate but in September 1997, we were able to ensure that persons who were earning the lower wages, an increasing number of persons were not paying taxes at all. I think persons working for around \$1 300 a month, just a rough calculation, do not pay Income Tax at all. If the top rate alone had been touched, only persons up there would have benefitted.

It is true that persons who are getting the top rate will benefit because it is the first \$15 000 tax free but the important point is that in this case you are letting both top and bottom benefit. If you had just touched the top rate then only one set would benefit so it is important that persons who are earning the lower wages are exempt from Income Tax. There is no Income Tax whatsoever and that is an important and progressive step and certainly one which is worthy of even further consideration.

This is not to mention, of course, the fact that the robust performance in a tax such as this has allowed things like the Poverty Alleviation Programme to get several shots in the arm. Remember, we have provided \$10 million out of the Consolidated Fund to start that programme in 1997 but if it is not to be a one-off programme, then further sums from the Consolidated Fund will be required. The bulk of the fund for poverty alleviation have to come, of course, over the long run from the Consolidated Fund and the Consolidated Fund will, by and large, get its money from VAT and similar taxes.

4.20 p.m.

So we should not get carried away by the VAT as a single tax. We have to look at overall Government revenue and overall Government expenditure. We also have to continue to manage the deficit and where, in a given year we might have projected it be 1.5% or 2% or 2.5%, we have to ask ourselves, if we get additional revenue, do we simply spend it whilst keeping the deficit, do we do our additional financing by borrowing or do we use the 'better-than-projected' revenue to eliminate deficit?

Those are basic policy questions that we have to ask but we cannot see Government's revenue collection as an isolated element. It must be seen in the context of the overall balance in the economy and the overall programme which is developed.

Mr. President, I commend these amendments to the Value Added Tax Bill to the Honourable Senate and also draw Your Honour's attention to the Value Added Tax Order which is the mechanism by which some of the other items which were raised in the Budgetary Proposals of the Right Honourable Prime Minister and Minister of Finance in September 1997 and I beg to move, Sir, that this Bill be now read a second time.

The question was put to the Senate and agreed to.

SENATOR Mrs. A. P. THOMPSON: Mr. President, I sat and I listened here this evening to a class in the rudiments of economics and I heard such terms used as 'differentiation between the Government's financial year and the calendar year'. Then I heard a statement which startled me a bit. The statement was "spectacular level of awareness". Then I heard another statement which made me realise that Senator Farley was still with us in the real world when he said that people are at the end of those numbers. It is at that point that I would like to begin.

"People are at the end of those numbers" – At the end of the day, Sir, whenever we debate this issue of the Value Added Tax system in Barbados, whether we have performed according to projections, over or under performed, whether we are going to bring in revenues or whatever areas, at the end of the day, people are at the end of those numbers.

The point that I want to make is this. I do not think that I have to stand here and talk all evening but if there is one point that I must make is that in its Manifesto, the Barbados Labour Party, in attempting to address the Value Added Tax at that time, stated:

"We will examine the planned introduction of the Value Added Tax to ensure that any such system meets the needs of Barbados in reducing the level of indirect taxation and its cost of collection. Indirect tax which is the consumption tax and stamp duty will be reduced or eliminated so that the total tax take is decreased."

This evening, I heard Senator Farley say that whenever we churn these figures, whether we deal in a financial calendar year or whatever year, at the end of the day Government will take in \$115 million more in Value Added Tax from the consumers of Barbados.

As he spoke of this \$115 million more, I wondered if he was talking about pennies. He was so relaxed, so reclined, so at ease that I had to remind myself that as he spoke of those \$115 million more which Government would take in, that people were at the end of those numbers. At the end of the day when the Government has collected \$115 million more in VAT, a number of persons out there in Barbados have made sacrifices, have suffered as a result.

Asides.

SENATOR Mrs. A. P. THOMPSON: I was very glad that Senator Farley brought in the direct tax system because we have to address that briefly.

The Value Added Tax system not only touches on food, because we talk about the basket of food items. I, as a Barbadian, with not the largest disposal income, welcomed the introduction of a basket of food items and for the sake of many Barbadians at the low income level, I welcomed the introduction of that basket of food items. But we must not fool ourselves. Value Added Tax is paid not only on food, it is also paid on services. There are a number of persons in this country today who are experiencing great difficulty paying their electricity bill, paying their telephone bills. And in their attempts to purchase some kind of property in Barbados, they have to pay the Value Added Tax to the lawyers as they try to purchase some little piece of property in this country and they even have to pay it on turnouts to the undertaker.

From birth to the grave, you have to pay the Value Added Tax. These are things that we must deal with. I believe that whether we boast about how successful it is or not, we must recognise that it is creating a serious burden still, at a particular level in our society. It is at that very low level in our society that people are feeling the brunt of this tax.

After all, we do not need to eat only. We need to go to the hairdresser and make ourselves fresh from time to time and to go to the barber and on those services we have to pay the Value Added Tax.

I do not like us to discuss VAT on people as though once you can get a little food and you are comfortable, that that is all you want. Because, in addition to a bellyfull, people like to carry themselves well regardless of whether they are poor or whether they have the greatest means. People are at the end of these numbers and I believe we need to look at this closely.

