
THE SENATE DEBATES

(UNOFFICIAL REPORT)

PARLIAMENT 2003 – 2008

THE SENATE

Wednesday, March 9, 2005

The Senate met in the Senate Chamber, Parliament

Buildings, on Wednesday, March 09, 2005 at 11.10
a.m.

PRESENT

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

Her Honour Senator Dame Patricia SYMMONDS,
D.B.E., G.C.M., B.A.(Hon.) (PG CE), J.P. (Deputy
President)

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

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

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

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

Senator the Hon. J.E.D. Williams, B.Sc. (Hons.),
M.Sc.,

M.B.A., J.P. (Minister of State, Prime Minister's
Office and Ministry of the Civil Service)

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

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

Senator Sir Allan C. FIELDS, K.C.M.G.

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

Senator Sir JOHN S. GODDARD, K.A., G.C.M.,
B.Com., F.C.A.(Hons.) LL.D.(Hons.)(U.W.I.)

Senator the Very Rev. H.E. CRICHLLOW, G.C.M.,
B.A.(Hons.)

(Dunelm)

Senator I. St.C. LINTON

Senator G.P.I. GOODING-EDGHILL

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

Prayers were led by Rev. Father Errington Massiah.

Mr. PRESIDENT: The Senate is in session.

ANNOUNCEMENTS BY YOUR HONOUR THE PRESIDENT

Mr. PRESIDENT: I have received apologies for the
absence of Senator Sir Roy Trotman, and Senator
Husbands.

PRESENTATION OF PAPERS

Senator the Hon. E.R. GRIFFITH: Mr. President, I
am commanded to lay the following documents before The
Honourable The Senate.

1. Barbados Estimates of Revenue and Expenditure
2005-2006.
2. Schedules of Personal Emoluments 2005-2006.
3. Duties, taxes and Other Payments (Exemption)
(Barbados Tourism Investment (Properties) Inc.)
Order, 2005.
4. Excise Tax (Rate of Tax) Order, 2005.
5. Value Added Tax (Refund) (Aurora (Barbados)
SRL) Order, 2005.
6. Duties, Taxes and Other Payments (Exemption)
(Hotels & Resorts Limited) Order, 2005.
7. Duties, Taxes and Other Payments (Exemption)
(Delcan International Corporation) Order, 2005.
8. Firearms (Licensing) (Forms and Fees)
Regulation, 2003.

9. Shipping (Incentives) (Ken Water Sports Inc.) Order, 2005.
10. The Telecommunications (Prescribed Telecommunications and Radio Communications Apparatus) Regulations, 2003.
11. The Telecommunications (Declaration of Dominance) Regulations, 2003.
12. The Telecommunications (Restrictions and Prohibitions) Regulations, 2003.
13. The Telecommunications (Licence Fees) Regulations, 2003.
14. Telecommunications (Public Telecommunications Licensing) Regulations, 2003.
15. Telecommunications (Certification Standards) Regulations, 2003.
16. Telecommunications (Resale) Regulations, 2003.
17. Telecommunications (Licence Fees) (Amendment) Regulations, 2003.
18. Telecommunications (Confidentiality) Regulations, 2003.
19. Telecommunications (Numbering) Regulations, 2003.
20. Telecommunications (Universal Service) Regulations, 2003.
21. Telecommunications (Spectrum Management & Licensing) Regulations, 2003.
22. Telecommunications (Licence Fees) (Amendment) (No. 2) Regulations, 2003.
23. Telecommunications (Class Licence) Regulations, 2003.
24. Telecommunications (Cyber Café) Regulations, 2003.
25. Telecommunications (Call Centres) Regulations, 2003.
26. Telecommunications (Interconnection) Regulations, 2003.
27. Telecommunications (Regulated Services) Order, 2003.
28. Telecommunications (Commercial Trunked Radio-Communication Network) Regulations, 2003.
29. Telecommunications (Data Communications Service) Regulations, 2003.
30. Telecommunications (Radio-Communication Ship Station) Regulations, 2003.
31. Telecommunication (Customer Equipment Transitions) Regulations, 2003.
32. Telecommunications (General Radio-Communications Station Licence) Regulations, 2003.
33. Telecommunications (Transition Time Table Phase II) Order, 2003.
34. Telecommunications (Private Telecommunications Licensing) Regulations, 2003.
35. Telecommunications (Satellite Television Receiver Antenna) Regulations, 2003.
36. Notice Given Under Regulation 9 of the Telecommunications (Universal Service) Regulations, 2003.
37. Telecommunications (International Submarine Cable Licence) Regulations, 2004.
38. Telecommunications (Video Tape Rental Service) Regulations, 2004.
39. Telecommunication (Citizens Band Radio Service) Regulations, 2004.
40. Telecommunications (Amateur Radio) Regulations, 2004.
41. Telecommunications (Aircraft) Regulations, 2004.
42. Telecommunications (Radio-Controlled Models Licence) Regulations, 2004.
43. Telecommunications (Interconnection) (Amendment) Regulations, 2004.
44. Telecommunications (Customer Equipment Transitions) (Amendment) Regulations, 2004.
45. Telecommunications (Numbering) (Amendment) Regulations, 2004.
46. Telecommunications (Numbering) (Amendment) (No.2) Regulations, 2004.
47. Telecommunications (Licence Fee) (Amendment) Regulations, 2004.
48. Telecommunications (Citizen Band Radio Service) (Amendment) Regulations, 2004.
49. Telecommunications (Restriction and Prohibition) (Amendment) Regulations, 2004.
50. Telecommunications (Data Communications Service) (Amendment) Regulations, 2004.
51. Telecommunications (Commercial Trunked Radio-Communications Network) (Amendment) Regulations, 2004.

52. Duties, Taxes and Other Payments (Exemption) Illuminat (Barbados) Limited) Order, 2005.
53. Value Added Tax (Refund) (The Barbados Children's Trust Inc.) (No.2) Order, 2005.
54. Insurance (Barbados Light and Power Company Limited) (Self-Insurance Fund) (Amendment) Regulations, 2005.
55. Fire Service (Fees) Order, 2005.
56. Immigration (Forms and Fees) (Amendment) Regulations, 2005.
57. Barbados Citizenship (Amendment) Regulations, 2005.
58. Post Office (Local Express Mail Service) (Amendment) Regulations, 2005.
59. Post Office (Surface Airlift) Regulations, 2005.
60. Post Office (Overseas Letter Post) (Amendment) Regulations, 2005.
61. Post Office (Private Letter Box) (Amendment) Regulations, 2005.
62. Post Office (Franking Postage Meter Machines) (Amendment) Regulations, 2005.
63. Post Office (Inland Letter Post) (Amendment) Regulations, 2005.
64. Post Office (Miscellaneous Service) (Amendment) Regulations, 2005.
65. Post Office (Domestic Business Reply) (Amendment) Regulations, 2005.
66. Post Office (Postage Paid) (Amendment) Regulations, 2005.
67. Marriage (Forms and Fees) (Amendment) Regulations, 2005.

MOTIONS RELATING TO THE BUSINESS OR
SITTING OF THE SENATE AND MOVED BY A
MINISTER

Senator the Hon. E.R. GRIFFITH: Mr. President, I move that Orders 22(1) and 45(2) be suspended for the remainder of this Sitting.

The question was put to the Senate and agreed to.

INTRODUCTION OF BILLS

Senator the Hon. E.R. GRIFFITH: Mr. President, I beg to give notice of the following:

1. A Resolution seeking approval for the vesting of land at Drax Hall Green in the parish of St. George in the National Housing Corporation.

The question was put to the Senate and agreed to.

FIRST READING OF BILLS

Senator the Hon. E.R. GRIFFITH: Mr. President, I beg to move that the following Bill be read a first time.

1. The Shipping (Incentives) Bill, 2005.

The question was put to the Senate and agreed to.

PUBLIC BUSINESS

Senate 27, sequence 02, 11:20:14

Wednesday, March 09, 2005

ORDER NO. 2 – COMPUTER MISUSE BILL, 2005

SENATOR the Hon. Miss L. V. EASTMOND: Mr. President, I rise to seek the support of the Senate for this Computer Misuse Bill, 2005. I want to start by putting this piece of proposed legislation into context. As most of us know, the world is moving toward the utilisation of information technology in virtually every aspect of life. Therefore, it is within that context that we enhance the law we already have in existence to ensure that the programmes and the data contained in computer systems are protected and to ensure that if there is any attempt to interfere with that data without authorisation that penalties can be imposed.

Mr. President, the Government of Barbados is currently engaged in a number of projects in order to promote the use of information technology in Barbados which would enhance our competitiveness and would lend to greater social participation, enfranchisement and empowerment of our people.

Mr. President, we are involved in a number of programmes. These include the public expenditure management programme which is known as the SmartStream Project. This programme allows Government to manage on a daily basis its financial resources in a much more effective manner than it was able to do in the past. There is also the enabling environment for private sector investment projects. That project was started some years ago in order to ensure that there was a link among agencies that were involved in the investment process in Barbados to make it more efficient. The computerisation of the Land Tax Department is also another project which has been extremely successful. We are also involved in the process of upgrading the computer technology system within the Customs Department. It is my understanding that a similar process is now being engaged in within the Inland Revenue Department. We also have the Education Sector Enhancement Programme popularly known as EduTech,

which started some years ago and we are in the process of implementing that.

Sir, one of the newer projects we are engaged in is the development and implementation of Government portal which would allow citizens of Barbados and individuals living outside of Barbados to access Government agencies in a way that they cannot at the moment. The portal would present a central location from which persons can access all Government agencies so that it would be easier to gain access to information in a way that we are not able to do currently.

Mr. President, other departments are also looking to embrace technology and to ensure that they are able to keep their data on computer systems. These departments are the National Insurance Department, the Immigration Department and the Licensing Authority. Parliament has now set up a website where access to Bills by the general public is made much easier. All off this is in an attempt to make sure that within the public service which is one of the facilitators within the Barbados economy that touches and concerns every aspect of life... If we are looking to move toward greater efficiency and competitiveness, it is important that we utilise the tools available to us through ICTs in order to effect this.

