



THE REPUBLIC OF TRINIDAD AND TOBAGO
ATTORNEY GENERAL & MINISTER OF LEGAL AFFAIRS
THE HONOURABLE FARIS AL-RAWI, LL.B, LL.M.

July 3rd 2018

Mr. Douglas Mendes S.C.
President of the Law Association
2nd Floor
95-97 Frederick Street
Port-of-Spain

Dear Mr. Mendes S.C.

RE: (i) The Criminal Division and District Criminal and Traffic Court Bill
(ii) The Payments into Court Bill 2018
(iii) The Miscellaneous Provisions (Supreme Court of Judicature and Children) Bill

I refer to the matters at caption and acknowledge receipt of your two (2) separate letters to me both dated June 29th 2018, which I first received from several members of the media whilst I sat during a sitting of the House of Representatives on the 29th ultimo. I later on the 29th ultimo received from the Treasurer of the Association, Ms. Theresa Hadad, her email to me of the same date enclosing copies of your said letters to me.

Regrettably and as you are aware, I was not able to respond the very day of receipt of your said letters as the sitting of the House and Committee of the Whole continued late into the night on the 29th ultimo on the very contentious and burning issue of the Opposition's violent about face in support of the unanimous report of the Joint Select Committee established to consider the Anti Terrorism Bill 2018. This Bill is of national and international importance as the 190 countries comprising the Financial Action Task Force will apply enhanced due diligence, colloquially referred to as 'blacklisting' against Trinidad and Tobago if it does not receive critical amendments contained in the Bill into law immediately. I note with deep concern that the Law Association is entirely silent on this critical matter, which affects the bedrock of the financial system of the country.

As per our several conversations over the weekend and ending yesterday I confirm that the Government is pleased to facilitate the Law Association's belated request to provide written submissions on the captioned Bills by July 6th 2018. Accordingly at a sitting of the Senate yesterday July 2nd 2018 the debate on the thirdly captioned Bill was adjourned to a date to be fixed in September 2018 prior to the end of the 3rd Session of the 11th Parliament. A fortiori, the debate on the secondly captioned Bill will also be taken in September 2018. It is to be noted that yesterday's sitting of the Senate was scheduled prior to the Association's letters to me of the 29th ultimo.

I note that your said letters to me of the 29th ultimo are very general in nature and are obviously written as a first blush response by the Law Association to matters which it now wishes to consider and also in fact reconsider. Whilst we are pleased to have the benefit of the Association's fulminations it is incumbent upon me to answer some of the very sharp criticisms levelled by you.

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I am particularly concerned by the Association's comments in respect of the **Criminal Division and District Criminal and Traffic Court Bill** (the 'Criminal Division Bill') which give in my respectful view, the entirely wrong impression that the Law Association was some how caught off guard in the structuring of this division and the unique features of *inter alia* the blending of jurisdictions of the Magisterial Courts and the Assizes and the use of Criminal Masters. My consternation is deeply rooted in the fact that the structure and features of the Criminal Division are **replicated** from the Family and Children Division Act, which established the **Children Court** with the very same structures and features of the Criminal Division Bill and which Act of Parliament has stood as part of the *lex corpus* since **July 5th 2016**.

It is a matter of public record that the Law Association was consulted on multiple occasions and in multiple ways in respect of the establishment of the Children's Court. Not a single comment has come from the Law Association let alone an adverse one, since the assent of the law which created the Children Court. This spectacular observation is underscored by the fact that hundreds of matters have been listed and actually heard in the two Children courts, where the essence of what is contained in the Criminal Division Bill is in active and actual practice.

With respect to **The Miscellaneous Provisions (Supreme Court of Judicature and Children) Bill** it is true to note that the Government proposes to increase the number of Pusine Judges from 49 to 64 and the number of Court of Appeal Judges from 12 to 15 and that it proposes to allow Judges to be appointed from the entire Commonwealth.

The Government has revealed statistics that demonstrate *inter alia* that: (i) there are over 29,000 preliminary enquiries in backlog; (ii) 2/3rds of the Prison population is in pre-trial detention with matters over 17-20 years in delay; (iii) there are over 94,000 matters pending at the Magistrate's Court with the backlog growing year on year and; (iv) if trials for murder alone occupied the full attention of the existing compliment of Judges in the Assizes it will take at least 10 years to deal with the backlog alone. The other 12 laws to be addressed in The Miscellaneous Provisions (Supreme Court of Judicature and Children) Bill relate to matters that the Government has observed in the operationalization of the 19 laws amended by the introduction of the Family and Children Division Act, none of which have come from the Law Association in the near 2 years since the assent of the law.

The Government's proposal to increase the number of Pusine and Court of Appeal Judges with a broadened range to include candidates from the entire Commonwealth has come on the back of the introduction and implementation of Criminal Proceedings Rules, the opening of new courts and specialist courts as evidenced by the Children Courts; the introduction of a computerised registry in courts; the filling of vacancies in the Office of the Director of Public Prosecutions; the increase in manpower at the Finance Intelligence Unit; the increase in manpower at the Financial Investigations Branch of the TTPS; the reforms to the Land Registry etc. Judicial capacity is perhaps the most critical aspect required to address the nightmare that is the criminal justice system.

The Government has noted the Opposition's call to amend the manner in which Judges are currently appointed. This will involve constitutional special majority issues. The Opposition's track record on the support for special majority legislation speaks for itself. The Law Association has also recently completed an exercise of reviewing the manner in which Judges are appointed. The courts are currently considering issues surrounding the Judicial and Legal Services Commission. The Government is in the course of considering potential amendments to the law relative to judicial appointments. The issue of immediately providing for more judicial capacity can be separated from the debate on constitutional reform as the manner of appointing

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judges and the entrenchment of the Judicial and Legal Services Commission in our Republican Constitution has been in existence for many decades. The Government holds the view that the many thousands of criminal matters in arrears have to be addressed immediately lest we continue to spend billions on an unchanged system expecting a different result. The chasm of decades between charge and conviction or acquittal has to be immediately closed.

We do not share some of the criticism of the Association's in relation to **The Payments into Court Bill 2018** but shall reserve our responses until after receipt of your written comments on the captioned Bills.

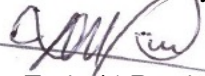
The Government agrees that there must be consultation. We posit that this must be catalysed by alacrity and consistency of approach. The Office of the Attorney General and Legal Affairs has written to the Law Association on numerous occasions requesting commentary and stakeholder engagement. In many instances we have been left without even an acknowledgment of our request. All Bills are published and gazetted. The Criminal Division Bill has been in the public domain since March 9th 2018. I am aware that the Association has employed an experienced legal officer from the Parliament to assist in its legislative considerations and I take this opportunity to commend your leadership for advancing this initiative.

The Government awaits the Association's submissions by July 6th 2018. I remind that we have written the Association on a host of other very important Bills and note that we have not had any responses to date.

I shall appreciate the same manner of instantaneous and wide spread dissemination of my letter to you as was employed in your letters to me of the 29th ultimo.

I look forward to your reply and reversion.

I remain
Yours sincerely



Faris Al-Rawi, MP
Attorney General and Minister of Legal Affairs