I think the Government needs to look at a further adjustment to this Value Added Tax. I know that I have heard of GDP and retained imports/exports, we have gauged it on this and this year we have this performance and the

next year we have that performance. But if as you are saying that we are increasing employment in this country, people are still spending, so we know that money is being spent and people are consuming and if there is increased employment, then we are going to increase our collection of taxes. So, as a result to say to me that it might not perform this way next year and that way next year, if you are reporting these significant growths in employment in Barbados I have difficulty accepting that.

4.30 p.m.

I have to say that the Value Added Tax is contributing to retaining in Barbados a level of poverty that we say we are trying to move away from because when you have reduced people's purchasing power you are also affecting the quality of their lives and we have to accept that.

Now I do not stand here and talk things because I have a mouth or because I want to sound good, because I recognise that the Value Added Tax would have been implemented under a Democratic Labour Party Administration. One of my strengths is my honesty, so therefore I have no difficulty with those things. But we have to recognise that in these taxes from time to time we must make the necessary adjustments, when we recognise that they can be a burden in certain areas and the adjustment made in September last year is not enough. I am calling on the Government of Barbados to look at this tax and to make a further adjustment in areas which would directly impact on that group of people in our society who are still barely making a living.

Mr. President, as I sat and I listened to the Leader of Government Business it is funny but I think sometimes we really have to differentiate between when we are wearing our technocratic hat, bureaucratic hat, and when we are wearing our political hat.

Mr. PRESIDENT: Order, please.

SENATOR Mrs. A. P. THOMPSON: If today I were a resident of Parish Land, Christ Church I would have been a little concerned about the very, very cool and relaxed way in which a representative of the future has sought to...

Mr. President, it is astonishing how simple we can be at times. For so long in Barbados we have heard it said, and not only Barbados but worldwide that once there is life there is hope and it is within that context, Sir, that I used the term a representative of the future. So I really do not understand what all the stomping of the desk is about, Sir.

Mr. President, as we look here at what is before us, as I said I really do not have a whole lot to say. I came here to make a case for the people of Barbados who are

still very concerned about the burden of the Value Added Tax system, who are still very concerned about their inability to provide certain basic items which they need for themselves. And as a woman in Barbados in which 44% of our households are headed by women and we know that women, children and the retired persons in this community feel the brunt of this Value Added Tax the most. They do, because this tax is a consumption tax. I heard the Leader of Government Business talk about businesses and all the increased activity in businesses. And one of the things I hope and pray is that we would be able to see this increased activity in increased employment, because as we speak this very day from this Parliament, roaming these streets are a number of young unemployed people who are seeking to have themselves recognised and they are seeking to do so by resorting to very painful means to our citizens. We must not fool ourselves, as we boast on this increased activity for business I hope that we can come back and report that is spreading around in our economy to the extent that a number of these young unemployed people who are at the lower levels of the society, that they are benefitting because, it is these disparities in our society which continue to create a number of headaches for us.

I really cannot jump and shout and prance about some things. It is very painful for me as I look around and see what is happening to our young people. I am not one to start by looking for a pill, I would not look for an anodyne, I think we should get to the source of these problems and one of the sources of these problems in Barbados is unemployment among our young people and we need to address that.

I do not know why, as he talked about the increase in our revenue or the revenues collected from the indirect tax system did Senator Farley refer to the reduction in the direct tax by the \$17 million that he stated was given back in tax allowances deductible to Barbadians because since that budget we have heard that unemployment has gone down by a significant percentage. Now, if unemployment has gone down by that percentage then employment has been created by that percentage and if therefore we have this increased number of persons working, unless these individuals are all working in categories which pay them below \$290.00 a week they are all contributing to the direct tax system of this country. Unless they are earning below \$288.46 weekly which turns out to be \$15 000 a year then these individuals are contributing to the direct tax system in this country which means therefore that in the same way that Senator Farley cautioned us that we must take all other things into account as we discuss the Value Added Tax system I think we should do likewise for the direct system.

So, Mr. President, I do not think this amendment was intended to be a controversial piece at all, but at the same time there are some things which must be said and I think I would be failing in my duty were I not to appeal to this

Government to look at the Value Added Tax again and see in which areas it can make further adjustments in order that those individuals in those lower levels of this society can get some easement, as they say, can get a bit of relief that they can enjoy more than a basic meal, that they can enjoy a bit more improvement in their quality of life. I thank you.

SUSPENSION

SENATOR THE HON. R. R. FARLEY: Mr. President, I beg to move that this Sitting be suspended until 5.00 p.m.

The question was put to the Senate and agreed to and Mr. PRESIDENT, suspended the Sitting accordingly.
4.40 p.m.

RESUMPTION

Mr. PRESIDENT: The Sitting is resumed. Senator Laurie.

SENATOR C. K. LAURIE: Thank you, Mr. President. Just a few comments. I was very interested in this range of prices that Senator Farley mentioned. There is a weekly publication basis which looks at the prices of local food. It has always shocked me that they show the low and the high and an average and the difference can be as high as 50 percent, meaning that there is a high variability in prices. That is partially explained by factor of quality, because within foods, there are carrots and carrots, some are tiny and some are big and so on. So there will be some range, but there is too large a price range at present.