Mr. President, in order to ensure that Barbadians are able to access computer equipment and computer systems, Government has removed the duties and taxes from computers and computer softwares so that individuals can access them more readily. We have also been engaged in the liberalisation of telecommunications which has seen the cost of telecommunications, the sending of data between various points, being reduced considerably.

Mr. President, one of the most important programmes we have engaged in as far as information technology is concerned is the community technology programme. I was privileged last weekend to witness the graduation of some 500 students from that programme at the Alexander School. It was a wonderful experience because we saw individuals ranging from their teens to men and women in their 60s, 70s and 80s graduating from this programme.

Sir, the community technology programme, as you would imagine, is one that we are involved in to ensure that the Government and the private sector do not move ahead of the ordinary citizens of this country in terms of using ICT. For example, it is all well and good to speak about information being available on websites, but if the ordinary members of the public cannot access the information because they do not know how to or they do not have the equipment, then it is not going to be beneficial to the broad masses of people in the community. That is why this community technology programme is so important because

it provides an opportunity for ordinary citizens of Barbados to be introduced to the computer where they are able to learn the basics in terms of the Microsoft suite that is available. For example, they would learn Word, Excel, et cetera. They would also gain access to and knowledge of the internet on how to search websites and how to use email. That is just an introductory part of it. Our hope is that they would continue to be interested and that they would seek to purchase their own computer equipment or visit the resource centres which are being built around the country in order to access the technology.

Mr. President, we believe that the utilisation of technology from a business perspective and an economic perspective will create greater efficiencies in everything we do. We all know that sometimes when we visit Government departments and even businesses within the private sector that it takes a very long time to transact business because we have to wait in a queue to carry out a particular transaction and sometimes it is difficult to find the particular information we need to carry out the particular transaction. With all of this information in a database it would be much easier for us to enter into transactions. It would also mean that the day would come, hopefully very soon, when we would be able to carry out some of these transactions on line from at home or from the community centres, that is our goal.

Mr. President, the legislative framework would need additional enhancement. We have already passed the Electronic Transactions Act. We are now discussing the Computer Misuse Act. The Freedom of the Information Act and the Data Protection Act are to come. We believe that it is important, especially in this context, to ensure that there is no misuse of the computer systems which we are starting to rely upon more and more.

Senate 27 Sequence 3

11.30 a.m.

Wednesday, March 09, 2005

SENATOR the Hon. Miss L. V. EASTMOND: Mr. President, one of the examples of which I have read is the computer virus called the Millissa virus which, around 1999, spread throughout the computer systems across the United States of America, Europe and other countries. It is estimated that the damage caused by this virus was in the tune of approximately US\$80 million.

Mr. President, certainly we have to do our part to make sure that individuals who would hack into computers in Barbados and from outside, will be dealt with appropriately by the law.

Mr. President, we entered into a consultation process in order to ensure that we had input from as many stakeholders as possible, with respect to this piece of legislation. We also looked at several pieces of legislation coming from several countries which deal with computer misuse. We looked at the Commonwealth Secretariat model but we also looked at the Computer Misuse Acts from the United Kingdom, Singapore, Malaysia, and Trinidad and Tobago. Sir, one of the things I would say is that it would not be surprising if this piece of legislation requires amendment in the future, because this is what is happening all across the world. In June 2004, the United Kingdom Government, for example, entered into a major exercise to see if it was necessary to make any amendments to that legislation, the Computer Misuse Act, which was passed in 1990.

Mr. President, the other point I would wish to make has to do with the legal context within which the Computer Misuse Bill will fall. The Computer Misuse Bill is part of the elaboration of the existing criminal law. We have not had this particular experience but the experience in the United Kingdom was one where prosecutors sought to use existing pieces of legislation, for example, legislation that dealt with fraud or counterfeit activities, in order to bring hackers to justice. In some instances, individuals were convicted under existing criminal legislation but in one case that went as far as the House of Lords, the court found that the prosecutor in that case was perhaps trying to fit a set of circumstances into a particular piece of legislation when, in fact, they did not fit. Unfortunately that case was overturned and the individuals involved were freed.

Mr. President, I think this is important because other pieces of legislation will come which will deal with Information Technology. I believe too that there will have to be amendments that will have to be made to existing pieces of legislation to facilitate the misdeeds that can be done with respect to Information Technology.

I think we must not be reluctant to read and to give our views with respect to legislation like this, especially those members of the Criminal Bar, because we feel that it has to do predominantly with Information Technology which we do not know much about, rather than having to do with the criminal law. Sir, fundamentally I believe that the principles involved in this piece of legislation are no different from the general principles that we will see in other pieces of legislation that seek to bring criminal activities such as theft, destruction of property and burglary, to justice.

Sir, there is not much difference between these activities identified and those other activities with which we are more familiar. The circumstances are such that we are talking about a new type of jargon and a new set of words that maybe we are not accustomed to or that we feel

so comfortable using as yet. For example, terms such as the "internet" or being able "to intercept information" are all issues and despite the fact that we may be using them in a different context, it is also clear that when we look at the legislation, there are many words that are being used with which we are very familiar, for example, "destroying data". We know that whenever there is any unauthorised destruction of somebody else's property, that tends to be a criminal offence.

Mr. President, therefore, it is not a piece of legislation that is completely unknown or new to us and I think it is important that we view it in that context and that we bring to mind the issues that one would raise if one were dealing with any piece of legislation that sought to create a criminal offence for certain actions by individuals.

Mr. President, the Bill makes provision for the protection of computer systems and the information contained in those system from:

(a) unauthorised access by persons;

(b) abuse by persons unauthorised to have access; and (c) for related matters.

Sir, this Bill does a number of things. First, one of the issues that would arise in looking at this Bill is that it does not only seek to convict individuals that are carrying out their activities within Barbados, but it seeks to create an offence with respect to individual who are on a ship or an aircraft registered in Barbados, or by nationals of Barbados who are outside of the territory of Barbados, if, in that territory, the activity in which they are engaged would also be an offence.

Mr. President, one of the mischiefs that one is seeking to remedy in such a context is to ensure... and this is because in many instances, we are dealing with the internet, so that one can be in the United States of America, St. Lucia or in China, and still seek to hack into a computer system in Barbados. Therefore, it is important for the law to have that reach outside of the jurisdiction but of course we are careful to ensure that there is still a link which one must have between the individual committing the offence and the territory of Barbados, to ensure that we are not passing a piece of legislation that has an extra-territorial reach in that sense. Therefore, the individual must still be a national of Barbados and if the offence is committed on a ship or an aircraft, that ship or aircraft must be registered in Barbados and, therefore, in such circumstances would normally be considered to be a ship or an aircraft of this country.

Mr. President, the proposed Bill also provides for a number of definitions. However, I should also state that

there are some definitions which are not provided for in the Bill. For example, there is no definition of the word

“computer” even though it is called the Computer Misuse Bill, 2005.

Sir, the reason for this is that we want to ensure that any piece of equipment that is being used to store or to transmit data, will continue to be covered by the Act, whether or not the terminology used with respect to that piece of equipment changes.

11.40 a.m.

Wednesday, March 9, 2005

SENATOR the Hon. Miss LYNETTE EASTMOND:
Sir, if you follow the progress of how computer systems have developed over time, they have moved from having large mainframe computers which would fit this entire room to small computers which can fit under the table at home. We also now have hand-held computers which are not connected, as far as we can see, to any other computer but are able to transmit and receive signals and data from the palm of the hand.

Sir, as legislators, we do not know where the technology is going so we are trying to protect data so that it is not misused, destroyed or altered. We want to make sure that the legislation continues to cover all devices that could be used as communication tools or for storing data within Barbados.

Sir, in Part II the Act goes into great detail in terms of seeking to identify the various acts that bring an individual to conflict with the law, if this Bill passes this House. Sir, the standard used throughout has to do with whether the person knowingly, recklessly or without lawful excuse or justification commits any of these offences.

Mr. Speaker, in most instances, the Act is not seeking to make criminal, activity which occur inadvertently. The standard is relatively high with respect to whether or not an individual could actually be found to be liable.

Sir, some of the matters which this Act seeks to cover are individuals who without the correct authority gains access to the whole or any part of a computer system. Sir, the term “gain access”, would suggest that the person would have to do more than find a computer system in an open lobby, clicks on the mouse and see information on a screen. Obviously, Sir, the person would have to do more than that in order to be found liable.

There are legal issues that will arise with respect to this in terms of what is the degree of security that a person

must put in place where you have a public website for example. If a person sets up a website on the internet for the world to see and persons in using the website are able to access certain codes to go behind the website as presented to public, is that a criminal offence?

Mr. President, one may argue that if a person has a website in an information technology environment for people to access, that the person should ensure there is enough security because persons are invited to go onto the website to browse and issues could arise from this.

The legislation also seeks to address the issue when one causes a programme to be executed. It is not simply accessing information but if you engage in some activity that causes the unauthorised execution of a particular programme to whatever end, there is the possibility that one could also come within the framework of the Act in terms of committing an offence.

The legislation also looks at using a programme to access data, copying or moving the programme or data, altering or erasing the data, destroying or altering data, rendering data meaningless, useless or ineffective. Mr. President, you can develop a programme that deletes all the vowels in a particular programme on a website. Sir, if this happens the document would be very difficult to read.

Sir, one may not destroy all the data but can alter in such a way that it becomes meaningless, useless or ineffective. One can also commit an offence if one interrupts, obstructs or interfere with the lawful use of the data. One can also be guilty of an offence if one seeks to deny access to the data by any person who is entitled to do so. Mr. President, there are a number of offences with regard to if one seeks to alter data oneself, destroy it or to prevent access by other individuals.

Sir, in terms of interfering with the computer system itself, I think it is interesting that one of the offences here is if one prevents the supply of electricity permanently or otherwise to a computer system that one can be guilty of an offence. I found it interesting because I imagine walking along and kicking the cord that links the computer to the power outlet that one could be guilty of an offence. I hasten to remind that the Act speaks of knowingly or recklessly so some damage would have to be caused other than simply cutting off the electrical supply.

