IN THE HIGH COURT OF JUSTICE

PORT OF SPAIN

INDICTMNET NO. 05/10

THE STATE

V.

OTTO LANCASTER

****

POSSESSION OF A DANGEROUS DRUG
FOR THE PURPOSE OF TRAFFICKING

****

RULING

AND

JUDGE'S NOTE ON SENTENCING

****

BEFORE: The Hon. Mr. Justice A. Mon Désir

APPEARANCES:

Mr. George Busby- for the State

Mr. Fulton Wilson- for the Defendant

DATED: March 23, 2011
DELIVERED: March 23, 2011

PUBLISHED: June 30, 2011

I

INTRODUCTION

Introduction:

1. On March 1, 2011 the prisoner was convicted of the offence of possession of a dangerous drug, namely- marijuana, for the purpose of trafficking. The jury deliberated for just over half an hour, before returning their unanimous verdict of guilty. A plea in mitigation was offered by learned Counsel, Mr. Wilson on behalf of the prisoner after which, learned Counsel Mr. Busby, for the State advanced certain authorities on sentencing for the Court's consideration. The matter was then adjourned to March 15, 2011 for sentence but in the interim the Court invited further and written submissions from both counsel on a matter of law. Those submissions were duly filed but only by the State, the Defence opted instead to make oral submission on the point and the sentencing of the accused was fixed for today.

The Relevant Facts:

2. Before I proceed to pronounce sentence on Mr. Lancaster, I must review the relevant facts, law and principles applicable to the instant case. The relevant facts are that on Wednesday 10th November 2004, at around 12.05 a.m., police officers were on mobile patrol proceeding East along Argyle Street in Belmont in a marked Police Vehicle. It was during that time that they observed the Prisoner with a black bag on his shoulder. He was at the time about 30-35 feet in front of the Police Vehicle and he was walking in an Easterly Direction. At that time, the street was well lit owing to the streetlights and also the light emanating from the head lamps of the Police vehicle. The Prisoner looked in the direction of the Police vehicle, started to run East along Argyle Street, then through a gate and into a yard on the Northern side of Argyle Street. When the prisoner ran into the yard, he still had the black bag on his shoulder. This aroused the suspicions of the officers and they gave chase. They eventually brought the police vehicle to a stop on the roadway in front of the said gate and pursued that prisoner into the yard, which it was later discovered was the prisoner's yard. Upon pursuing him into the yard the officers found the prisoner hiding behind an old metal bed with the bag still in his possession. The officers identified themselves to Mr. Lancaster and one of them, PC Roberts then told him of his observations and proceeded to search the black bag that the prisoner had in his possession. Upon so doing, the officer found 12 packets of plant like material which

looked like the dangerous drug marijuana. PC Roberts told the prisoner that he is of the opinion that the said plant like material was the dangerous drug, marijuana and cautioned him in accordance with the Judges Rules. The prisoner made no request or reply.

3. With the assistance of the other Police Officers, PC Roberts then arrested the prisoner and took him, along with the black bag containing the 12 packets of plant like material to the Belmont Police Station. At the station PC Roberts again cautioned Mr. Lancaster in accordance with the Judges Rules. He again made no reply or request. PC Roberts then weighed the plant-like material in the presence of the prisoner and other police officers and subsequently placed his markings on pieces of masking tape and affixed them to each of the 12 packets and also on the black bag in which the packets were found. Thereafter, PC Roberts formally charged the prisoner for the offence of possession of marijuana for the purpose of trafficking and informed him of his legal rights and privileges to which the Accused made no reply or request. The Certificate of Analysis that was subsequently obtained in respect of the said drugs and which was later tendered into evidence, revealed that the plant-like material was indeed the dangerous drug marijuana and that its weight was some 10.47kg.

II

THE LAW

4. This case raises for the Court's determination two (2) primary questions regarding what is the appropriate sentence that should be imposed when a person has been convicted on indictment of the offence of trafficking in a dangerous drug or of being in possession of a dangerous drug for the purpose of trafficking. Those questions, simply put are- (1) whether section 5(5) of the Dangerous Drugs, Act ("the Act") creates a mandatory minimum sentence for offences of this nature; and (2) if the answer to the first question is no, what is the appropriate sentence in this case?

Relevant Statute

5. A convenient starting point is the text of section 5(5) of the Act, itself. That section provides that-

> "[s]ubject to subsection (7), **a person who commits the offence of** trafficking in a dangerous drug or of **being in possession of a dangerous drug for the purpose of trafficking is liable upon conviction on indictment to a fine of one hundred thousand dollars**, or where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, **and to imprisonment for a term of twenty-five years to life**."

6. It follows therefore, that a person who commits either the offence of trafficking in a dangerous drug or that of being in possession of a dangerous drug for the purpose of trafficking, and who is convicted on indictment- is liable to a fine as prescribed by the statute **and** to imprisonment for a term of twenty-five (25) years to life. As regards, the issue of the fine that may be imposed by the High Court, the language of section 5(5) is quite clear and warrants no further exploration. It is however, in respect of the *term of imprisonment* which the law prescribes, that the Defence contends that the language used by the legislature, on the face of it, is not quite clear. The essential question which first arises for this Court's determination therefore, is- what is meant by the words, **"liable to … imprisonment for a term of twenty-five (25) years to life"**?

Case Law:

7. Although the maximum sentence prescribed under section 5(5) of the Act is life imprisonment- the general authorities in this jurisdiction on sentences for offences of this nature and in these particular circumstances, reflect a tariff that ranges from approximately eight (8) to about twelve (12) years with hard labour. That is the general position and it is reflected in the following assortment of relevant authorities.

8. In *John Quamina v The State*[1], the Appellant was the driver of a vehicle in which police officers found twenty-three (23) packets (41.86 kgs) of marijuana, twenty-two (22) of which were hidden in a trunk while one (1) was found in the back seat of the said vehicle. The Applicant was charged with Possession of Marijuana for the Purpose of Trafficking. Upon conviction, he was sentenced to eight (8) years imprisonment with hard labour. The Court of Appeal comprising Justices of Appeal, Weekes JA, Soo Hon JA and Stollmeyer JA, on October 22, 2009, considered the seriousness of the offence. The Court found that the quantity and the packaging revealed that this was no small operation and the quantum of the dangerous drug was substantial. In that case the Court noted however, the previously clean record of the Appellant. In the result, the appeal was dismissed and the convictions and sentence were affirmed.