I think that it will be in the consumers interest that the Minister of Consumer Affairs should publish where these prices come from and that would make very interesting reading. It would be a great service to the consumer.

The question on VAT on food, we did not get the actual figures of what was the VAT on food and how that affected the VAT income. We got the over-all figure.

I remember in the original debate on the VAT, I mentioned that I was very much against VAT on food and I said this estimate by Government of \$30 million of VAT that would be collected on food was much too low and it would be in the range of \$60 million. I was told I was talking nonsense. I could not know what the experts had come up with. The experts had said that it would be \$30 million.

Obviously, if we have only given back some in this basket and that some has cost us \$45 million, it is clear that it was a lot more than \$30 million collected. It must have been in the \$60 million range which I had said.

I would just like you to know in passing that I do not know what other people's experiences are, but my experience is that I am yet to get any refund on VAT. I called this week to ask what was happening and they told me that the cheque was in the mail. I hope other people are doing this. I asked the VAT Department, "I see you are taking people to the High Court who are not paying VAT, can I take you to the High Court?" He told me, "of course not, you cannot do that."

Now, I had a case where there is a feed additive called "Pig Special" that is imported here. It is a mineral and vitamin mix that is used by small farmers when they feed swill or household refuse to pigs. It is used to bring their diet up in nutritional level in terms of minerals and vitamins that are lacking in those kinds of diets. The small farmer does not collect VAT. He is not VAT able. He now has to pay VAT on this "Pigs Special" and has no way to recover the tax.

Asides.

SENATOR C. K. LAURIE: Excuse me, Sir. I am telling you because I have written to the VAT department. I called them and they told me I have to put it in writing. I wrote to them and they wrote me back and said, "The Act does not say 'Pig Special' and once the Act does not say 'Pig Special' you have to pay VAT on 'Pig Special'".

The larger farms like mine pay VAT and I collect VAT. Therefore I can get it back, but the small farmers cannot get this back. I think this is a disgrace. It is certainly not, the intention of the Government to collect VAT on something like that. It impinges on that small farmer and not on the larger farmer.

Charities, the Leader of Government Business in the Senate mentioned that VAT is due on certain things for charities. Some charities depend on membership dues, like the Barbados National Trust and the Barbados Museum. Some of these places are registered charities, but we have to pay VAT on the money that is collected as a membership due. I know, because I have to pay VAT on my membership dues to the Barbados National Trust. I do not think that this right. I do not think that the intention was there. They told me when I questioned it at the Council Meeting of the National Trust, that they checked it with the VAT department and they said "yes, you must charge VAT on top of your membership."

My favourite one is alternate energy sources. When you are importing anything here for alternate energy, for instance, solar energy panels and windmills that generate energy and any of these alternative energy equipment that you import, you have to pay VAT on them. This is the only country in the world that charges taxes on alternate energy equipment. The policy of the Barbados Government, this

Government and past Governments has been to encourage the use of alternate energy and yet, we are still paying VAT on these things and I would ask the relevant ministry to please look into this matter.

Finally, computers. In 1990 I was on the Economic Consulting Council of the Prime Minister and I raised the point that we were going into the computer age. In those days the tax on computers was anything like 60 percent. It was agreed then by the Prime Minister and subsequently implemented that there was to be no tax on computers. It seemed then to apply if you brought in the computer for yourself or for your personal use. The businesses in town selling computers were still charging 20 percent tax. I think that in this day and age where we are trying hard to move everyone into the computer age, we should not only, not have VAT on computers, hardware and software, but, we should be in someway subsidising them so that they become more and more available to our people in the lower economic range.

Thank you very much.

Mr. PRESIDENT: Senator Bernstein.

SENATOR S. P. BERNSTEIN: Thank you, Mr. President. I rise to support the Bill and as the Leader of Government Business dealt very comprehensively with it, he spoke about the anomalies that are taking place and that is expected in a situation where the Value Added Tax was just introduced and we are going to have teething problems.

But I think first I want to start by congratulating Mr. Merton Moore and his staff for working very diligently and efficiently at the Value Added Tax office. It was not easy initially getting everyone into this transitional phase of Value Added Tax. You must remember that all the 11 taxes were abolished. The Consumption Tax, the Stamp Duty and I was an advocate in here from very early that in order to do business, the Stamp Duties and Consumption Taxes were much too high. Therefore, it would be remiss of me to come in here and criticise the Value Added Tax, because I am in favour of it and I am happy to see those other taxes go.

I am also on record prior to the Value Added Tax saying that I was against tax on food. I am very happy and I welcome the basket of food and look with the increase of monies that we have, the \$107 million that we not only have a basket of food but we have a container of food.

Aside.

SENATOR S. P. BERNSTEIN: Sir, there are some problems in the Value Added Tax office and I would deal with a few. The first and foremost is the delay in getting back VAT claims.

Now refunds, Sir, and what I am speaking about is particularly of interest to small and medium size businesses. Obviously big businesses too, but they have the resources to rely on banking facilities to keep their businesses alive. But the small and medium sized businesses have difficulties.