Mr. President, one can also be guilty of an offence for interfering with the function of the computer generally, corrupting the entire computer system or part of it.

The legislation also provides for situations where an individual utilises, supplies, distributes, or makes available to another person a device which can cause interference to a computer, computer system or data.

For example, we know that many of these computer systems have passwords or access codes and some times these passwords are known to more than one person. If that information is passed to another individual so that he can access the information, the person who provides the password or access code would also be guilty of an offence, along with the person who used the access code to interfere with information or data on the computer.

Sir, within this legislation we have also identified what are called restricted computer system.

S27/11:50

Sequence 5

Wednesday, March 9, 2005

SENATOR the Hon. Miss L. V. EASTMOND: Sir, we sought to identify computer systems which are owned by institutions that we believe would collect information of a sensitive nature. While one would imagine that the Royal Barbados Police Force would be listed in the Schedule, there is also the Archives Department because the information in the Archives Department is central and critical to Barbados as a country.

There is also the Forensic Laboratory and we had discussion earlier about the storage of DNA information in a database under the legislation that was passed recently with respect to forensic procedures.

Sir, we have institutions such as the National Library Service and the Supreme Court of Judicature which are Government agencies but we also thought that it would be necessary to look at some other entities as well. We have included our statutory corporations, companies incorporated under the Companies Act or any other entity that provides a utility service within the meaning of the Utilities Regulations Act.

Mr. President, we included those even though the public utility companies are in some instances completely private sector owned, we think that is important in terms of the service that they provide in Barbados to ensure that their computer systems are protected as well. We should not forget that as far as public utilities are concerned, the Government still retains the right to provide services such as water, telecommunity and electricity to the country. The Government has allowed other entities to carry out these particular services but they retain the right to provide those services because there are critical to the country and for that reason those entities are also listed as entities that should be protected specially.

Sir, in the legislation, with respect to those entities, stiffer penalties are provided where there is an offence

concerning a restricted computer system as is defined in the legislation.

Mr. President, one of the critical points in the legislation is that recipients of information are also liable. I do not think that the idea of a receiver of unauthorised property is anything that is new to the criminal law. A person who is not authorised to receive information under the circumstances in the particular entity will also be guilty of an offence. It does not matter if the person who provides the information to the recipient has the authority to provide the information or if the recipient in other circumstances has the authority to receive other information. It will always be specific information that one is referring to. The recipient can also be found liable with respect to receiving data that is unauthorised.

Sir, clause 13 of the Bill looks specifically at an issue which I believe is a concern to all of us. It has to do fundamentally with the exploitation of children. It refers specifically to child pornography. Sir, the clause provides that any person who knowingly publishes child pornography will be guilty of an offence. In terms of defining child pornography, it looks at minors who are engaged in sexually explicit conduct; a person who appears to be a minor engaged in sexually explicit conduct and realistic images representing a minor engaged in sexually explicit conduct.

Sir, in terms of publication one would be guilty of an offence if one distributes, transmits, disseminates, circulates, delivers, lend for gain, barter, sell or offers for sale, let on hire or offer to let on hire, offer in any other way or make available in any way, this type of information and of these types of images. Mr. President, we know that we have had some of this in Barbados where the images of children and minors have been exploited, but now we have a specific piece of legislation that can deal with those types of activities.

Sir, clause 14 seeks to deal with a circumstance where information is being sent via the internet. The legislation states that where a person uses a computer to send a message, letter, electronic communication or article of any description that is indecent or obscene, is or constitutes a threat or is menacing in character ... I am sure that most of us in this Chamber do not know of these types of activities but what has happened in the past, in some instances, is that you would have a circumstance where a man and woman are involved in a relationship, if the man is upset about the breakup of the relationship, he would take a photograph of the woman when things were going well and the woman might have been in a relaxed circumstance and what often happens is that the image would be sent, for example, to the woman's workplace or if he does not have an image of the woman in a relaxed position he could take a picture of her face and put it on the

body of a woman who is in a relaxed pose or position and send it to her office.

Sir, the embarrassment and annoyance, inconvenience, distress and anxiety because it could cause her to lose her job because one would be concerned in an environment like whether the circumstances are going to continue where the circumstance of her relationship could be a disruptive force within the company with which she is employed. It is a serious matter which we have sought to address in this piece of legislation.

Part III of the legislation deals with the investigation and enforcement. We have to imagine that what is happening in terms of investigation and enforcement. We have the warrant process where the police officer must approach a magistrate and if there is reasonable grounds for suspecting that an offence has been committed, then a warrant will be issued.

However, we must now imagine circumstances where the police officer is not simply walking into a room and looking to find something that is necessarily tangible. The computer is tangible but the computer software that the police officer might have to access or to retrieve is not tangible in that way. When the police officer walks into a room he will not necessarily see it. He will see the computer but not necessarily see the software.

12.00 p.m.

Sequence 6

Friday, March 09, 2005

Senate 27, sequence 07, 12.00 p.m.

Senator the Hon. Miss L.V. EASTMOND: Therefore, it is necessary within this context of investigation and enforcement to ensure that all of the facilities are put in place so that the police officer can get the job done, while at the same time seeking to safeguard the rights of the potential offender.

The police officer, through the warrant will have the right to seize computers, computer equipment, data, information, documents to inspect and check the operations of a computer. The police officer will also have the ability to convert an encrypted programme or data held in other computer system, at the place where the offence is supposed to have been committed. He will have the right to convert that encrypted information as well.

Sir, when we start to speak of encryption, and we speak of a police officer converting an encrypted programme, we begin to think that all of our offices will have the ability to convert encrypted information on a

computer system. Therefore, quite naturally, the law has to find a mechanism by which the Police can still carry out its functions effectively in this new context within which they have to operate.

Therefore, the warrant issued under the section can authorise assistance to the police officer by an authorised person. The authorised person must be agreed upon by the magistrate. The Commissioner of Police is required to put into writing the request that the particular individual who has specialised knowledge will be put in a position to assist the police in these circumstances.

Sir, this seems quite sensible to me. It is simply a mechanism by which you seek to ensure that the issuing of the warrant actually makes sense. If the warrant is issued and then the police still cannot get the information, or have no idea which pieces of information they should take, then the warrant will be ineffective. What they will have to do is if they went into a particular office, they would have to walk out with all the computers, instead of seeking to find really exactly where the evidence can be found that they need.

The legislation also goes on at Section 16 to provide that the police can also ask the owner of the equipment to assist him or the authorised person in accessing the computer, and the data on the computer and to assist with anything else that they need to do in carrying out their activities.

I believe that this is also necessary because in terms of the information that you can have on a computer system, depending on the purpose for seeking the warrant in the first place, sometimes the owner or the programmer is the only person that can really help you, in terms of accessing the information because of the sequence of codes or the encryption that is used. Even though the authorised person has special knowledge of information technology, that person will not necessarily be able to determine what is the appropriate information or data to be taken away or to be examined by the police officer in certain circumstances.

Where the police officer carries away or seizes documents or computer systems, there is a specific provision here that the police officer must provide the owner with information about the computer, computer systems, data and documents that are taken away from the premises.

In looking further at the enforcement powers that are given to the police, the police is also in a position to request information from the person who is in charge of the computer system to provide information to them, so that they have enough information to determine who the Internet service providers are in the entire activity.

Sir, often we will not simply be dealing with a static offence where we walk into a room and there is a computer system with data on the system that we are concerned about. The offence will, in many instances, occur in circumstances where the individual is not within the precincts of the office.

Sir, as I mentioned at the outset, the Bill also seeks to cover individuals who are actually outside of the jurisdiction or within Barbados. One of the mechanisms that you can use to determine who is the individual that has committed the offence, is to get information from the company which is providing the Internet services that allow this individual to get access to the computer system in the first place.

Therefore, there is a specific provision within the legislation which provides that the police officer can request information and that is through the application being made to a judge that this information be disclosed. There is a safeguard in providing this additional information that the judge may order that a person in control of the computer system, disclose sufficient traffic data about a specified communication to identify the Internet service provider in this case and the path through which the communication was transmitted.

Finally, in terms of the remedies available, there are penalties provided in the legislation which range between \$25 000 and \$200 000 fines, and two years to seven years imprisonment. In setting out those fines, we sought to ensure that the particular fine is commensurate with the potential damage that will occur through the particular activity. While setting penalties is often difficult, these are the ones that we have decided to present in this Bill.

Section 21 also provides that the court may actually order compensation to any person for any damage caused to that person's computer programme or data, as a result of the commission of an offence for which the sentence is passed. It provides that the court you apply to, with respect to the offences under this Act, can actually order compensation for damage caused.

We believe that this piece of legislation is critical to the continued confidence that we can have in our computer systems and computers in Barbados in terms of storing information. I believe that there are many of us who are still not as confident as we could be with respect to storing information on a computer system, as opposed to having it on a file.

Senate 27, sequence 07, 12:10:14

Wednesday, March 09, 2005

SENATOR the Hon. Miss L. V. EASTMOND: This is understandable because when it is on a file you can see it, you can hold it and you can turn the pages. That is what we have been used to. Today when you click on the mouse you see the information appearing before you. Therefore, there is a feeling that if the information could appear before you so easily that it could also disappear as easily. We have heard of circumstances where people have said that their computer crashed and they lost all of the information.

Mr. President, I do not think that we have much experience in Barbados with people hacking into our computer systems. If that happened, it is possible that it would not be disclosed, so maybe we do not even know that they have been hacked into. I believe that the general public would have concerns about these issues until we are certain that the security is in place.

Mr. President, this legislation must be viewed as any other piece of legislation. Even though we have offences such as burglary so that if somebody breaks into your house and steals something, the person could be punished, I believe there is still an obligation to make sure that we put the security systems in place with respect to our computer systems to make sure that we make it difficult for people to hack into the systems. There is quite a lot of security software out there at the moment that we can use for our computer systems, because it is always going to be a moving target with anything that we do. We use certain locks in our homes and then we realise that people knew how to pick those locks. Years ago people were using deadbolt locks only to realise that people could address those as there were cases of the 'deadbolt man'. We also put up burglar bars only then to realise that people would take the sheets off the roof of your house and enter the house from the top.