9. In *Richard Govia, Lystra Ravello and Nicholas Cadette v The State*[2], the Appellants went travelling in a vehicle which was under police surveillance. The vehicle was searched and therein officers discovered a bag continuing 4.1 kgs of marijuana. The Appellants were jointly convicted of Possession of Marijuana for the Purpose of Trafficking and sentenced to twelve (12) years imprisonment with hard labour. The learned trial judge considered the fact that the Appellant, Cadette had a previous conviction for Possession of a Firearm; that the Appellant, Ravello had a previous conviction for Possession of Marijuana; and that the marijuana was found next to Govia in the back seat. The learned judge also took into account the prevalence of the offence; the fact that the nation had the reputation of being a significant international drug transshipment point; and that the use and abuse of drugs had destroyed the lives of many youths. In addition to these, the trial judge took into account the fact that the evidence suggested that this was a very organized operation. Additionally the amount of marijuana, manner in which it was packed and the open area in the car where it was found, were all taken into account as aggravating features.

[1] Cr App No 53 of 2008
[2] Cr App No. 2, 3, 4 of 2006

10. At the Court of Appeal however, their Lordships took into account the fact that the amount of marijuana was not too substantial and that there was nothing in the evidence to suggest that the Appellants were of a higher echelon of a well organized international or national drug trafficking ring. They also bore in mind the fact that the Appellant, Ravello had pleaded guilty; and that the Appellant, Govia had no previous convictions. In the circumstances the Court of Appeal, comprising of Justices of Appeal, Hamel-Smith, JA John JA and Weekes JA, on July 17, 2007, varied the Appellants' sentences from twelve (12) years with hard labour to that of eight (8) years imprisonment with hard labour.

11. In *Emmanuel Wilson v The State*[3], the Police stopped a vehicle and noticed two long objects resembling firearms which they seized. Neither the Appellant nor the other occupant had firearm user's licences. Upon further search, the Police found two (2) feed bags containing marijuana three (3) shotguns and four (4) shotgun cartridges. The Appellant was convicted of- (1) being in Possession of 6 kgs of Marijuana for the Purpose of Trafficking, for which he was sentenced to twelve (12) years imprisonment with hard labour; (2) being in Possession of Ammunition, for which he was sentenced to three (3) years imprisonment with hard labour; (3) being in Possession of Firearms without the requisite licence, for which he was sentenced to three (3) years imprisonment with hard labour. The sentences were ordered to run concurrently. The learned trial judge, in sentencing the Appellant, considered- (1) the need for punishment; (2) the issue of deterrence; (3) the Appellant's previous convictions; (4) the nature and seriousness of the offence; and (5) the maximum penalty for the offence. The aggravating feature of note in this case was the fact that the Appellant actually had two (2) previous convictions, one for Possession of Marijuana for the Purpose of Trafficking and Possession of Ammunition. On appeal however, learned justices of appeal, Jones JA, Nelson JA and Lucky JA on May 15, 2003, the Court of Appeal dismissed the appeal and affirmed the sentence and conviction.

[3] Cr App No 44 of 2001

Mandatory Minimum Sentence- Vishal Lalman

12. These authorities do not however, consider the thorny issue of whether section 5(5) of the Act creates a mandatory minimum sentence for offences of this nature section which arises in this case. That issue was considered by Soo Hon J, as she then was, in the case of 2008 case of *Vishal Lalman v The State*[4]. The material facts of *Lalman* are that, ten (10) packages of cocaine (7.368 kgs) were discovered in a car solely occupied and driven by the Appellant. The Appellant was convicted of Possession of Cocaine for the Purpose of Trafficking and sentenced to ten (10) years imprisonment with hard labour. Upon sentence the learned trial judge considered that the prisoner had three (3) previous convictions; that the case involved a large quantity of drugs; that in the context of this case the primary sentencing consideration was the need to deter the prisoner and the prevalence of the offences of that type. The learned trial judge also took into account in the prisoner's favour the fact that he was fifty-four (54) years old with a family of three (3) young children; that he had been in custody for the past three (3) years awaiting trial; and that since the incident, he had not had any infringement against the law.

Construction of Penal Statute

13. At page 6 of the Court's cogent and, in my view, well-reasoned ruling in *Lalman,* Soo Hon J, citing the dicta of Mohammed J, in *The State v. Anthony Alfonso*[5], considered the principles of statutory interpretation and noted that-

> "Mohammed J was called upon to decide this very issue. He reviewed the various legislative enactments and aides on interpretation including Bennion on Statutory Interpretation, the Third Edition, which states at paragraph 271, at page 637 as follows:
>
> > **"It is a principle of legal policy that a person should not be penalized except under clear law. The Court, when considering in relation to the facts of the instant case, which of the opposing constructions of the enactment would give effect to the legislative intention, should presume that the legislator intended to observe this principle. It should, therefore, strive to avoid adopting a construction which penalizes a person when the legislators' intention to do so is doubtful, or punishes him or her in a way which was not made clear."**

[4] Cr App No 36 of 2008
[5] HCA (Criminal) No. 38 of 2003

Mohammed J concluded that the principle to which he must adhere in construing the relevant provisions must be the one favourable to the person liable to the penalty. Support for this view is found in the case of **Tuck and Sons v. Priester, (1887) 190 BP, 629, Lord Esher Master of the Rolls** stated at page 638,

> **"If there are two reasonable constructions, we must give the more lenient one. This is the settled rule for the construction of penal sections."**