We have a situation here where the VAT is divided into two-month periods. For example, period one is January and February. Period two is March and April. Period three is May and June and so on. When the input of VAT exceeds the output, then it means that you have contributed to the VAT already and when you put the two months together, you then apply in the form of a claim for a refund. There are situations where period four, July and August and period five, September and October, on both occasions they will have situations where refunds are in the tune of, hypothetically speaking say, \$10 000 a period. So that business has already put in \$20 000 into the VAT office waiting for a claim.

Right away you can see that there is \$20 000 tied up in this disposable income. Then, they will have a good month, assuming that they are retailers and they do have a good December month. So Period six, which is November and December you have a situation where your output is more than the input and you may very well have to pay the VAT office to the tune of \$20 000 or \$25 000. So whilst the claim from the VAT office for period four is \$10 000 and the claim from the VAT office for period five is another \$10 000, in period six, on the 21st of the following month the company has to fork out whatever the output exceeding the input for that period, which could easily be another \$25 000. Here it is \$20 000 is tied for refund, and \$25 000 paying out, so it is \$45 000 affecting the cash flow.

I am saying, Sir, that there should be something on the side of the form where the businesses can deduct a period, say period four and period five and in this example that I am giving, they can deduct from the \$25 000, the two \$10 000 claims and only pay in \$5 000. It is not very difficult, but as it stands, it is creating hardships to the medium and small businesses in this country. I think that is very, very important.
5.15 p.m.

We have established in this Honourable Chamber that the cash flow of any business is its lifeline, and I say without hesitation, and I call very seriously that the VAT Office amend their forms so that businesses can get their refunds offset against what they are paying in for a period, say it is period 6, they can get the refunds for period 4 and 5. That is very important, particularly when the VAT Office is doing extremely well.

The other area I want to speak on is to do with their flexibility. I know of a case in this country where a person came to me with the problem that in the 6 periods of last year since it was implemented this company has never missed a payment, a manufacturing company, and on January 19 they sent in by mail over \$100 000 in VAT. The 21st, Errol Barrow Day, was a holiday, and for some reason the VAT Office got the cheque 2 or 3 days later and then turned around and instead of accepting the cheque and saying thank you they turned around and billed the manufacturing company a penalty of \$10 000. You look at the track record and see the company has never missed a payment, you see the postage mark that it was mailed on the 19th and yet they still come out and say they want \$10 000. There has to be a certain amount of flexibility. True there is a VAT Tribunal but you do not have to bombard the VAT Tribunal with all these little things.

The amendment before us today is to make things smooth, to make everything move in a nice way, to make everything work easily for everybody, and it should work the same way for businesses. I think it is outrageous, and then on top of that, we are told that there is something like 7% of delinquent companies or small businesses that are not registered in Barbados.

I disagree with this. This should never be allowed. I do not see why we should follow the precedent of the National Insurance where amnesty has been given on numerous occasions. We need to make sure and we should be vigilant rather than wasting time and sending people who are sending in \$100 000 a \$10 000 penalty. They should be looking at the 7% of companies that are not paying VAT. Get behind those companies and we would get in more revenue.

Do not just sit and say 7% is under 10% so we are doing very well. They have to be very vigilant on this and I think we should make sure that everyone who is registered should be paying VAT.

When they had the consumption tax I was always an advocate against this policy and especially now that the manufacturers are going to be faced with the World Trade Organisation and free trade, that the manufacturers in Barbados send out bills to stores and they had to pay consumption taxes on the total of the bills in those days. Now they are told that they have to pay the Value Added Tax on the total of those bills. It is my humble opinion that the Value Added Tax should be paid when the store pays the bill. The manufacturer is only the agent. He is only taking from the store that pays the Value Added Tax, collects it as agent and pays it in. Therefore, why should the manufacturer have to affect his cash flow because he needs to sell to some businesses whose cash flows are not good

and they take 90 days and 120 days to pay and the manufacturers have to pay the 15% on the full amount when they should only be paying 15% on what they receive? They are acting as agent.

What is suggested in some quarters, and I do not know if it is legal or not, is that these people do not write bills with the tax invoice on it and the registration number but they simply send out statements and only when payment comes in then you send the bill with the tax invoice and the registration number. I do not know if this is correct but I have heard it mentioned in some quarters. It may be legal, but I am not sure, but rather than having to create that situation. The manufacturers when it comes to free trade are going to be suffering and they are going to be non-existent in a matter of years.

I suggest strongly that whoever is trying to stay alive, keep them alive. They are employing people. We come in here and we talk about the small man and this man and the other. They are employing Barbadians as the rest of us and I feel that the manufacturers should be given some amendment on this particular thing because this is not fair to them.

Senator Laurie talks about the memberships and the computers and there are still a number of teething problems. We are going to be coming back in here from time to time to have further amendments but, as far as it goes, up to today, things are going well and I am happy with what I am seeing with the Value Added Tax. I think most people are very happy and I do feel that the comments that we are making today should be constructive enough that it will go to the authorities whereby the next time we meet we can look at these changes and make them to suit. Thank you.