Mr. President, so as it is in terms of protecting our property at our homes, so it is going to be with our data protection systems. Even though the legislation makes accessing computers in an unauthorised fashion or in an unlawful fashion an offence, there is still an obligation on all of us to make sure that we consider security to be a top priority and that we also put security measures in place with respect to our computer systems.

Mr. President, with those remarks I beg that the Bill be read a second time.

SENATOR F. J. STUART: Mr. President, I believe that the Computer Misuse Bill starts with the acknowledgment that whatever man invents man could circumvent and that it is necessary, as the Minister was just indicating, to try to keep a few steps ahead of those who would abuse rather than merely use the inventions of man.

Mr. President, the relationship between man and technology is a primordial one. It goes back to the very origins of mankind. Western anthropologists have classified various stages through which human development has passed. According to them, the first stage is that stage called savagery when at the economic level for his own survival man lived a monadic life and survived by gathering his food, therefore he lived on the basis of hunting and fishing. At that stage of human development the technology with which he would have wanted to have a relationship would have been technology that guaranteed his survival and facilitated hunting and fishing which were the two main activities in which he indulged in order to guarantee his survival. Therefore, the most advanced pieces of technology at that time would have been technologies aimed at facilitating hunting and fishing and guaranteeing the survival of early man.

According to the anthropologists, when man moved from savagery to a stage they called barbarism, which was distinguished by his ability now not to live by gathering food but to live by producing it, because he discovered agriculture and had become more settled with domesticated animals and that type of thing, the technology that he would have needed in his domesticated and settled state would have been technology appropriate to the working of the land and other technologies appropriate to settled people and not people who had to live their lives moving from place to place in search of food and shelter. The base of the technologies would have been broadened by the fact that since he became settled, some embryonic forms of family life would have begun to take shape and different persons in the family would have been performing different roles and using different kinds of technology.

According to the anthropologists, when man moved from barbarism to what they called civilisation which is where we are supposed to be now, the technologies would have changed again because the defining feature of civilisation would be not just man's capacity to produce food but to produce it in surplus. That led to various forms of the division of labour and the scope for development was then larger in man's civilised state than at any other time in human history.

Mr. President, whether living in a savage state, in a state of barbarism or in civilisation, man has always had a relationship with technology. Technology is really nothing more than the tools used by man to make his life more tolerable, more abundant and certainly more congenial.

In the civilised state, according to the anthropologists, man has moved through a stage called feudalism and we are today in the stage which they called capitalism. The defining feature of capitalism is its focus on profit making. Profit, Mr. President, is not a bad word. Many great thinkers including our own the late Sir Arthur

Lewis made that point over and over again. It is just a distinguishing feature of the era in which we live.

Senate 27 Sequence 8

12.20 p.m.

Wednesday, March 09, 2005

SENATOR F. J. STUART: Mr. President, I believe I may have said from the Floor of this Honourable Chamber before that the father of capitalist thought and philosophy, the Scottish Philosopher Adam Smith, would have put it better than most of us could have, when he said that:

"It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest."

Therefore, the defining feature of the era in which we live is a profit-making one.

Mr. President, it is understandable, therefore, that not only would the production of technology be aimed at making profit, but the use of technology would also be aimed at making profit and understandably too that the abuse of technology will be aimed at making a profit. Sir, that is precisely what it seems to be that this legislation is intended to capture, that is the abuse of technology for profit-making purposes.

Mr. President, I first need to caution, if the caution is necessary, that while we promote the use of technology and in this case, the computer, we should never forget that ultimately we are only talking about a tool. When I hear the evangelical pleas being made in the various quarters in Barbados, for people to use the computer and to become familiar with it, one sometimes gets the impression that we are not talking about a tool anymore, but that we are talking about something that is organic to our everyday existence. The truth is that most of human history and life has gone on without the use of anything called a computer and the computer, as we know it today, only represents a stage in human development.

It is, therefore, conceivable that at some time in the distant future when all of us in this Honourable Chamber are gathered unto our Father, that a piece of technology far more advanced than the computer will be the dynamic by which generations of the future would live their lives.

Mr. President, a tool is, therefore, only a means; it is not an end by itself. I believe it was the late Dr. Martin Luther King who dealt with this means-end dichotomy and warned us that we should not allow the means by which we live, to outdistance the ends for which we live. We, therefore, have to accept and understand that there are

certain things that the computer cannot do for us. Technology has always mediated the relationship between man and nature, and between man and man, but it is possible to meet any man on the street and to ask him what are the five things that he wants most for himself and for his family. Therefore, for that man to answer, he would not mention the word computer because those fundamentals of human existence, those intangibles that go to the making of a civilised life, cannot be captured by tools. Tools are just the means by which we live. The ends for which we live are of a different dimension altogether.

Mr. President, having said that, we have to accept that there are means around us and that there are people who will try to use these means for perverse purposes. Therefore, the computer, of course, has a particular vulnerability, I would have thought, to this kind of abuse, because perhaps it is the only piece of technology that is as attractive to the youngest child as it is to adults, and that it is as accessible to the youngest child, as it is to an adult. Therefore, the scope for its impact across generations is obvious and needs no belabouring.

Mr. President, the legislation before the Honourable Chamber is intended, as best as it can, to deal with the scope for abuse of computer systems and the information contained in those systems. I listened with care to the Honourable Minister as she detailed the provisions of the Bill, and I do not think that there are any issues of particular controversy that should lead me to want to detain the Honourable Senate on this Bill.

Mr. President, just before the Honourable Minister took her seat, she drew attention to the fact that one of the issues captured in the Bill was that of child pornography, and clause 13 of the Bill deals with the issue of child pornography. It imposes penalties for persons who publish, produce or possess child pornography.

Mr. President, if this clause is intended to protect children, what is the state of the law in relation to adult pornography? Sir, having regard to the fact that computers are as accessible to children as they are to adults, and while it is clear that from Clause 13, the abuse of children for pornographic purposes is intended to be prohibited by this Bill, the larger issue of protecting our children from the risks and perils to which they are exposed by the omnipresence of the computer, has to be addressed by the Government.

Mr. President, I am aware that in the 1994 Barbados Labour Party Manifesto, there is a specific commitment to pass a Children and Young Persons Act. I think that piece of legislation can come none too soon in the context of the perils to which our children are exposed. We have been waiting on it for ten years now but I think that having regard to the fact that the computer is so all-pervasive and

so easily accessible to children, for both use and abuse, that perhaps we need a more comprehensive piece of legislation to deal with the issue of children.

Sir, therefore, the clause in this Bill will not be enough to protect children because children are not only at risk, in terms of the chance that there will be caught in sexually explicit conduct, but what they view on the computer is also of relevance. Of course, as I said, there is not only child pornography but adult pornography which needs to be captured by the law and from access, to which children have to be protected.

Mr. President, I am attracted to Part 2 of the Bill which deals with Prohibited Conduct. Of course, Clause 13 comes within Part 2 of the Bill.

12.30 p.m.

Wednesday, March 9, 2005

SENATOR F.J. STUART: I note that the penalties imposed for the various offences contained in the Bill are all, with one exception, penalties imposed in trial on indictment.

This issue arose in the last Sitting of this Chamber and Senators will note that throughout this Bill, the jurisdiction of the court to impose fines or imprisonment arises not on indictment but on conviction of indictment. I seem to recall that the explanation given at the last Sitting, was that it was some new form of drafting and that people would have to be tried anyhow and, therefore, there was no need for the words "on conviction". Mr. Speaker, this Bill comes after that piece of legislation, the Forensic Procedures and DNA...

MR. PRESIDENT: Senator, I am sure that you are aware of the Standing Order. I think that you can make your point without specifically referring to legislation which has recently passed this Chamber.

SENATOR F.J. STUART: Mr. President, I am obliged to Your Honour. It is always a pleasure to be brought back on course by the timely intervention of Your Honour.

Sir, if one looks at Clause 5 of the Bill which relates to interfering with data, it says that if a person knowingly, recklessly, without lawful excuse or justification destroys or alter data, he is guilty of an offence and is liable on conviction on indictment to a fine of \$50 000 or imprisonment for a term of five years or both.

Mr. President, what is the significance of that form of wording which pervades Part II of the Bill and properly so? The simple point that has to be made is this. The

jurisdiction of a judge to impose a fine or sentence on any man or woman who appears in a court of law arises only after that person has either pleaded guilty, in which case a conviction is recorded against the persons or if that person is found guilty after a trial.

What are the procedural steps that are followed? If the person is going to be tried by a judge and jury, Step 1 is an indictment which is drafted by the Director of Public Prosecutions or someone in his office. This is the indictment that frames the charge which the accused man is supposed to meet. Step 2 is the arraignment of the accused person. The person is brought to a court of law and that indictment is read to him and he is asked to plead guilty or not guilty. If he pleads guilty, a conviction is recorded against his name and the judge before whom he is appearing then has the power to fine him, imprison him or both.

If he pleads not guilty, then he has to go through the formality of a trial before a jury and, at an appropriate time, the jury will be asked to determine his guilt or innocence. If the jury determines that he is innocent, he goes free, even though he was indicted. If the jury determines he is guilty, the jurisdiction of the judge clicks in either to fine him, imprison him or both.

Mr. President, if a piece of legislation does not say, as this legislation clearly does, that a person is guilty of an offence and liable on conviction on indictment, then the judge, before whom an accused person is appearing does not have the jurisdiction to impose a penalty even if the person is found guilty.

Sir, when I have to be critical, I am critical and I am pleased to say that the draftsmen or draftswomen at the Attorneys-General Chamber have got it right in this Bill and it is highly unlikely that persons found guilty can escape the sanctions of the law. Conviction on indictment or summary conviction, as is the case in one clause under the Bill, ensures that the law does not act in vain.

Mr. President, the other point I want to make is this. The Minister made reference to Clause 16 of the Bill, the Marginal Notes which says "Assisting a Police Officer". I find that clause quite interesting because it states that (1) A police officer executing a warrant in accordance with Section 15 is entitled to require a person who is in possession or control of a computer data storage medium or computer system that is the subject of (a) search to assist him or an authorised person to access and use a computer system or (b) to obtain and copy computer data referred to in paragraph (a); or (c) use the equipment to make copies and so on.