14. Then at page 8 of the Court's ruling, the learned judge, continued by stating that-

> "The words, **"Imprisonment for a term of 25 years to life"** calls for clarity. It is sure that the legislature intended imprisonment as the penalty for the commission of the said offence. But is it for any term between 25 years to life imprisonment? It is interesting to note that the Dangerous Drug Amendment Act 2000 provides for penalties in Section 8, 9 and 10 in the following terms, "Which shall not be less than 25 years," clearly creating a minimum sentence of 25 years for the offences contained in the respective Sections. In the same vein, if the intendment of the legislature were to set a minimum penalty of 25 years for the offence possession of a dangerous drug for the purpose of trafficking, it seems clearer to specifically state that the penalty for the said offence "Shall not be less than 25 years and up to life imprisonment." Thereby creating both a minimum and a maximum penalty.
>
> Moreover, the courts being deprived of the liberty to apply Section 68(2) and 68 (3) of the Interpretation Act, does it now mean that the Court must impose both a fine **and** imprisonment? Once the legislature intended to impose a minimum sentence, such intention ought to be clearly specified. More so, because the said minimum is on the higher end of the scale. There is no doubt that the amended Section of the Act intended to create a more severe penalty for the said offence. Moreover, by depriving the courts of the use of Section 68(2) and (3) of the Interpretation Act, Parliament was seeking to reinforce the message that these types of offences ought to be meted out with the severest of sentences."

15. At page 9, Soo Hon J, then went on to consider the case of *Hilo Food Stores Limited v. Ilva Ellis and the Price Control Inspector, James Samuel*[6], and noted as follows-

> "the appellants were convicted of selling what was called "chilled chicken" at a price in excess of that prescribed by an order made under the Price of Goods Regulations (1972). Upon appeal in the Judgment of Sir Isaac Hyatali Chief Justice, at page 8, he stated as follows:
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> > **"It is a well-settled principle of interpretation for which no authority need be quoted, that a Court will not construe an enactment in a way which will produce absurd and unreasonable results, unless it is driven to such a construction by the plain words of the enactment."**

[6] Magisterial Appeal No. 226 of 1981

16. The learned judge then went on to pose the question-

> "If the Court were to construe the subject provision as meaning that a minimum penalty of 25 years must be imposed on all persons convicted of the said offence, what then would be the results? Clearly persons in possession of the statutory amount of 10 grams of cocaine, as well as someone in possession of 10 kilograms may both be subject to the minimum penalty of 25 years. What then of the other factors, which the Court must consider in passing sentence? Would the Court ignore the essential factors of the gravity of the offence, the personal characteristics of the offender, the particular circumstances of the case, the aims of sentencing, such as, rehabilitative, punitive, deterrent? By depriving the Court of the use of 68(2) and 68 (3) of the Interpretation Act, is Parliament saying that these factors are of no importance in passing sentence, and that every offender, in any set of circumstances, would be subject to minimum penalty of 25 years? If these were the absurd and unreasonable results intended, then the Court must be driven to such a construction by the plain words of the enactment".

17. At page 8, citing a Bennion on Statutory Interpretation[7], the Court observed that:

> **"Whenever it can be argued that an enactment has a meaning requiring infliction of a detriment of any kind, the principle against doubtful penalization comes into play. If the detriment is minor, the principle will carry little weight. If the detriment is severe, the principle would be correspondingly powerful. However it operates, the principle states that persons should not be subjected, by law, to any sort of detriment unless this is imposed by clear words."**
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> As Bret J said,
>
> **"Those who intend that a penalty may be inflicted must show that the words of the Act distinctly enacted that it shall be incurred under the present circumstances. They must fail if the words are merely equivocally capable of a construction that would, and one that would not, inflict the penalty."**

18. The learned judge then referred to Sutherland, Statutory Construction, Chapter 50 paragraph 3, the Sixth Edition, on Punitive Legislation at page 2 which states that:

> **"The purpose behind the more lenient interpretation is to place the burden equally on the legislature to clearly and unequivocally warn people as to what actions would expose one to liability for penalties, and what the penalties would be."**

[7] Benion: page 303, paragraph 129, under the rubric, "Persons should not be penalized under a doubtful law,"

At page 3:

"Strict construction is a means of assuring fairness to persons, subject to the law, by requiring penal statutes to give clear and unequivocal warning in language that people generally understand concerning actions that would expose them to liabilities for penalties, and what the penalties would be. A number of Courts have said that the rule that penal statutes are to be strictly construed is a fundamental principle, which in our judgment, would never be altered. Why? Because the law-making body owes the duty to citizens and subjects of making unmistakably clear those act for the commission of which the citizen may lose his life or liberty. The burden lies on the lawmakers, and inasmuch as it is within their power, it is their duty to relieve the situation from all doubt."

19. Soo Hon J, then concluded by holding that-

"it is the view of this Court that the amended provisions of 5(5) of Act No. 44 of 2000 is ambiguous. It's plain meaning is unclear, therefore, the prisoner must benefit from such doubt. In this regard see the case of **R v. Chapman** (1931)2 Kings Bench, at page 606 in the words of Lord Hewart, then Chief Justice, and I quote:

> **"Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning, which the common interpretation fail to be resolved, the benefit of the doubt should be given to the subject and not to the legislature, which has failed to explain itself."**

Therefore, as I said, the prisoner must benefit from such doubt. The Court rules that the provisions cannot be interpreted as imposing a minimum penalty of 25 years. Taking, therefore, all the circumstances of this particular case into account, the sentence of this Court is as follows: Vishal Lalman, you will serve a term of imprisonment of 10 years with hard labour."

Lalman Distinguishable

20. I am respectfully of the view however, that the case of *Lalman* is distinguishable from the case at bar. It is for that reason therefore, as well as the ones that I have outlined herein at paragraphs 21 to 26, that I accordingly decline defence counsel's invitation to follow *Lalman* in the instant case.

A.