SENATOR T. E. BARKER: Mr. President, I rise to support this Amendment Bill and to commend it to this Honourable Chamber. First of all, I want to join Senator Bernstein in offering sincere congratulations to Merton Moore and his staff because they have done, in my view, a first class job and this Honourable Chamber should commend them for their efforts. In a lot of countries in the region and further afield, Sir, we know that there was a tremendous amount of chaos which accompanied the introduction of the Value Added Tax but in Barbados we have been spared that sort of dislocation and although there were a lot of cries in a lot of departments, some legitimate and some otherwise, by and large the tax has gone down pretty well with the Barbadian public because they fully understand that Government is committed to social programmes such as free education, free health services, better street lighting and so on and these require an extraordinary large amount of funds.

I think we spend around \$80 million a year on the Queen Elizabeth Hospital and we all know it can do with a few million more. We can all confess that there is still a need to improve not only the health services but generally our roads need improvement and we have to be aware of the fact that in order to keep services at the desired level Government will require this amount of taxation.

Sir, I want to address the problem of underestimating the amount of tax. We hear a lot of figures but the one we can go with is the \$150 million as reported by the Leader of this Honourable Chamber. The Honourable Leader gave two important reasons for the underestimation. One related to the level of growth and I am convinced that for years we have been underestimating the level of growth of this economy. It is a sort of gut reaction as opposed to an empirically measured statistic. I believe in my heart of hearts that we grew by more than 4.3% last year but we all know that there are a lot of problems in measuring national income. We live with what we have been given and accept it as the appropriate figure but the point I want to make is that there has been a tremendous amount of growth in the economy over and above what was estimated. Secondly, as the Honourable Leader said, imports grew at twice the level that was projected.

Sir, when the VAT was introduced, this Honourable Chamber would be happy to know that we got some of the best experts in the field of Value Added Tax because it was a tax that we did not know anything about in an empirical way. Our economists would have read about it at its introduction but nobody in Barbados had the hands-on experience with this sort of tax so the Government did what it should have done that is to get people who have experience on the VAT and get them to do the appropriate data work so that we could come up with a figure and options for the introduction of the VAT. The Government did that and I was privileged to read some of the reports.
5.25 p.m.

One thing struck me, Sir, that the level of revenue that was expected was predicated, as the Leader said, on growth rate of imports and also it had a compliance rate in there because the consultants in their wisdom decided that traditionally they have found that in certain countries the level of avoidance was at this level therefore they were going to put in that figure for Barbados based on the experience in other countries.

What probably happened is that the level of compliance in Barbados was higher than what was estimated so that as a result this could have been responsible for some of the underestimation. I know the last speaker mentioned the 7% delinquency. While 7% is 7% too high, it is much lower than other countries have. We admit it is too high.

The point I am making is, Sir, that the revenue projection was based on a certain level of non-compliance. But, for well-known reasons the Barbadian is patriotic and he sees no real merit in defaulting because the Government made sure that it staffed and equipped the VAT office that they were in a better position to carry out the checks and balances in order to identify those who should be paying by using the computerised system of inputs and outputs. You could then get a better handle on people. That alone could have accounted for the low level of non-compliance we have been achieving so far. I agree though, Sir, with the last Senator that it is still too high and that we have to use all means at our disposal to ensure that it is 0%. So these are some of the reasons for the under-estimation of the return on the Value Added Tax.

Sir, other countries had a different problem. In their calculations they did not exercise the same conservatism we did and as a result, as happened in Jamaica, they started at too low a rate and had to raise the rate twice and created all sorts of confusion. We were determined that was not the way to go for Barbados so if we were going to err, we were going to err on the side of caution because it is always better, especially in these situations where you are unsure of the outcome, to be in a position to do what we have done, that is, decrease the tax on certain goods than do the opposite, that is, find yourself in a position where the revenue loss was tremendous and you had to increase the tax and create all sorts of uncertainty in people's minds. So, if we were going to err, we were going to err, as I said, on caution because in any case, we are locked into an expenditure system which is not going to be easy to reduce whether in the medium or in the short term. We are in this high expenditure system which will persist for a long time so we have to make sure that the revenue base is there to support the given level of expenditure.

Sir, I want to tell this Honourable Chamber that this Government is not adamant. We have shown in the past 3½ years that we are not an adamant Government. The VAT is subject to constant review. It is not something etched in stone. It is not like the laws of the Medes and Persians which altereth not. But, as I said, the VAT is under constant review and if changes are warranted, we will make the changes as we made them in September.

Now, Sir, I can sit down here and I can make a good case for 101 items to be on the zero-rated list and there are going to be plausible and sensible reasons but, at the end of the day, if we go back to the old situation where we narrow the base too much, we will end up having to up the rate and that is a fact of life. If we keep on narrowing the base in order to maintain the given level of revenue which, in turn, is predicated on a given level of expenditure, and we keep narrowing the base, we have to up the rate. It is simple arithmetic.

Sir, if every time we get up we put good cases for zero-rating all sorts of items we will end up in the old situation once again with a high rate on a few amount of goods with all sorts of problems.