Sir, before the passage of this legislation and before the introduction of this Bill, there would have been legal

authority stating explicitly that there is nothing in law called assisting the police with their investigation. In a case called *The Crown and Lemsatef*, the judge made it quite clear to police officer, custom officers and others that there is nothing called assisting the police with their investigation.

Mr. President, Clause 16 in this Bill represents, in my view, a departure from that. Not only does it represent a departure from that but under the Constitution of Barbados, accused persons have a right to silence and that silence is not only limited to not saying anything but the accused persons have a right not to do anything that will incriminate themselves.

Clause 16, it seems to me, to the extent that it gives a police officer the power to require a person who could face indictment and conviction to assist them in securing his indictment and subsequent conviction is, in my view, trenching dangerously on the rights of accused persons.

Sir, I understand the good intention of the Bill. I made the point before that way to hell is paved with good intentions but there is nothing in law called "assisting the police with their investigation". If the police or any other office of law enforcement think they have evidence on the basis of which a charge can be proffered against a citizen, they are entitled to do that without the assistance of the citizen.

S27/12:40

Sequence 10

Wednesday, March 9, 2005

SENATOR F.J. STUART: Clause 16 of the Bill makes a departure from that but, of course, the Minister would have a chance to respond to that and I wait with eager anticipation for her response in this regard.

Sir, apart of those two concerns I fully identify myself with the spirit and intention of the Bill. I think that the targets, those persons who would try to hack computers and try to abuse technology which can play a critical role in the advance of our civilisation, should really face the stiffest penalties available to the law if they are caught so going.

The departments identified in the Schedule pursuant to clause XI are all the departments whose information has to be protected and it is appropriate that these departments should be identified and specified in the Bill and for the protection from those who would try to abuse computer systems.

Mr. President, the Opposition has no difficulty, outside of the concerns expressed, with the spirit of the Bill the Government can count on our support.

I am obliged to you, Sir.

SUSPENSION OF SITTING

SENATOR HON. E.R. GRIFFITH: Mr. President, I beg to move that the sitting be suspended until 1.45 p.m.

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

12.42 p.m.

Sequence 11

Friday, March 09, 2005

Senate 27, sequence 12, 1.41 p.m.

RESUMPTION

Mr. PRESIDENT: This Sitting is resumed.

Senator Sir Allan FIELDS: Mr. President, I rise to lend my support to this Bill before us today. First of all, I would like to touch on the commercial aspect of the Bill. The business community in Barbados, as all over the world, has become increasingly dependent on the Internet to transact its business and, certainly, needs a level of comfort that these transactions are secure and that the law is there to protect them against people, if and when they try to infiltrate their networks to pilfer or disrupt their businesses.

This is one of the fastest growing elements of conducting business anywhere in the world now. For those who think that hacking is only a pleasant pastime, we should recognise that computers now form a central role in our lives containing personal, financial details and confidential aspects of Government business, companies and many business organisations. Some of these services are so dependent on the computer to deliver them that without having access to a secure computer, they can disrupt whole economies of countries.

We have seen this in Barbados. I remember well in 1997, there was a Canadian gentleman here who set up several shell companies that engaged in telemarketing and targeted elderly citizens in the United States where there were fraudulently deprived of their hard earned monies for many years. Eventually on a visit to the United States, he was apprehended and I believe, incarcerated in a jail in Seattle. Therefore, it is not something that is foreign to

Barbados and it is already here and it is here to stay, and the sooner we deal with it, the better.

On the social aspect, I think it is not before time that Barbados does everything in its power to limit and, indeed, stop where possible, lewdness, pornography and child abuse. It is a fact that the greed for pornography among a certain element of the world's population has fuelled the advent firstly of VCRs and videos to the point where they got very cheap and everybody can afford them, and that same greed for pornography has fuelled to a large extent, the explosion of the Internet and Internet devices. We have to do everything in our power to stop the further degradation of the society in which we live.

Mr. President, on another aspect of this, while it is heartening to be in a position here today to be part of passing this legislation, I would like to suggest that we also should be able to encourage those in a position of power to stop the associated lewdness and pornographic material that bombards our youth every day on ZR Vans and Minibuses. I cannot understand why a simple change to the Road Traffic Act, could not be made to plug the loophole that allows this to continue.

I was very privileged and honoured to be part of the Commission on Justice and Peace in Barbados and when we went from venue to venue on evenings to have Town Hall Meetings with citizens of Barbados, it was amazing how at every Town Hall Meeting, people cried out about the music that was being thrown at their youth and children as they attended school on morning. I think that a corollary more could be done to stop this.

Mr. President, it seems to me that this Bill is also specific to persons in Barbados committing breaches, when it finally becomes law. Anyone who follows cyberspace crime or crime committed on the Internet, or follows viruses that are produced to interrupt the use of computers, will note that these criminals for the most part are very sophisticated and they have the ability to do untold harm to businesses in Barbados. Those crimes are committed as far away as Singapore, Thailand and across the length and breadth of the United States.

We have always spoken of the long arm of the law. In my opinion, it seems to have been shortened.

Senate 27, sequence 12, 13:50:14

Wednesday, March 09, 2005

SENATOR A. C. FIELDS: I just wonder if the Minister could shed some light on how we could react to crimes of this nature which are perpetuated on companies and citizens of Barbados by people who are not citizens of Barbados and how in the fullness of time we could capture

them in some legislation to prevent them from doing this when it can be proved that they were committing the crime.

Mr. President, I would like to make one other relevant observation. As I have already mentioned in this Honourable House, there is no current protocol on e-commerce in the protocols governing the impending CARICOM Single Market and Economy. In view of this Bill and similar Bills that are to come before this House and the heightened recognition that is being brought to internet activities in a business context, I think that this is another aspect that should be dealt with as a matter of urgency because we do need a protocol within the CARICOM Single Market and Economy to speak to e-commerce signatures and the like.

Mr. President, I urgently and anxiously await the complementary legislation such as the Data Protection Act.

Mr. President, it is my pleasure to support this Bill, and I thank you for your kind indulgence.

SENATOR G. P. B. NICHOLLS: Mr. President, I rise to lend my support to the Computer Misuse Bill. I am very pleased and heartened that it appears that we have reached some form of bi-partisan consensus.

Mr. President, the last Honourable Senator who spoke said that the private sector in Barbados is *ad idem* with the Government of Barbados in bringing to Parliament this most critical Bill which would protect computer systems and the information contained in those systems from unauthorised access by persons and from abuse by persons authorised to have access and for all related and ancillary matters thereto.

Mr. President, on my way to the Chamber, I listened to the Honourable Minister of Commerce and I want to compliment her for a very erudite presentation and introduction to this Bill. I am indeed heartened that the Government of Barbados has recognised that the whole concept of protecting computer systems, networks and so forth, would need the regular attention of legislation. When England passed their Computer Misuse Act in 1990, a number of the present problems that are causing concern to owners of computer networks and computer systems were not dealt with in that Act. In fact, only last year the House of Commons has been embroiled in a debate as to whether or not to do minor tinkering with the Act or to completely overhaul it. The Computer Misuse Act of 1990 of the United Kingdom has been recently the subject of several expert commissions engaged to advise the members of the House of Commons as to the appropriate measures to be put in place to deal with a whole plethora of situations that were not encountered or contemplated when that piece of legislation came into effect in 1990.

Sir, from my research, I am pleased to say that the Bill under our consideration today has borrowed from the learning and the advice of several other Commonwealth countries who have gone as far as to put on their statute books provisions to deal with unauthorised access and entry into our computer systems.

The criticism in England, Mr. President, if you would allow me the latitude to make the necessary reference, was that the Computer Misuse Act in its then form was a failure because it was not seen as a viable tool to enable the prosecution of the offenders. Sir, because computer crimes evolved at such a rapid rate the law was not moving with the pace or was not seen to be as flexible as the criminals which the law was intended to target.

Mr. President, the definition and the interpretation section at Clause 3 of the Bill is broader than that of the 1990 English Act. I make specific reference to the definition of what is computer data, a computer data storage medium and computer systems, because the primary threat from hackers has not necessarily been an individual computer but has been in computer networks and computer systems. The authorities in England found themselves limited where persons did not necessarily hacked into a specific or individual computer but into networks systems thus causing havoc.

Therefore, I am very buoyed by the fact that it is to Barbados' credit that we have taken the advice of some of the industry experts in creating this Bill and making provisions for the protection of data networks and networks systems, as opposed to how other countries have implemented this Bill with the focus being on specific individual computers.

Sir, as I said at the outset, the need to protect the owners of computer systems from persons who maliciously attack computer networks and systems is important in a society that depends upon the provision of services as its central economic agent for development. That is important because we need to bring our computer protection legislation on board with the other criminal legislation on our statute books that deal with malicious damage to persons private equipment and property.

Mr. President, the authorities in other jurisdictions have found that while the disruptive actions of those persons on the internet in relation to hacking and virus writing were clearly illegal, there were many areas in which the Computer Misuse Act, and indeed I would even venture to say our Computer Misuse Act, would not be able to capture as there are several grey areas. There are also difficulties in relation to how people deal with accessing persons who stay within one jurisdiction and commit an act of computer misuse in another jurisdiction. The concept of spamming has been identified as one of those areas, in

recent reform in places like Hong Kong, England and Trinidad and Tobago, that have not been dealt with.

Indeed, Mr. President, our legislation does not specifically deal with how an internet service provider protects his network systems from unsolicited bulk email which cuts into their ability to send and receive information from their clients.

Sir, I would anticipate that one of the major acts of computer misuse prior to the introduction of this Bill into Barbados' law... The average user of a computer system or a network in Barbados would complain that they are being bombarded with several unsolicited email some of which contain a lot of pornographic material dealing with sexual enhancement vitamins, dealing with membership for various organisations and people soliciting you to purchase a lot of products which the user of a computer system is clearly not interested in.

