

June 29, 2018

The Hon. Mr. Faris Al Rawi
Attorney General of Trinidad and Tobago
Government Campus Centre
Corner Longden and Richmond Streets
Port of Spain

Dear Attorney General,

**Re: (1) The Criminal Division and District Criminal and Traffic
Courts Bill No. 6 of 2018**

(2) The Payments into Court Bill No. 9 of 2018

I had cause to write to you this morning on your failure to consult with the Law Association on Bill No. 7 of 2018. Regrettably, I now make a similar complaint in relation to the captioned Bills which only came to our attention on the 18th June, 2018 after they had already been passed in the House of Representatives and were to be debated in the Senate.

The first captioned Bill was passed in the Senate on the 21st June, 2018 and the second captioned Bill is due to be debated in the Senate on the 2nd July, 2018.

We dispatched these Bills to our Membership on the 21st June, 2018 and invited comments to be submitted to us on or before the 30th June, 2018.

In the interim, we wish to bring the following concerns to your attention and we sincerely hope that you share same with the Parliament in the case of that Bill currently before the Senate:

1. The first captioned Bill, if brought into force, will empower the Court Executive Administrator to appoint a Deputy Court Executive Administrator on contract. Curiously, the proposed position of Deputy Court Executive Administrator appears to be solely a contractual position and not a post to be filled by the Judicial and Legal Services Commission, as obtains with the Court Executive Administrator and the Assistant Court Executive Administrators.

2. If the second captioned Bill is passed in its current form it will be possible for the Court Executive Administrator to select the Deputy Court Executive Administrator as a co-signatory on the custodial bank accounts. The potential for abuse is obvious since the Deputy Court Executive

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Administrator would be beholden to and not independent of the person who appointed him or her, that is, the Court Executive Administrator. In such circumstances the requirement of two signatories as a financial safeguard is illusory and further, marginalises the established statutory role and function of the Registrar of the Supreme Court.

3. We also note with concern that the second captioned Bill seeks to introduce powers to deal with public moneys without the oversight of the Exchequer and Audit Act and without persons being appointed accounting officers for the purposes of that Act. Furthermore, the mere fact that the Auditor General is to be given responsibility to audit the custodial bank accounts is of little comfort and offers little oversight since it is reported that the Judiciary has not submitted financial reports to the Auditor General since 2014.
4. The creation of Masters in the first captioned Bill appears to give them jurisdiction over the liberty of the citizen, a jurisdiction which was clearly excluded by the Supreme Court of Judicature Act.
5. The blending of the jurisdiction of the Magisterial Courts and the Assizes is not a task that ought to have been undertaken lightly. Summary matters are currently heard in the respective Districts in which the complaint has been lodged. It is unclear how such a concurrent jurisdiction is to be exercised, and the first captioned Bill provides no assistance as to how this concurrent jurisdiction will work in practice. There are numerous Acts which require amendment and which have not been expressly amended by the first captioned Bill. This will surely lead to uncertainty, arbitrariness and the appearance of forum selecting. This unwieldy result is directly inimical to the Rule of Law.
6. We also wish to express our concern as to the discretion accorded to the Chief Justice by s. 24 (2) of the first captioned Bill to determine the case types and offences which are appropriate for "special criminal court procedure". Such procedure is not defined in the Bill and the discretion appears to be unfettered.
7. On consideration of the first captioned Bill we have concerns as to whether same required a special majority, and this is under review along with numerous other issues that arise in relation to clarity of jurisdictions and the circumscribing of the exercise of absolute discretions.
8. The second captioned Bill follows the implementation of a system called 'Court Pay' which was already engaging our attention as the payments have already commenced under said system despite the absence of underpinning legislation. Each payment to Court Pay involves a transaction fee payable to a private service provider. There is no jurisdiction in our respectful view to order a person paying maintenance to pay a transaction fee, and there have been no amendments to the relevant legislation governing the payment of maintenance to render such a fee legal. It matters not if the fee is nominal, it must nevertheless be lawful.

We are further constrained to bring to your attention that the facilities in which our Courts currently operate throughout Trinidad and Tobago are less than desirable and yet additional resources are contemplated for the establishment of the Criminal Division. There are Magistrates' Courts which are desperately in need of repair and resources. The Hall of Justice in Port of Spain does not have a functioning air conditioning system, photocopiers, printers, sufficient paper, functioning security scanners, functioning toilet facilities amongst other issues which hamper the administration of justice.

It is essential that consultation take place and that same be meaningful. In the circumstances, we recommend strongly that the progress of the second captioned Bill be halted and further, that the first captioned Bill not proceed to her Excellency the President for assent, or to proclamation to permit such consultation with the legal profession to address our concerns.

We appreciate that similar type legislation was passed in the Family and Children Division Act No. 6 of 2016, in respect of which the Law Association was given an opportunity to comment. However the subject matter of the second captioned Bill was not dealt with in the aforementioned Act and the creation of the Criminal and Traffic Division has wider implications and therefore the Bill deserved fresh consideration. Furthermore, the manner in which all of these Bills and Acts referred to herein and Bill no. 7 of 2018 impact on each other and they need to be considered thoroughly. The landscape of the Courts and consequently, the very administration of justice is being changed drastically, with severe impact on the profession and the public.

We look forward to your kind and urgent assurances and timely receipt of all other proposed legislation which impacts the administration of justice in sufficient time to enable us to make a meaningful input.

Yours sincerely,



Douglas Mendes
President
Law Association of Trinidad and Tobago