Take the case where Senator Laurie mentioned about the pig special. How much of that is the pig farmer going to use? How much of the tax on that is going to represent his total expenditure on the animals? I do not think it is going to be that significant. The farmer may save a dollar but the fact is that when he does that, and you multiply that dollar by 1 000 or how many farmers, the figure can escalate and that is a few thousand dollars you have lost and you have to make up in some other way. We cannot afford to keep on narrowing the base. If we keep on doing that, we are going to end up like how we had the Consumption Tax where you had a high rate on a few goods. That is not the way to go. We have to make sure that we keep the base reasonably broad in order to keep the rate low.

Sir, the point is, and this point must be made that the VAT rate of 15% is manageable. Some countries have a higher rate. I am told some countries have rates as high as 17% and 21%. I am not sure if there are many countries with a rate lower than 15%. In any case, Sir, while Senator Thompson was talking, she admitted that the Dems would have put in a VAT if they had gotten back into power and, in any case, their VAT included a VAT on food. That is a matter of record. They were going to put the VAT on food so I do not know what all the indignation is about. The Dems were prepared to have the same 15% on the same range of goods that we put it on initially, so I do not see why they are making a song and dance.

Sir, they are now having a 20/20 vision. After the fact you can talk what you like but they were prepared in their Cabinet Paper to have a 15% VAT and have it on all the goods including food because it is on record that the then Minister of Finance, one David Thompson, Opposition Leader, said that a VAT on food was highly desirable. That is a matter of record. It is nothing we have made up. That is what he said. So when I hear the Dems talking, they cannot talk like that.

Sir, the VAT has been in for a year and almost two months. What is the effect of the Value Added Tax on the general price level? That is the important factor. It was in long enough now that we can assess the effect of VAT not only on food but on the general price level.

Sir, the Honourable Leader of this Honourable Chamber reported that the basket of goods they were monitoring from December 1996 showed a slight reduction after the VAT was taken off food. Sir, that is consistent with what the Statistical Department is reporting in the Retail Price Index. What they have found is that after

the VAT was taken off food in September and it worked through the system that the rate of inflation, measuring on a point to point basis in 1997, was about that in 1996 so the VAT has not caused any significant increase, I think it was about 1% increase over the rate for 1996. The VAT has not caused any significant increase over the rate for 1996. The rate for 1996 was about 3% and the rate for 1997 was about 4% so the VAT did not cause any significant increase in the rate of inflation.

5.35 p.m.

Why, Sir? Because in their statements, people are conveniently forgetting, as Senator Bernstein would tell them, that the price of clothing actually showed a decrease as a result of the imposition of the VAT. That is what the records are showing. The price of clothing and footwear has shown a reduction because the clothing had on consumption tax.

Some of them had on stamp duty and a surcharge. The surcharge is still on but as you know, the Prime Minister has given a timetable for the removal of the surcharge. But in all this, you have to remember that there are revenue implications. Even although the surcharge is still on, the fact that the consumption tax has been removed and the fact that the stamp duty has been removed and replaced by a 15% VAT, has caused the price of clothing to come down.

Sir, clothing is very important. Especially to people with young children. I must confess that I have a little bit of experience in that regard. Sir, can you imagine a mother with two or three children of school age? I have used mother deliberately because a lot of our household as Senator Thompson was saying, about 45% of them, are headed by women.

The point is, Sir, that clothing is very important, especially in a household with young children. All of us have children that their feet are always growing and some good shoes you have to discard because the feet are growing. So clothing and footwear are extremely important to families with small children. And that showed, Sir, a decline. But nobody is saying that. We are not hearing that. We are not going to hear that at all because it is not in the interest of the Opposition Party to publicise these facts. It is not in their interest. They are only interested to be harbingers of bad news but any good news, they conveniently ignore.

The fact remains that the figures are showing that the VAT is not the monster, especially since the Prime Minister has made the adjustment, the VAT is not the monster that the Opposition claims that it is.

Again, I am reminded of the words which say that it is better to be right than to be consistent. If I have to change

my tune, I have no problem with that. I have no problem at all with that because I am not an adamant man, Sir. And we all know what happens to adamant men.

Sir, we do not know what is going to happen this year. We expect that the economy will keep on growing and that the VAT revenues will be at a decent level. But we must remember this, that the time may very well come, given the high dependence on VAT, because as we said, Sir, a lot of taxes have been removed, VAT now is the major tax. One third of our revenue will come from VAT and Excise Tax so any significant trouble with the VAT is going to have a very bad negative effect on total revenue.

What will happen? We are fortunate that when we got more VAT than was estimated, we were able to do a few things. We were able to put a little more money in the social services. A Resolution in the Other Place was passed which gave more money to the QEH and education and so on. Secondly, we were able to reduce our dependence on borrowing. That is very important. We got extra revenue so what did we do? We spent some, like any wise person, you spend some and you save some. The saving was in the form of reducing the need to borrow either on the domestic or the international market.

Whilst we were projecting to borrow a certain amount, we were able to reduce the need to borrow such a sum. The benefit is that in a couple of years to come we will have less money to pay on both interest and the amortisation of that debt. The VAT money was used to reduce our dependence on borrowing. What is wrong with that? We spent some on social services, we spent some on education and at the same time, we were able to lessen the amount of money we borrow.

In addition, Sir, we have to keep back some because the hard working public servants, including those from the VAT office deserve a raise. We have to keep back some for this.

Asides.