Issue of mandatory Minimum- Not Argued Before the CA

21. First of all, in *Lalman*, the appeal was withdrawn prior to it being determined on its merits and on November 13, 2008, the Court of Appeal comprising Justices of Appeal Weekes JA, Mendonca JA, Jamadar JA dismissed the appeal and affirmed both the conviction and sentence. In relation to the minimum mandatory sentence the learned trial judge had ruled that section 5(4) of the Dangerous Drug Act No 38 of 1991 as amended by section 5(5) of Act No 44 of 2000 cannot be interpreted as imposing a minimum mandatory sentence of 25 years imprisonment for someone convicted of being in Possession of Dangerous Drug for the Purpose of Trafficking. Although the Court of Appeal upheld the conviction and sentence, the issue of the mandatory minimum sentence was not argued before their Lordships and was as such, never ruled or adjudicated upon by the Court of Appeal. There is therefore, no authority on this specific point that is binding on this Court.

B.

Inapplicability of Interpretation Act, Recognised

22. Further, it is to be noted from the ruling in *Lalman* that the Court, in construing the provision of section 61 of the Act and the applicability of sections 68(2) and 68(3)[8] of the Interpretation Act to the Act, quite rightly took the view that- "this section [section 61 of the Act[9]] clearly prescribes that section 68(2) and 68(3) of the Interpretation Act do not apply to penalties fixed for offences other than for the simple possession of dangerous drugs. So that they do not apply where the offence is one of possession of a dangerous drug for the purpose of trafficking.[10]" So it is clear that in the mind of the learned trial judge that the legislature had intended to limit the application of those provisions of the Interpretation Act to only the offence of possession simpliciter. The clear inference therefore, being that an entirely different consideration was intended by parliament for offences such as trafficking in a dangerous drug or the possession of a dangerous drug for the purpose of trafficking.

[8] [8] Section 68(2) Interpretation Act, Chap. 3:01: "Where in any Act or statutory instrument provision is made for any minimum penalty or fine, or for a fixed penalty or fine, as a punishment for a criminal offence, such Act or statutory instrument shall have effect as though no such minimum penalty or fine had been provided, or as though the fixed penalty or fine was the maximum penalty or fine, as the case may be."
[8] Section 68(3) Interpretation Act, Chap. 3:01: "Where in any written law more than one penalty linked by the word "and" is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively."
[9] My inclusion
[10] HCA (Criminal) No. 15 of 2008 @ p. 6

C.

Neither Defence Nor State Invited Court

To Recognise a Mandatory Minimum Sentence

23. Additionally, it is clear from of the ruling of the learned trial judge in *Lalman* that neither the prosecution nor the defence invited the Court to construe the provisions of section 5(5) of the Act as prescribing a mandatory minimum sentence. Indeed, at page 6 of the said ruling Soo Hon J, noted that- "in his submissions, counsel for the prisoner expressed the view that the subject section did not set a minimum penalty of 25 years, and so, the Court is at liberty to fix any appropriate sentence, including one under 25 years. Counsel for the State submitted that the provisions of section 5(5), as amended, were unclear, consequently, the Court ought to construe same in favour of the prisoner." Therefore, the Court in *Lalman* was not impressed upon to view the said provision in any way other than that which was most favourable to the prisoner and as such the learned judge would not have had the benefit of full and mature arguments to the contrary.

D.

No Assistance on the Specific Language of Section 5(5) the Act

24. It must also be noted that no assistance was provided to the Court in *Lalman* regarding the meaning of the specific expression being "imprisonment for a term of twenty-five years to life" that is used in section 5(5) of the Act nor. Indeed, no examples of authorities where that peculiar expression was used were drawn to the attention of the Court, nor it seems, was the Court invited to consider whether that expression was essentially the same in its practical effect as the expression "shall not be less than 25 years and up to life imprisonment" which the learned judge preferred.

25. In my respectful view however, the expression "*imprisonment for a term of twenty-five years to life"* that is used in section 5(5) of the Act is neither ambiguous nor unclear. In my view also, that expression is precisely the same in its purport, import and in its practical effect as the expression *"shall not be less than 25 years and up to life imprisonment"* which the learned judge in *Lalman* preferred. Although the latter may, admittedly, be considered a more elegant

formulation of the intention of parliament, the expression "imprisonment for a term of twenty-five years to life", in my view, connotes and conveys precisely the same meaning and effect- albeit in a slightly untidy way. This is all the more so when one has regard to the fact that by section 61 of the Act, Parliament has specifically and deliberately removed the application of section 68(2) and (3) of the Interpretation Act, from offences of this nature and has limited it to only the offence of possession *simpliciter* of a dangerous drug.

E.

No Reference to Hansard

26. Finally, and perhaps the most significant aspect of the ruling in *Lalman* that makes it distinguishable from the case at bar, is the fact that the Court in that case was not referred to the rule in *Pepper v Hart* as an aid to statutory interpretation, nor was the Court's attention drawn to the debate of the Dangerous Drugs (Amendment) Bill as reflected in the Hansard Reports June 5, 2000 and August 8, 2000 respectfully. These are matters which, had they been brought to the learned judge's attention may well have affected the view that the Court ultimately took of the intention of Parliament in respect of section 5(5) of the Act. It is clear therefore, that the learned judge in *Lalman* felt constrained by the rules of statutory interpretation that were drawn to the Courts attention to rule that penal statutes which are in some way "**ambiguous"** should be construed "in favour of the accused". However, such ambiguity as the learned trial judge perceived in the language of section 5(5) of the Act, may well have been definitively resolved had the Court had the benefit of the learning in *Pepper v Hart* and the relevant transcripts of the Hansard concerning the debates on the Dangerous Drugs (Amendment) Bill in both Houses of Parliament.

III

THE ULTIMATE ISSUE

The Ultimate Issue- Whether A Mandatory Minimum Sentence Created?

27. The questions remains however, whether the words "imprisonment for a term of twenty-five years to life" used in section 5(5) of the Act create a ***mandatory minimum sentence*** for offences of this nature?

Arguments for the Defence

28. On this issue, Mr. Wilson for the prisoner has essentially argued that the section does not create a mandatory minimum sentence and that therefore, this Court should be guided by the *dicta* in *Lalman*. He has also argued that there are in this case, a wide range of other sentencing options available to this Court which options are reflected in the cases to which I have already referred.