Mr. President, in support of this Bill, I would want to lend my voice to the core of persons out there who were saying that we need to have a situation in which our laws protect those persons who do not want to have their access to internet systems interrupted by persons who are sending several bulk email to them.

Senate 27 Sequence 13

2.00 p.m.

Wednesday, March 09, 2005

SENATOR G. P. B. NICHOLLS: Mr. President, it is going to be a very difficult course and no one is anticipating that the Government has got it right, or that the Government will get it right. Therefore, the Honourable Minister and Senator Stuart did make reference to the fact that the people who are targeted in this legislation are very clever, and as people in society improve their ability to use technology to exploit their own desires, the legislation has to be flexible. I also anticipate that in the future it has to be able to deal with jurisdictional and cross-jurisdictional issues, in which people might want to stay in one jurisdiction and render, wreak havoc on, or damage to our own country.

Mr. President, the application of the Act speaks to:

“An act done or an omission made:

(a) in Barbados; (b) on a ship or aircraft registered in Barbados; or (c) by a national of Barbados outside the territory of Barbados, if the person's conduct would also constitute an offence under the law of a country where the offence was committed.”

Mr. President, that is a start and, for example, let us use the country of Grenada which does not have a computer misuse legislation on its statute books. If a Barbadian national was in Grenada and, for example, wanted to break into Sagicor's computer systems, it would not be a specific act of criminal misuse, if that action was done in Grenada because of the fact that Grenada does not have the relevant legislation to which our Act is making mention. Sir, these are the kinds of jurisdictional issues which are not necessarily encountered by other pieces of legislation in relation to criminal activity because the criminalisation of certain acts in relation to accessing certain computers is relatively new within the Caribbean. I wonder why it has taken so long, but it is better late than never.

Mr. President, I also want to make mention of cyber-squatting and spamming, because some countries which have already dealt with the issue of making the act of trespass on computers illegal. There is a 1999 English decision in which the internet service provider, Virgin Net Limited, prosecuted successfully a subscriber who sent over half million bulk emails on their internet service system, in breach of his contract with them, in relation to sending out emails. There are examples in the United States of America, in which it is illegal for someone to use a forged or dummy returned address, or to put false or misleading information in one's domain address or in the subject lines. These countries have gone into specific details in relation to dealing with those acts of computer misuse which are not contemplated by our legislation but which I am sure, the number of internet users in Barbados would complain, would be their greatest humbug.

Mr. President, with those few words, I pledge my support to this Bill. I am grateful that we have brought Barbados in line with several of the more advanced commonwealth jurisdictions in relation to these acts of computer misuse and hope that with the intended passage of the Data Protection and the Freedom of Information Bills, that are to come to these Chambers, that we would shore up our existing electronic legislation and computer legislation in relation to Information Technology.

I am obliged to you, Mr. President.

SENATOR the Hon. Miss L. V. EASTMOND: Mr. President, I would like to thank all Honourable Senators who spoke in support of this proposed piece of legislation and I will respond to a number of issues raised during their various presentations.

Sir, I listened very carefully to Senator Stuart's contribution with respect to the place in our society which technology has at present. The Honourable Senator referred to a somewhat evangelical approach to the promotion of Information Technology. I suspect the Honourable Senator

is referring to utterances made by the Minister of Commerce and Consumer Affairs. Sir, those utterances may very well sound that way because as Senator Stuart rightly pointed out, Information Technology is a tool. I think we should also bear in mind that the automobile is a tool and that at the moment all of us do not see the necessity for engaging in Information Technology.

Sir, when the automobile first came about, we probably did not see the importance of that either. I believe that is how all Honourable Senators reached here today. I know that life would have been much harder, if I had to walk from St. Philip. Therefore, I think that in that context, Information Technology and the internet have to be viewed in this way. There is nothing inherently sacred about it but another point about using it, is that it cannot be viewed only from a domestic perspective.

Mr. President, the truth is that this is how the rest of the world is conducting its business and if we do not ensure that we have the facilities to connect with the rest of the world, it would mean that we would become isolated. For example, when individuals started to use aeroplanes as a means of transportation, it would have been ridiculous for us to say that Barbados did not need an international airport, as this would have cut us off from the rest of the world, if we were only taking passengers who come by boat. Sir, some would come by boat but it would cut us off and make life difficult for us. Sir, we send our messages by facsimile and by post when the rest of the world is using email, the internet and other areas of Information Technology? Barbados is a small country and because of the importance of our tourism, we must remain connected with the rest of the world. Sir, because of our access to information and knowledge, we have to make sure that we create that connection. Sir, if there is any hint of being evangelical in my approach, I can only say that it is because I take these matters very seriously.

Mr. President, with respect to the specifics in the legislation regarding child pornography, the issue was raised about the fact that children have access to the internet and that they may also come into contact with adult pornography. Sir, the legislation is seeking to make punishable the activities by individuals who transmit child pornography through the various communication systems that we have.

The legislation does not try to address the issue of access by children to pornographic sites. I believe the reason for this is that it is seeking to be consistent with what we have known in law in the past because of the fact that pornography exists in books, in video tapes and in other forms.

S:No.26(14)2:10 p.m.

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SENATOR the Hon. Miss LYNETTE EASTMOND:
In those circumstances the responsibility that must be exercised by parents in terms of allowing their children access to these other mediums must be addressed in the same way when it comes to accessing website. Sir, parents still have the responsibility to ensure that they monitor what their children are doing in terms of accessing websites by not allowing them to sit in front of the computer unsupervised.

Sir, there are facilities where you can block some information coming into your homes through facilities provided by various companies. Those are some of the mechanisms that could be used in terms of shielding children. It is a fact that the legislation does not seek to address that issue but I believe it is consistent with what we are used to in terms of our legislation.

Sir, I believe it is important in terms of computer related legislation that we ensure that we do not travel too far outside of the bounds of what we are used to in terms of any kind of law, especially criminal law.

I refer to the point made by Senator Stuart with respect to the clause which considers the issue of assisting a police officer. Senator Stuart is correct even though I am not familiar with the case he cited. He is correct when he says that there is no such thing as assisting the police with investigations.

Sir, I believe that Senator Stuart recognises that the case would have been focusing on the approach taken by police officers sometimes as an excuse to question a suspect when there cannot find reasonable grounds for attaining the individual who they think might have committed a crime. Sir, this euphemism of assisting the police with investigation was coined and Senator Stuart is correct when he said that there is no such thing.

Sir, in this particular piece of legislation they are not speaking of a euphemism because they actually mean assisting the police when they go to carry out a search warrant. The legislation says that the police officer is entitled in executing the warrant to require a person who is in possession or control of a computer, storage medium or computer system to assist him or the authorised person with their investigation.

Sir, there is a possibility if one hacks into the Archives Department, that the person who owns that system is Government and, therefore, the Government would not have an issue with providing assistance. In this particular case, the person in question in control of the computer system is unlikely to be under consideration for prosecution seeing that they are the victims of the offence

but they can require them to assist. The other person that could be required to assist is the hacker himself who could end up being a suspect and would face prosecution.

Sir, the Section at 16(1) provides the police officer with an entitlement to require a person who possess the information to assist.

Clause 16(2) provides that a person who fails to give the information would be guilty of an offence. It also provides that the person would be guilty of an offence only where there is not lawful excuse or justification to assist a police officer. I imagine that it would be lawful excuse or justification if the police asked a question and the person refuses to answer or assist because his Constitutional rights permits him not to answer. The person would have a lawful excuse or justification in not assisting the police officer in this particular case.

Sir, it is necessary to read Section 16 as a whole because there is no piece of legislation that can simply change the Constitution by implication in any case. Sir, as I said before, the answer to that issue lies in Section 16(2) where it clearly suggests to me that the individual has a right not to do anything that would put him in a disadvantageous position.

Mr. President, I refer to the issue of dealing with individuals who attack computers in Barbados, who live outside of Barbados and who are not nationals of Barbados. Sir, individual states are very cautious about going outside of their jurisdiction in terms of putting laws in place. The United States of America is the only country which believes it has a right to extent its jurisdiction outside of its own border. Sir, especially with criminal law we are doubly cautious about putting legislation in place that would criminalise activity that individuals outside our jurisdiction get involve in.

Sir, this is why we sought to ensure that there was strong connection between the person in Clause 2 which says that there has to be a connection in terms of nationality. Sir, there has to be a connection with Barbados for it to seek to exercise a kind of extra-territorial jurisdiction.

Therefore, the answer would not be for us to seek to do this through our legislation. We would have to seek to do this through some kind of bilateral or multilateral convention among several states. For example, there are existing protocols with respect to extradition and criminal exchange of information. Perhaps we should look at these instruments to see if they are wide enough to cover the issues with which we deal.

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SENATOR the Hon. Miss L. V. EASTMOND: I will also say that within the international community, certainly within the European Council, there are already conventions in place that countries have entered into. There is a convention dealing with the criminal misuse of computers that has been developed by the European Council and some countries have signed onto it already. It is within that context that I think that we would be in order to deal with that particular issue. I am sure that it is a matter that will come up as we engage in the process at the United Nations, which is called the World Summit on the Information Society. All of the issues concerning internet governance and putting in place protocols for the internet are being discussed at that level. Barbados has been participating fully in those discussions on internet governance and we will continue to do so. Recently, the Permanent Secretary in the Ministry of Commerce, Consumer Affairs and Busines Development went to Geneva to progress talks on this issue of internet governance and what further protocols we would wish to put in place.

In terms of amendments to the Computer Misuse Act I do not think that in all instances there will necessarily be amendments to this piece of legislation. I think that there are many pieces of legislation in Barbados that need to be enhanced in order to take into account that you are dealing with other methods of transferring information and other methods of communicating. Therefore, there are new means by which crime can be facilitated and in those instances there may be a need to enhance legislation already in existence.

However, I will caution that we cannot get ahead of the state of play within the international community. All of the issues concerning spam and spyware are matters that we are aware of. There are many things that companies seek to do on the internet. If you use a particular browser you will see all kinds of advertisements popping up in front of you.