SENATOR T. E. BARKER: The last Administration actually cut 8% but we are going to raise almost by 8%. That is the difference between the two Administrations. The extra VAT money will go towards that worthy cause. A deserving worthy cause of ensuring that the public servants in this country are to some extent rewarded. We know that they will be rewarded when they get to the other side but even on this side we want to give them some reward for the hard work that they have put in over the years.

So what is wrong, Sir, with getting a little bit more money and spending it in the way in which we are spending it. We are spending it on the people. Some of us in here do not care about the QEH because we are rich

enough that we can have private medicine but the bulk of Barbadians depend on the QEH for all of their health needs so we have to make sure that adequate money is given to that institution. That is what we are doing with the extra money because we do not know if we will get extra money in another year but when we got it this year, we made sure that it was spent on the people of this country. It is as simple as that.

I do not understand what the harping is all about by the Opposition.

Asides.

SENATOR T. E. BARKER: You are not an Opposition, you are an independent.

I want to commend this Bill to this Honourable Chamber and this Chamber should in their heart of hearts, praise the Government for its wisdom and the excellent move it has made with the VAT. We know that all is not 100% right but we will continue to look at it all the time. As I said, we are not adamant people and we will continue to look at it and if a reasonable case is put up, we will look at it but do not expect that we are going to narrow the base too much.

Mr. CHAIRMAN: Senator, you said that you were not adamant on four occasions. You need not repeat it since it is contrary to the Rules to keep repeating yourself.

SENATOR T. E. BARKER: Thank you very much, Sir, for that timely admonition.

With those few words, I commend this Bill to this Honourable Chamber and I am asking Honourable Members to support it with all their vigour.

Thank you.
5.45 p.m.

SENATOR THE HON. R. R. FARLEY: Mr. President, 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. R. R. FARLEY, Mr. PRESIDENT left the Chair and the Senate went into Committee on the Bill, SENATOR THE HON. Miss O. P. SYMMONDS in the Chair.

COMMITTEE

MADAM CHAIRMAN: The Senate is in Committee.

Clauses 1 to 7 inclusive were called and passed.

On the motion of SENATOR THE HON. R. R. FARLEY, MADAM CHAIRMAN reported the passing of one Bill in Committee and Mr. PRESIDENT resumed the Chair and reported accordingly.

On the separate motions of SENATOR THE HON. R. R. FARLEY the Bill was read a third time and passed and cited as the Value Added Tax (Amendment) Act, 1998.

ORDER NO. 3 – THE CUSTOMS (AMENDMENT) BILL 1998

SENATOR THE HON. R. R. FARLEY: Mr. President, I rise to move the second reading of this Bill. This Bill seeks to amend the Customs Act to make provision for a number of what are basically technical improvements relating to the Act of setting-off sums which are owed by indebted persons to the Crown against moneys which might be otherwise due to them. Matters relating to the filing of unpaid tax certificates in order to recover sums which are due to the Crown. Matters relating to the issues of holding Directors of Companies liable for debts to the Customs Department and resolving the matter where persons allow businesses to go into receivership and then have the mechanism of receivership as one means by which they are able to avoid the payments of obligations, including obligations to the Customs Department and then go on to form a new company performing the same principal activity but basically having had the debts of that company die with the previous company. So it basically sets about making Directors, Receivers and others become liable for outstanding debts in relation to the Crown.

Of course in that particular matter as can be seen from the Bill it sets out circumstances under which Directors and Receivers and so on would not be liable, for example where they have operated with due care and diligence and in all good faith and various other factors as are set out in the Bill.

It also basically makes provision for the Comptroller of Customs to issue unpaid tax certificates, particularly to persons, and this is a mechanism where persons are strongly suspected to be proposing to leave the island, for example, as a means of avoidance of the settlement of debt to the Customs Department, the Comptroller can issue unpaid tax certificates, issue garnishment demand notices and serve notice on those persons. The basic procedure there as provided in the amendment would be for the Comptroller to file the necessary documents with the

Magistrate's Court and have an Order made which would basically ensure that the debts are settled before the individual is allowed to leave Barbados.

The Customs Act, Cap. 66 and Regulations attached thereto make provision for clearing agents, persons to act as brokers and other such persons, acting on behalf of other individuals clearing items from the two Ports and other areas where customer supervision is required.
5.55 p.m.

There has apparently been a series of problems in relation to persons who purport to be authorised clearing agents, but who do not possess the necessary registration to do so. There is a procedure for being registered with the Customs Department and that registration also doubles as a verification that the person is in possession of the relevant skills to do the level of jobs which are required.

I remember in the case, Mr. President, that not all activities of clearing items through Customs require particular skills. For example, in Shed No. 2 in the Bridgetown Port where special provision is made for persons clearing special effects, the level of documentation and the procedures required are certainly not as rigorous or some might even say, "onerous", as when one is clearing commercial entries. Depending on whether rules of origin certificates are required or whether other documentation for special treatment, for example, documentation in support of claims on behalf of the person importing the item, that they are an international business company. Or the item is being imported pursuant to the concessions under the Hotel Aids Act or under the memorandum from the Ministry of Finance in respect to manufacturing companies and so on. And, that in order to reduce the level of delays in Customs which can be attributed to incorrect documentation being submitted and incorrect practises being used, only authorised clearing agents are allowed to do certain sophisticated and advanced transactions within the Customs Department.