Arguments for the State

29. Mr. Busby on the other hand, in his rather detailed and particularly helpful submissions on the matter has submitted on behalf of the State that section 5(5) of the Act, prescribes a minimum pecuniary penalty of one hundred thousand dollars and a minimum custodial sentence of twenty-five years imprisonment. Such an interpretation, he contends can be gleaned from a holistic and purposive approach to construction of the Act, which he argues was deliberately designed to- (a) facilitate the prosecution of dangerous drug offences by broadening the definition of possession (section 2A), and introducing certain rebuttable presumptions in favour of possession (sections 29A and 29B); (b) impose greater penalties for dangerous drug offences; (c) change the mode of charge and trial of dangerous drug offences; and (d) impose mandatory minimum sentences. As such, the State respectfully contends that it is not open to the Court on sentencing Otto Lancaster to impose any lesser sentence than the minimum set out by Parliament.

30. The State also submits that Parliament, in passing the Act[11], made manifest its desire to take a rigid stand against offenders, by the provisions of the Act and to impose harsher penalties by amending the Act to include a new section 61. This new section made section 68(2) and section 68(3) of the Interpretation Act ***inapplicable*** to the penalties for all offences under the Act with the exception of that prescribed for Possession of a Dangerous Drug *simpliciter* (s.5(1). As a consequence, the Courts are now obliged to construe the relevant penalty sections as minimum sentences.

31. Further, the State contends that- similarly section 68(3) of the Interpretation Act states that where one penalty linked by the word "*and*" is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively. This enabled the Courts to interpret the word "and" appearing in several penalty sections of the original Act in an alternative or disjunctive way. However, with Parliament rendering of section 68(3) inapplicable to offences under the Act save for that of possession simpliciter of a dangerous drug, Courts are now required to construe the word "and" in a conjunctive sense, and to impose ***both*** pecuniary and custodial penalties, where applicable.

Francis and Hinds

32. On this issue of whether section 5(5) of the Act creates a mandatory minimum sentence, I respectfully agree with the arguments advanced by the State and (with the exception of the learned judge's finding that the use of the words "25 years to life" are ambiguous) I accept and adopt in its entirety, the reasoning and *dicta* of my sister, Madamme Justice Browne-Antoine in *The State v. Francis and Hinds*[12]. In that case the learned judge held that section 5(5) of the Act ***did*** create a mandatory minimum sentence of twenty-five (25) years- a view with which I respectfully concur for the following reasons.

[11] No. 44 of 2000
[12] HCA (Criminal) No. 126 of 2004

A.

The Act Created New Offences & Imposes Greater Penalties

33. In her rather erudite and well-reasoned judgment, after examining in great detail the legislative history of the Act, Brown-Antoine, J observed that the Act, which came into force on November 7, 1991 was passed in Parliament with a special majority and that since its promulgation, the Act has been amended on three occasions; first by the Dangerous Drugs Amendment Act No. 27 of 1994; then by the Dangerous Drugs Amendment Act No. 44 of 2000, and finally, by the Dangerous Drugs Amendment Act No. 55 of 2000. The amendments in 1994 created certain new offences and new sections were also added, which dealt with the recognition and enforcement of foreign confiscation and forfeiture orders. New offences were also created in relation to precursor chemicals and offences on the high seas. The Court also noted that the purpose of the Act No. 44 of 2000 was clearly to introduce higher penalties for offences relating to a number of offences under the Act. Some of those offences include- (1) the cultivation, gathering or production of a dangerous drug contrary to Section 5 (3) of the Act; (2) the trafficking in a dangerous drug and possession of a dangerous drug for the purposes of trafficking contrary to Section 5 (5); (3) the trafficking in a substance other than a dangerous drug which one represents or holds out to be a dangerous drug contrary to Section 5 (6); (4) the possession of a dangerous drug or substance represented or held out to be a dangerous drug on school premises or within 500 metres of a school contrary to Section 5 (7); and (5) the manufacture, possession, transportation or supply of precursor chemicals set out in the fourth schedule contrary to Section 6(a). Further, the Court noted that- (1) the term of imprisonment to be served in default of payment of a fine provided in Section 18 were also increased; (2) there was introduced a definition of the term "life" to mean the natural life of a person; (3) a new Part IV A was created which introduced provisions relating to the burden of proof and certain presumptions that are to be applied; and (4) certain offences, among which are the offences under section 5(5) of the Act, which were previously triable both summarily and on indictment, were converted into either offences triable on indictment *only,* or on indictment which would only proceed summarily with the consent of the Director of Public Prosecutions.

B.

Application of Section 68(2) & (3)- Limited

34. The learned judge then went on to note that an important feature of the amendments effected to the Act was that they-

> "… sought, by a new section, Section 61, to oust the application of Section 68 (2)[13] and 68 (3)[14] of the Interpretation Act except in relation to penalties for "Possession of dangerous drugs." … The effect the Section 68 (2) is that where in a statute a minimum penalty is provided, the statute has effect as if there was no such minimum penalty. Thus, the judicial officer who is imposing a penalty under a particular section, can impose a penalty less than the minimum penalty provided by the statute. The effect of Section 68 (3) is that where a statute provides, for example, for a fine and imprisonment using the word "and", the penalties may be imposed either cumulatively or alternatively. In other words, the judicial officer imposing the penalty may impose either a fine or imprisonment or both. In relation to Section 61 as outlined above, the submissions of both counsel for the prisoners were that the term "possession of dangerous drugs" should be held to refer to possession of dangerous drugs for the purpose of trafficking. While Mr. Winter countered that that phrase should be restricted to possession simpliciter. It is clear that by the Amending Act Parliament wished to send a clear message that it viewed offences in connection with dangerous drugs very seriously. It is also clear that Parliament wanted to provide harsher punishments for the more prevalent offences, no doubt with the aim of reducing their prevalence in this society and to curtail the scourge of the drug trade which is said to fuel other crimes of violence including murder."

C.