We also had a circumstance where the results of the census were published in the United Kingdom. The Government publicised that they were now on the website and the whole of the United Kingdom apparently tried to access the website at the same time, which caused a calamity. That was within the Government's realm but if this were the case with a private sector entity, would anybody be to blame in a context like that, for example, if a commercial website was selling furniture and if you get on the website first they would give you \$5 000 in furniture free and someone maliciously got that information printed in the newspaper and everybody went on that website and caused a disruption to the entire system, what kind of affect

would that be. That person has not entered into any computer system but they have maliciously caused the company to suffer some damage because they published this misleading piece of information in the newspaper and then caused millions of people to go on one website.

Sir, those are the types of issues that we face. We have to make sure that we fit them in the appropriate place where the law is concerned. We also have to make sure that we do not criminalise activity that really should be dealt within other ways because there is not every activity that causes harm that we make a criminal offence. For example, there is the possibility that if you have a website that you think that you may be subjected to a million people coming on your website at the same time, there is the possibility that you can develop a piece of software that when the information approaches the website to say that X number of people are coming on, that may be it would allow only 25 persons to come on at one time.

Mr. President, maybe the solution could be, in using a particular type of software or for the particular company to use its best judgement to deal with it in another way and that the recourse is not really to go to the criminal law to try to find a solution. It is not in every instance that we will need to criminalise a particular type of activity, which is a serious thing when we are talking about the criminal law because the penalties go up to about seven years imprisonment. Mr. President, with the criminal law we always have to be very careful about the activities that we are going to make a criminal offence.

Sir, I wish to thank all Honourable Members who expressly supported the Bill and those who supported it by not speaking against it. I, therefore, beg to move that the Bill be read a second time.

The question that the Bill be read a second time was put to the Senate and agreed to.

On the motion of SENATOR the Hon. Miss L. V. EASTMOND, the Senate resolved itself into Committee on the Bill, Her Honour Senator Dame Patricia Symmonds in the Chair.

Madam CHAIRMAN: The Senate is now in Committee.

Clauses 1 - 3 inclusive, were called and passed.

Clauses 4 - 14 inclusive, were called and passed. Clauses 15 - 23 inclusive, were called and passed. The Schedule was called and passed.

On the motion of SENATOR the Hon. Miss L. V. EASTMOND, 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. Miss L. V. EASTMOND, the Bill was read a third time and passed and cited as the Computer Misuse Act, 2005.

14.30 p.m.

Sequence 16

Friday, March 09, 2005

Senate 27, sequence 17, 2.30 p.m.

ORDER NO. 3 – THE SHIPPING (INCENTIVES) (AMENDMENT) – BILL, 2005

Senator the Hon. E.R. GRIFFITH: Mr. President, the path of economic development which the Government has committed itself, is one where all sectors of the economy are to function well and so provide an opportunity for the use of all of our resources, human and otherwise.

In that context, Mr. President, all of us have acknowledged that one sector has to lead that development, while the others provide some support. In our context, the sector which is carrying the brunt of the development is services generally, particular tourism within the services sector. Therefore, there is always a need for us to be identifying new products to help to carry the sector further forward.

It is in that context therefore, Mr. President, that in 2002, the Minister of Finance, in presenting his Economic and Budgetary Proposals to Parliament, indicated that as part of the further development of the tourism sector, a number of incentives were going to be provided to the boating and yachting community to add another dimension to the tourism product. This is why today we are discussing the Shipping Incentives Amendment Bill to provide concessions to encourage the development of the yachting and boating community.

The concessions provided in that submission by the Minister of Finance in 2002, include the introduction of a refurbishment programme to facilitate the alteration, equipping, maintenance or repair of existing boats which are used commercially in the tourism industry, as well as the acquisition of marine equipment, sport and fishing gear, fittings and furniture.

These concessions include the following which are set out in the draft Bill before us. At Clause 4, there is a decision to repeal section 5 of the existing Shipping Incentives Act, Chapter 90.A. and to insert the following:

“...for approved shipping companies.”

5. (1) Where an approved shipping company incurs approved capital expenditure up to \$200 million dollars in respect of an approved shipping activity the expenditure shall for income tax purposes, be deducted against the income arising over a period of 15 years.”

“(2) Where a person other than a commercial bank provides funding to an approved shipping activity by means of a loan or otherwise, either the interest or dividends received by that person shall be exempt from income tax.”

“(3) An approved shipping company that is granted income tax concessions under this Act may, for the purpose of the assessment of income tax, carry forward in respect of the first 9 years of assessment after the expiration of the concession period, losses that were incurred during the concession period and were not written off.”

Sir, this fits in with the existing provision of the Income Tax Act. Previously, the provision granted in respect of losses under the Shipping Act was a shorter period. It has now been brought in line with what exists in the Income Tax Act.

Exemption from the payment of customs duties on the items listed in the Third Schedule, provided a restaurant is being operated on board, and where the Minister is satisfied that the items concerned are not being made or manufactured in Barbados.

In Clause 5 of the Bill before us, section 6 of the existing Act is repealed. Sir, a provision is made for an approved shipping company engaged in commercial shipping or boating in the tourist industry, to access concessions under sections 5 and 6, only if it possesses an operating licence or permit, with respect to its activities and there is a stipulation that the information which must be submitted in order to access the concessions under Section 5 or 7 of the Act, namely, in respect to the importation, building, alteration, refitting, equipping, maintenance or repair of the ship.

Clause 6 seeks to renumber sections 7 and 7.(1) and inserts the section 7.(2), which provides an exemption from the payment of customs duties with respect to the items listed in the Second Schedule, where the Minister is satisfied that the items concerns are not being made or manufactured in Barbados.

Clause 7 provides that the Minister may, by order, amend the First, Second and Third Schedules to the Act.

Clause 8 amends the existing Act by inserting First, Second and Third Schedules.

The First Schedule lists the specific items of marketing expenditure, which, if incurred by a shipping company will attract 150 per cent income tax deduction. That is an existing allowance under the Income Tax Act for marketing of various products.

The Second Schedule lists the items to be exempt from customs duty, including trailers to be used in the building, refurbishing, equipping, transporting, maintenance or repair of a ship, as well as all water sports equipment.

The Third Schedule is made up of two parts, A and B.

The items listed in Part A of the Third Schedule may be imported free of customs duty, once every five years while those in Part B, may be imported free of customs duty, once every year.

In addition to the Bill before us, there was an order which sought to amend the Schedule to the Value Added Tax Act, to allow the items identified within this Act to be covered under that section which deals with zero rating, and that was done already.

Mr. President, at the moment there are about 550 small vessels on the register which is kept by the Director of Maritime Affairs. These vessels are around 10 tonnes. Included in that number would be vessels like the Jolly Roger, the Harbour Masters and those other boats which operate within the tourist industry.

There are 276 speed boats as well as 169 jet skis and wave runners. I know from where I have read elsewhere that persons have expressed concern about the manner in which the jet-skis, according to them, are being disadvantaged. My research indicated to me that there is nothing which is happening by this Bill before us, which will in any way disadvantage the jet-ski operators.

Senate 27, sequence 17, 14:40:14

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SENATOR the Hon. E. R. GRIFFITH: I know that is a subject that is being reviewed by the Ministry responsible at the moment, and in the very near future they would be making a definite statement on that and will set out clearly the manner in which these operators would be expected to do so in the future so that they can continue to make their living in a legitimate way. Therefore, this Bill is in no way disadvantaging any of those persons. This Bill is merely seeking to create a legislative as well as a fiscal framework for Barbados to promote itself as a country that is favourably disposed toward the development of a vibrant yachting and boating industry, which would provide

another opportunity for persons who are taking advantage of our tourist industry to be occupied and to enjoy their stay in Barbados. This Bill also creates an opportunity for Barbadians who are interested in these areas of activity and for the owners of these vessels who are operating in Barbados to make a contribution to the economic development of the country.

Mr. President, it is in that vein that I encourage Honourable Senators to support this Bill. Therefore, I beg to move that it be read a second time.

The question was put to the Senate and agreed to.

SENATOR the Hon. E. R. GRIFFITH: Mr. President, I am grateful to the Members of the Senate for their full support for this Bill because all of us are interested in seeing Barbados developed as a country and that we can continue to do those things which would attract the necessary foreign exchange that would permit us to carry the country forward, so I really do appreciate the full support that is being provided by Honourable Members of the Senate. On the motion of SENATOR the Hon. E. R. GRIFFITH, the Senate resolved itself into Committee, Her Honour Senator Dame Patricia SYMMONDS in the Chair.

COMMITTEE

MADAM CHAIRMAN: The Senate is in Committee.

Clauses 1 to 2 inclusive were called and passed.

Clause 3 was called.

SENATOR F. J. STUART: Madam Deputy President, I just want to ask the Minister to explain the thinking behind the deletion of the words “subject to negative resolution” in the Bill. The existing legislation states that the Minister may, on application being made to him in such form as he approves, by order, subject to negative resolution, approve any company.

This Bill is seeking to delete the words “subject to negative resolution”. I understand those words, as I have always understood them, to be precautions against ministerial whim. They give Parliament a residue of control over the whimsical exercise of ministerial discretion. I am not aware that the words in any way offend, therefore I would really like to know what is the thinking behind the deletion of those words.

I do not know when last there has been a negative resolution in Parliament on any order made by a Minister, so I would really like to know what is the thinking behind the deletion of the words “subject to negative resolution”.

SENATOR the Hon. E. R. GRIFFITH: Madam Deputy President, I must admit that I do not have an immediate answer for Senator Stuart. What I would respectfully suggest to the Senate is that we hold the passage of this section and deal with the other sections, by which time I should have an answer from a few persons. I am not aware of the thinking behind it. However, I doubt that it is of any sinister nature, but I would prefer to find out first.

MADAM DEPUTY PRESIDENT: I take it that meets with your approval Senator Stuart.

SENATOR F. J. STUART: Yes, Madam.

MADAM DEPUTY PRESIDENT: I thank you. Therefore, until we can shed some light on this, I think that we can go on to the other clauses.

On the motion of SENATOR the Hon. E. R. GRIFFITH, notion on Clause 3 was deferred.