The penalty for persons who hold themselves out to the clearing agents when in fact there are not, has been increased as a means of dissuading persons from holding themselves out to offer these services that they are not entitled or qualified to do. Also, as an incentive as well, to encourage clearing agents to be more diligent in their approach to their work, the penalties for submitting false documentation, whether by error or otherwise and where that incorrect documentation – to put it in the more charitable context – result in a change in valuation having to be subsequently done, or where the items were incorrectly classified, then the penalties are spelt out in the Amendment Act. Two dollars or \$3 per document if the change is on the first schedule per Scheduled Customs Form, and \$100 per document where the changes are proposed to other schedules other than

the first schedule. That basically is proposed to be an incentive to those persons to improve the quality on those – the first customs procedure, \$2 or \$3 and the subsequent ones, \$100.

Part of the delays – we all know there have been delays in getting items cleared through Customs, however, the delays in clearing those items are not exclusively attributable to Customs. A number of them are, but certainly the Government is currently putting pressure on the Customs Department to ensure that they do all that they can to clear items in good time. But the reality is that there are many cases where the documentation submitted to the department has been so replete with errors that that ends up being part of the delay.

Like I said, increasing the penalty of these things where errors result in actual subsequent changes to valuation. But we are also insisting that the Customs Department moves to increase its deficiency and that they make greater use of the computer technology which they have available to them. We have also been providing further resources and further assistance both in terms of training and improvements in hardware and software to make the technology more meaningful and more effective in facilitating the clearance of items. The Customs Department continues to hold regular meetings with the representatives of the business community in an attempt to understand the issues which are genuinely presented by either side, as well as at the end of the day ensuring that we are able to clear our goods in a quick time.

Basically these amendments, Sir, are to ensure that we are able to achieve these improvements in the operations of the Customs Act and I would urge the Honourable Senate's support and approval for these amendments.

I beg to move, Sir, that this Bill be now read a second time.

Mr. PRESIDENT: Senator Thompson.

SENATOR Mrs. A. P. THOMPSON: Thank you, Mr. President. The Opposition would never object to any amendment which seeks to improve the way in which we do business in Barbados and the way in which we attempt to make life more comfortable for those individuals who are in enterprise.

I mainly rise to make one comment. It is a concern which I have had ever since I perused this Bill and when I sat this afternoon and listened to Senator Bernstein, I realise that it is very important that this point be made. Sometime we would have amended the Limitations Act in order to make sure that the Crown does not have an overriding benefit as

far as its right to claim against persons in society, because under that Act, an individual could make a claim against the Crown within a one-year period only, and thereafter there is the death of that person's claim against the Crown. But, the Crown could claim against the individual for a period which extended into six years.

As I look at this Customs Amendment Bill and I look at clause 3 where it,

"Sets-off or deduction" -

"108A. Where a person is indebted to the Crown, the Comptroller may require the retention by way of deduction or set-off of such amount that may be or may become payable to that person by the Crown."

I believe, Sir, that this Act should also reflect that where the Crown is indebted to the person. I think if we are to be consistent in our legislation and when we made that amendment to the Limitations Act, we stated that we wanted to make sure that the Crown did not have overriding benefit on the individual, that in this piece of legislation we are not being consistent in that regard.

I believe that in the same way we are allowing the Crown to make that off-setting entry against the person, that the person should be in such a similar position. An example given by Senator Bernstein where an individual who owes VAT to the Customs, because it is VAT to the Customs I believe, that individual should be able to, when that person has paid in a certain amount into the VAT office and is awaiting a refund from the VAT office and finds that individual has to continue pay VAT. This legislation should reflect that that individual can also do an off-setting entry and pay the difference into that office.

That is the contribution I would like to make, Sir. Thank you.

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

The question was put to the Senate and agreed to.
6.05 p.m.

On the motion of SENATOR THE HON. R. R. FARLEY the Senate resolved itself into Committee on the Bill, SENATOR THE HON. Miss O. P. SYMMONDS in the Chair.

COMMITTEE

MADAM CHAIRMAN: The Senate is in Committee.

Clauses 1-7 were called and passed.

On the motion of SENATOR THE HON. R. R. FARLEY, 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 separate motions of SENATOR THE HON. R. R. FARLEY the Bill was read a third time and passed.

ADJOURNMENT

SENATOR THE HON. R. R. FARLEY: Mr. President, I rise to move the adjournment of this Sitting and to inform members of two housekeeping matters. We have cleared up the outstanding business from the Other Place and they have adjourned until Friday, March 6 at which time they will be looking on to the Estimates. It is proposed that debate will commence on March 16 and we should prepare ourselves for the Estimates Debate the following Monday on the 23rd March for 3 or 4 days of straight work in which to complete that particular process.

As is the custom of housekeeping, supper and other refreshments are served downstairs.

I have been informed of details of the funeral service for a former President of the Senate and it has been confirmed for Saturday, February 28 at 2.45 p.m. at St. Michael Cathedral.

Mr. President, I beg to move that this Honourable 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.
6.15 p.m.

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