The Issue of Whether the Wording of Sec. 5(5) is Ambiguous- Was Considered

35. At page 9 of her judgment, Brown-Antoine J, in considering the question whether the words in section 5(5) and 61 of the Act were ambiguous, observed that in setting out the various penalties under the Act, Parliament used differing phrases to express the relevant penalty. The learned judge noted for example, that the penalty for *possession*[15] of a dangerous drug under Section 5(1) is stated as follows: "Upon conviction on indictment to a fine of $50,000 and to imprisonment for a term which shall not exceed ten years but which shall not be less than five years." This formulation of the term of imprisonment is repeated for various offences under the Act. However, Act No. 44 of 200 introduced a new formulation for expressing terms of

[13] Section 68(2) Interpretation Act, Chap. 3:01: "Where in any Act or statutory instrument provision is made for any minimum penalty or fine, or for a fixed penalty or fine, as a punishment for a criminal offence, such Act or statutory instrument shall have effect as though no such minimum penalty or fine had been provided, or as though the fixed penalty or fine was the maximum penalty or fine, as the case may be."
[14] Section 68(3) Interpretation Act, Chap. 3:01: "Where in any written law more than one penalty linked by the word "and" is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively."
[15] My emphasis

imprisonment, namely the term, "to imprisonment for a term of 25 years to life" which appears several times throughout the Act.

36. The learned judge then went on to consider the questions of how the Court should construe the term, "25 years to life?; and whether the term itself is ambiguous? At the said page 9 of her judgment Brown-Antoine J makes the point that-

> "The Court is of the view that the term "25 years to life" is ambiguous. As Justice Soo Hon said in the case of **The State v Vishal Lalman**, Cr. No. 15 of 2008, at page 8,
>
> > 'It is interesting to note that the Dangerous Drug Amendment Act 2000 provides for penalties in Sections 8, 9 and 10 in the following terms, 'which shall not be less than 25 years,' clearly creating a minimum sentence of 25 years for the offences contained in the respective sections. In the same vein, if the intendment of the legislature were to set a minimum penalty of 25 years for the offences of possession of a dangerous drug for the purpose of trafficking, it seems clearer to specifically state that the penalty for the said offence, 'Shall not be less than 25 years and up to life imprisonment,' thereby creating both a minimum and a maximum penalty.'
>
> Justice Soo Hon had to construe the meaning of the words in Section 5 (5). The Court there came to the conclusion, at page 12:
>
> > 'It is the view of this Court that the amended provisions of 5 (5) of Act No. 44 of 2000 is ambiguous. Its plain meaning is unclear, therefore, the prisoner must benefit from such doubt. In this regard see the case of **Rex v Chapman**, (1931) 2 K.B. 606, in the words of Lord Hewart, then Chief Justice, "Where an equivocal word or ambiguous sentence leaves a reasonable doubt of its meaning which the canons of interpretation fail to solve, the benefit of the doubt should be given to the subject and against the Legislature which has failed to explain itself." Therefore, as I said, the prisoner must benefit from such doubt. The Court rules that the provisions cannot be interpreted as imposing a minimum penalty of 25 years.' "

D.

Pepper v. Hart- Applied

37. At page 10, Brown-Antoine, J opined that since the Act is a penal statue, the principles of construction applicable to penal statutes must be applied. Referring to *Bennion,* on Statutory Interpretation[16], where the learned author stated that- "it is a principle of legal policy that a person should not be penalised except under clear law… [and that] Care must be taken in

[16] Fifth edition, section 271

deciding whether the penalization really is doubtful"- the learned judge then went on to consider and apply the rule in *Pepper v. Hart*[17]. The Court noted that in that case:

"the House of Lords relaxed the general rule against reference to parliamentary material by the Court in the construction of statutes. All the Law Lords, except Lord Mc Kay of Clashfern LC, supported this conclusion or this relaxation. Lord Griffith said at Page 5 of the report, and I quote from the judgment of Lord Griffiths:

> "I have long thought that the time had come to change the self-imposed judicial rule that forbade any reference to the legislative history of an enactment as an aid to its interpretation. The ever increasing volume of legislation must inevitably result in ambiguities of statutory language which are not perceived at the time the legislation is enacted. The object of the Court in interpreting legislation is to give effect, so far as the language permits, to the intention of the legislature. If the language proves to be ambiguous, I can see no sound reason not to consult Hansard to see if there is a clear statement of the meaning that the words were intended to carry. The days have long passed when the Courts adopted a strict constructionist view of interpretation which required them to adopt the literal meaning of the language. The Courts now adopt a purposive approach which seeks to give effect to the true purpose of legislation, and are prepared to look at much extraneous material that bears upon the background against which the legislation was enacted. Why, then, cut ourselves off from the one source in which may be found an authoritative statement of the intention with which the legislation is placed before Parliament.""

"Lord Browne-Wilkinson who delivered the main judgment of the Court with which the other six Law Lords agreed, except Lord Mc Kay, to the limited extent referred to above, said, that one of the questions for their Lordships was, at page 9 of the Judgment, "Whether in construing ambiguous or obscure statutory provisions, Your Lordships should relax the historic rule that the Courts must not look at the Parliamentary history of legislation or Hansard for the purpose of construing such legislation." At pages 18 and 19 of the report he said this-

> "Under present law, there is a general rule that references to Parliamentary material as an aid to statutory construction is not permissible… The exclusionary rule was later extended so as to prohibit the Court from looking even at reports made by commissioners on which legislation was based. (See **Salkeld v Johnson**, (1848). This rule has now been relaxed so as to permit reports of commissioners, including law commissioners, and white papers to be looked at for the purpose solely of ascertaining the mischief which the statute is intended to cure, but not for the purpose of discovering the meaning of the words used by Parliament to effect such cure." And he referred to the case of **Eastern Photographic Materials Company v Comptroller General of Patents, Designs and Trademarks,** (1898).""