The question was put to the Senate and agreed to.

Clauses 4 to 8 inclusive were called and passed.

The First Schedule was called and passed.

The Second Schedule was called and passed.

The Third Schedule was called and passed.

Senate 27 Sequence 18

2.50 p.m.

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MR. PRESIDENT: The Chairman has reported progress on the Bill and seeks leave of the Senate to sit again.

SENATOR THE HON. E.R. GRIFFITH: Mr. President, I beg to move that further consideration of the Bill be postponed until later in the Sitting.

The question was put and agreed to.

ORDER NO. 4 – RESOLUTION TO APPROVE IN ACCORDANCE WITH SECTION 5 OF THE CROWN LANDS VESTING DISPOSAL ACT, CAP. 225, THE VESTING IN THE NATIONAL HOUSING CORPORATION OF A PARCEL OF LAND SITUATED AT DRAX HALL GREEN IN THE PARISH – OF ST. GEORGE IN THIS ISLAND FOR THE PUBLIC – PURPOSE OF HOUSING DEVELOPMENT.

SENATOR THE HON. E.R. GRIFFITH: Mr. President, this matter before us is straightforward in that it deals merely with the vesting of land in the National Housing Corporation for the purpose of housing development. The acquisition was done on May 6, 2004, and this is merely the vesting of the land which has been acquired, in the National Housing Corporation so that they can use it as part of their development programme.

Mr. President, as you know, the matter of housing is one which concerns all of us. I am sure that Honourable Members would be willing to support any further effort which is being made to improve the housing stock for the many persons who are seeking assistance from the Government. Therefore, I will not detain the Chamber on this matter.

I beg to move that this Resolution do now pass.

MR. PRESIDENT: Senator Stuart.

SENATOR F.J. STUART: Mr. President, I am in agreement with the Honourable Leader of Government Business that the Resolution seeks to vest land at Drax Hall Green in the parish of St. George in the National Housing Corporation. When it gets to this stage, the land has already been acquired and, therefore, this matter would have engaged the attention of the Senate before.

Mr. President, in any event, in two days time, we will have ample opportunity to discuss matters relating to housing when the Appropriation Bill comes to this Chamber to be debated. I should not spend my energies at this time but will wait for a fair and more appropriate day.

Mr. President, the Government is free to proceed with this as there is no objection from the Opposition.

SENATOR THE HON. E.R. GRIFFITH: Mr. President, I beg to move that Resolution do now pass.

The question was put and agreed to.

RECOMMITAL

ORDER NO. 3 (resumed)

On the motion of SENATOR THE HON. E.R. GRIFFITH, the SENATE resolved itself into Committee on the Bill, SENATOR THE HON. DAME PATRICIA SYMMONDS in the Chair.

SENATOR DAME OLGA PATRICIA SYMMONDS: The Senate is now in Committee.

Clause 3 was called.

SENATOR THE HON. E.R. GRIFFITH: Madam Deputy President, I have the answer to the question raised by Senator Stuart and as I felt, there is nothing sinister about it. What has happened in this case is that this is an effort to bring this piece of incentive legislation in line with other incentive legislation.

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SENATOR HON. E.R. GRIFFITH: For example, the Tourism Develop Act, after which this is modelled in the sense that in Schedules II and III, the items which are identified there are items similar to those in the Tourism Development Act, with respect to the pieces of equipment in the restaurants on the board the ships are allowed to have onboard. That Act does not have such a requirement.

Mr. President, the idea is, once the incentives are approved, the business entities are expected to have access to them and move on with their operation. That is why the other pieces of legislation dealing with incentives do not have that requirement that the order may be subject to negative resolution and in which case there is a period of 40 days before they could have access to the incentives because if they have access to them before that period expires, there is always the possibility of a Resolution being made in Parliament to nullify that.

This is simply an effort to bring this piece of legislation in line with existing incentive legislation. Sir, once the incentives are granted, the beneficiaries can move on with their operations instead of having to wait a further 40 days before they can have access to the incentives. There is nothing sinister about this Bill.

SENATOR F.J. STUART: Senator Griffith, I accept the good intention but clause III of this Bill seeks to amend section 3 of the Principle Act. Section 3 of the Principle Act states:

“ The Minister may, on application being made to him in such form as he approves by order subject to negative resolution, approve any company that:

(a) is engaged in shipping

activities; (b) is wholly owned by the Crown; or

(C) in which the Government has the majority interest as an approved shipping company.

Sir, Section 2 of the Principle Act defines an approved company as any company approved by the Minister under Section 3. Section 3 does not deal with incentives at all. The company has to be approved first before the issue of incentives arise. I do not see how deleting the words “subject to negative resolution”, can address the issue of incentives because before a company can qualify for these things, it has to be approved as a company first by Ministerial order.

SENATOR HON. E.R. GRIFFITH: That is true, Madam Deputy President, but then it has to wait 40 days before it can have access to the incentives. That is the real issue there and that is the objective behind that amendment.

Clause 3 was called and passed.

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

On the separate motions of SENATOR HON. E.R. GRIFFITH, the Bill was read a third time and passed cited as the Shipping (Incentives)(Amendment) Act, 2005.

ADJOURNMENT

SENATOR HON. E.R. GRIFFITH: Mr. President, it is very unlikely, accordingly to my way of interpreting events, that we will meet before March 21, 2005 when we are likely to consider the Estimates of Revenue and Expenditure for 2005-2006 but I will await further development on that matter. At this stage I beg to move that the Senate do now adjourn sine die.

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

15.06 p.m.

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EDITORIAL NOTES — NOT PART OF THE REPORT

Prepared with the transcript; for checking against the recording and the Minutes.

EDITORIAL QUERIES

Points noted while preparing this report from the edited transcript. The text has not been altered except where stated.

Q1. Masthead. The session is not stated in the source, so no session line is printed.

Q2. Papers, items 52 and 62. The titles of items 52 and 62 have unbalanced brackets in the source ('(Exemption) Illuminat (Barbados) Limited) Order, 2005' and 'Post Office (Franking Postage Meter Machines (Amendment) Regulations, 2005'). Printed as in the source.

Q3. Introduction of Bills; First Reading of Bills. Under 'INTRODUCTION OF BILLS' the Leader of the Senate gives notice of a Resolution (vesting of land at Drax Hall Green), and the Bill read a first time is called 'The Shipping (Incentives) Bill, 2005', while Order No. 3 and the Act as passed are the Shipping (Incentives) (Amendment) Bill/Act, 2005. Printed as in the source.

Q4. Take-slip about 2.30 p.m.. One time stamp reads 'Friday, March 09, 2005'; the sitting was on Wednesday, 9th March, 2005, as the other stamps show. Printed as in the source.

Q5. Order No. 3, second reading and Committee. The record shows the question on the second reading put and agreed to before the Minister's closing thanks, and then the Committee without a motion to go into Committee; a procedural line reads 'motion on Clause 3 was deferred'. Printed as in the source.

DEBATE SUMMARY

(Editorial summary — not part of the record.)

The Senate met in the Senate Chamber, Parliament Buildings, on Wednesday, 9th March, 2005 at 11.10 a.m., with His Honour Senator Sir Fred Gollop, the President, in the Chair; prayers were led by Rev. Father Errington Massiah. Apologies were received from Senator Sir Roy Trotman and Senator Husbands. The Leader of the Senate, Senator the Hon. E. R. Griffith, laid 67 papers, among them the Barbados Estimates of Revenue and Expenditure 2005-2006, some forty sets of Telecommunications Regulations made in 2003 and 2004 and a series of Post Office Regulations. Standing Orders 22(1) and 45(2) were suspended, notice was given of a Resolution to vest land at Drax Hall Green, St. George, and the Shipping (Incentives) Bill, 2005 was read a first time.

Under Order No. 2 Senator the Hon. Miss L. V. Eastmond moved the second reading of the Computer Misuse Bill, 2005. She cited the 'Millissa' virus of about 1999, which caused some US\$80 million in damage, and explained that the Schedule listed computer systems holding sensitive information, such as those of the Royal Barbados Police Force, the Archives Department and the Forensic Laboratory. Senator F. J. Stuart traced the history of man and technology and questioned the drafting of the penalty provisions, citing clause 5 (a fine of \$50 000 or five years' imprisonment) and clause 16; the President reminded him of the Standing Order on referring to legislation recently passed. He said the Opposition supported the spirit of the Bill.

After the suspension Senator Sir Allan Fields spoke on the dependence of business on the Internet, asked how offences by non-nationals could be reached and noted that the CARICOM Single Market and Economy had no e-commerce protocol. Senator G. P. B. Nicholls welcomed the bipartisan consensus. Replying, Senator Eastmond referred to the European Council's convention on computer crime and cautioned against criminalising every harmful activity, such as spam. The Bill passed through Committee, Her Honour Senator Dame Patricia Symmonds in the Chair, and was passed as the Computer Misuse Act, 2005.

Under Order No. 3 Senator Griffith moved the Shipping (Incentives) (Amendment) Bill, 2005, giving effect to the 2002 Budget proposals for incentives to boating and yachting in the tourism industry, including deduction of approved capital expenditure up to \$200 million over 15 years and duty-free import of listed equipment. He said about 550 small vessels, 276 speed boats and 169 jet skis and wave runners were registered. In Committee Senator Stuart asked why the words 'subject to negative resolution' were deleted, and clause 3 was deferred.

The Senate then agreed to Order No. 4, the Resolution under section 5 of the Crown Lands (Vesting and Disposal) Act, Cap. 225, to vest land at Drax Hall Green, St. George, acquired on 6th May, 2004, in the National Housing Corporation; Senator Stuart said there was no objection from the Opposition. On recommittal Senator Griffith explained that the change avoided a 40-day wait before incentives could be used, bringing the Act in line with other incentive legislation. Senator Stuart replied that section 3 dealt with approval of companies, not incentives. Clause 3 passed and the Bill was passed as the Shipping (Incentives) (Amendment) Act, 2005.

Senator Griffith said the Senate was unlikely to meet before 21st March, 2005, when it would consider the Estimates, and the Senate was adjourned sine die.