"At page 22 Lord Browne-Wilkinson said this:

> "My Lords, I have come to the conclusion that, as a matter of law, there are sound reasons for making a limited modification to the existing rule, subject to strict safeguards, unless there are constitutional or practical reasons which outweigh them. In my judgment, subject to the questions of the privileges of the

[17] [1992] 3 WLR, 1032

House of Commons, reference to Parliamentary material should be permitted as an aid to the construction of legislation which is ambiguous or obscure, or the literal meaning of which leads to an absurdity. Even in such cases references in court to Parliamentary material should only be permitted where such material clearly discloses the mischief at or the legislative intention lying behind the ambiguous or obscure words. In the case of statements made in Parliament, as at present advised, I cannot foresee that any statement, other than the statement of the Minister or other promoter of the Bill, is likely to meet these criteria. Statute law consists of the words that Parliament has enacted. It is for the Courts to construe those words and it is the Court's duty in so doing to give effect to the intention of Parliament in using those words. It is an inescapable fact that, despite all the care taken in passing legislation, some statutory provisions when applied to the circumstances under consideration in any specific case are found to be ambiguous. Parliament never intends to enact an ambiguity. Contrast with that the position of the Courts. The Courts are faced simply with a set of words which are in fact capable of bearing two meanings. The Courts are ignorant of the underlying Parliamentary purpose. Unless something in other parts of the legislation discloses such purpose, the Courts are forced to adopt one of the two possible meanings using highly technical rules of construction. In many, I suspect, most cases references to Parliamentary materials will not throw any light on the matter. But in a few cases it may emerge that the very question was considered by Parliament in passing the legislation. Why, in such a case, should the Courts blind themselves to a clear indication of what Parliament intended in using those words? The Court cannot attach a meaning to words which they cannot bear, but if the words are capable of bearing more than one meaning, why should not Parliament's true intention be enforced rather than thwarted." "

"At page 25 of the Judgment Lord Browne-Wilkinson said this:

"In sum, I do not think that the practical difficulties arising from a limited relaxation of the rule are sufficient to outweigh the basic need for the Courts to give effect to the words enacted by Parliament, in the sense that they were intended by Parliament to bear. Courts are frequently criticized for their failure to do that. This failure is due not to cussedness, but to ignorance of what Parliament intended by the obscure words of the legislation. The Courts should not deny themselves the light which Parliamentary materials may shed on the meaning of the words Parliament has used and thereby risk subjecting the individual to a law which Parliament never intended to enact." And at page 27 he said, "The purpose of looking at Hansard will not be to construe the words used by the Minister but to give effect to the words used so long as they are clear." "

"And at the end Lord Browne-Wilkinson set out the new rule at page 28 of the Judgment,

"I therefore reach the conclusion, subject to any question of Parliamentary privilege, that the exclusionary rule should be relaxed so as to permit reference to Parliamentary materials where, (A), legislation is ambiguous or obscure or leads to an absurdity; (B), the material relied upon consists of one or more statements by a Minister or other promoter of the Bill together, if necessary, with such other Parliamentary material as is necessary to understand such statements and their effect; (C), the statements relied upon are clear. Further than this I would not at present go."

38. Brown-Antoine J, then went on at page 13 of her judgment to note that-

> "the House of Lords decision in **Wilson and others v Secretary of State for Trade and Industry** [2003], UKHL at page 40, in which the House of Lords reaffirmed the rule laid down in **Pepper v Hart.**
>
> At paragraphs 56 to 58 Lord Nicholls of Birkenhead, delivering one of the judgments of the Court said,
>
> > "The decision in **Pepper v Hart** [1993] A.C.,593, removed from the law an irrational exception. When a court is carrying out its constitutional task of interpreting legislation, it is seeking to identify the intention of Parliament expressed in the language used. This is an objective concept. In this context the intention of Parliament is the intention the Court reasonably imputes to Parliament in respect of the language used. In seeking this intention, the Courts have recourse to recognized principles of interpretation and also a variety of aids, some internal, found within the statute itself, some external, found outside the statute. External aids include the background to the legislation because no legislation is enacted in a vacuum. It has long been established that the Courts may look outside a statute in order to identify the 'mischief' Parliament was seeking to remedy. Lord Simon of Glaisdale noted:
> >
> > > "It is 'rare indeed' that a statute can be properly interpreted without knowing the legislative object. (See the **Black –Clawson** case, 1975.) Reports of the Law Commission or advisory committees and government white papers are everyday examples of background material which may assist in understanding the purpose and scope of legislation. Before the decision in **Pepper v Hart** a self imposed judicial rule excluded use of parliamentary materials as an external aid. The Courts drew a veil around everything said in Parliament. This had the consequence that a statement made in a government white paper issued by the relevant government department before legislation was introduced, could be used as an external aid, but if the statement were made by a minister of the department in Parliament when promoting the Bill is one or other House, the Courts were strictly unable to take cognizance of the minister's statement. In relaxing this self-imposed rule, the House enunciated some practical safeguards in **Pepper v Hart**. These were intended to keep references to Hansard within reasonable bounds."

E.

Hansard Reports- Considered

39. The Court in *Francis and Hinds* then went on to examine in great detail, extracts from the Hansard Reports of the parliamentary debates on the Dangerous Drugs Amendment Bill. Her Ladyship considered the full record of the debate on the Bill in the House of Representatives on Monday 5th June 2000, when the Bill was passed by the votes of 26 members of the House. The Court also considered the presentation of the Bill to the House by then Attorney General, Mr. Ramesh Lawrence Maharaj. The learned judge in *Francis and Hinds* also took time to consider the full debate on the Bill in the Senate on Tuesday 8th August 2000, including the introduction of the Bill there by then Attorney General, Mr. Ramesh Lawrence Maharaj. The Bill was passed in the Senate on that day by the vote of 29 senators and it obtained the

support of a special majority of three fifths of the members of each House. The Court noted that-

"During the debate in the Upper House some senators expressed concern about the provision which sought to oust the application of Section 68 (2) and (3) of the Interpretation Act. Their concern was that the discretion of the Courts to sentence a particular offender was being removed. (See in particular the observations of Senator Martin Daly, as he then was, at pages 544 to 546 of Hansard for Tuesday 8th August 2000.) In response to the concerns of the senators, the Attorney General said at page 587 of the report of Hansard for that day, that is Tuesday 8th August 2000,

> "Mr. President, there was much talk here today from Honourable Senators on the other side, quite justifiably because they are entitled to make their contributions and they are entitled to make statements about minimum sentencing and giving Courts the power to reduce the minimum which Parliament has passed. I would merely like to read some newspaper cuttings of some of the sentences that have been passed, I would just read about three in some of these matters."

"He then proceeded to read several newspaper reports. And then he went on to deal with Clause 19 at page 589, Originally Clause 19 had provided that Section 68 (2) and (3) of the Interpretation Act would not apply to the entire Amending Act. However, this was later amended in a way which was explained by the Attorney General. Clause 19 eventually became Section 61 of the Amending Act which is under consideration by this Court. He said at page 589,

> "Clause 19 merely deals with sentencing and, therefore, to link Clause 19 with the contention that the Bill is draconian is really not fair. I think it is not fair to the Government and I owe a duty to say it is not fair because all that Clause 19 does is say that the Interpretation Act, in effect, which gives the Court the power to disregard the minimum sentence, to pass a minimum sentence, has nothing to do with finding a person guilty, not guilty or reviewing the case. As a matter of fact, the Court proceeds on basis that the person is guilty." "

"He dealt with minimum terms at page 593 in this way,

> "Mr. President, I think that I made it quite clear also, because the impression has been got and has been given that if, for example, a person is sentenced in accordance with the minimum term of imprisonment, there is no hope for that person. What is the policy in this Bill? It is that with respect to a person 21 years and under, the Court does not have to follow the minimum sentence. So for under 21 years of aged, the Court has that discretion, but we are dealing here with trafficking in dangerous drugs. It may be that we can consider whether the Interpretation Act should be relaxed for possession of drugs and be kept for trafficking and precursor chemicals, and so forth, but we are dealing with people who traffic because what we have done here is remove the threshold."

"And later at that page he said,

> "What I will be prepared to consider and what the Government will be prepared to consider is that, yes, possession of dangerous drugs could be in a different category. What we did in the Bill is that we did not touch, if you notice at all, Mr. President, the provisions dealing with possession and dealing with the

punishment in possession. As a matter of fact, under Section 5 (1) of the Act of 1991 as amended in 1994 it says, 'A person who has in his possession any dangerous drug is guilty of an offence and is liable, (a) upon summary conviction to a fine of $25,000 and imprisonment for five years, (b) upon conviction on indictment to a fine of $50,000 and to imprisonment for a term which shall not exceed ten years but which shall not be less than five years.' This legislation makes a distinction between the possessor and the persons who are involved in the trade because those are the people one wants to target, but from what I have said this morning, it also recognized that some people who are involved in the trade have the people who are behind them. Because the law was such that although they were in control of the person and the law, how it was drafted, they would not be in possession for the purposes of trafficking. That is how we amended the Bill also. We amended the law so that for the possessor we recognized that most of these persons have an addiction problem. It must be that most of them have an addiction problem. Therefore one cannot treat them in the same way as one would treat traffickers, persons who have this drug for the purposes of killing other people."

"He explained the effect of Clause 19, the new Section 61 in this way at page 596,

"What this Clause 19 does, it says that in relation to the provisions of this Act, that is to say, in matters relating to offences under the Dangerous Drugs Act, the powers of the Courts would be taken away. The only rider to that, however, is that when you look at an amendment which was done, I think in the other place, under Clause 19 (A), and I am saying this because it shows that this matter was looked at I do not use it as an influence but just as a matter of information, it was looked at, it says, "Where a person under the age of 21 years appears before a Court and is found guilty of an offence under this Act, the judge or magistrate may impose a lesser penalty on such person that that specified for the offence in the Act."

40. The Court noted at page 17 of its judgment that that amendment was eventually enacted in the Amending Act as section 56 (A) and as such an amendment was introduced in respect of persons under the age of 21 years whereby the judge or magistrate would retain the discretion to impose any term of imprisonment in accordance with the assessment of the Court of the normal factors relating to sentencing. The learned judge then went on note the then Attorney General's justification for the minimum sentences for persons over the age of 21 years. At pages 598 to 599 of the Hansard Reports he stated that-

"The policy which Parliaments have to consider is whether they want, in relation to matters like these; in which the parliamentarians are accountable to the people, that there should be certain minimum punishment in respect of offences like these, that is the hard question. The hard question which parliamentarians would have to decide is: Do you want to give that to the Courts in which you have instances in which the law is being frustrated? There are many instances. Senator Shabazz mentioned a few cases today, but the fact of the matter is, if you have an obligation, that is why it is said, it is being

contended that if you take away the discretion of the Court it may be that you are affecting fundamental rights. That is one of the points that had been raised. And we as parliamentarians in the other place had to consider. **It was decided that from a policy point of view that is what was needed in our country. Therefore, the policy position which honourable Senators would have to decide is whether they would go along with the question of the minimum sentence being a sentence which Parliament would pass as representing the people, but also recognizing that with persons 21 years and under, you have a situation in which the Courts' power is not taken away. So you have situations in which people are either in possession over the age of 21 years or trafficking that they will have to meet the full brunt of the law. I mentioned when I was making my contribution just now that one of the matters that we could consider and discuss at the committee stage is whether in respect of possession we can see whether we can protect, if I can use that expression, in respect of persons with the possession but not in respect of trafficking, and so forth."**

41. Further, at page 18 of the Court's judgment, the learned judge noted that the matter was considered at the Committee stage and an amendment was also made to Section 61 of the Act, which amendment provided that the provisions of section 68 (2) and (3) of the Interpretation Act shall apply **only to penalties prescribed for possession of dangerous drugs**[18]. Therefore, in the final analysis, that was how Section 61 was enacted. The learned judge then went on to note that at page 612 of the Hansard, the Attorney General said-

> "Mr. Chairman, I think that what we have done is a major concession which is to say that we are saying it is limited to the possession of drugs. It means that we are saying that we recognize possessors are mostly people who have addiction problems and, therefore, in respect of that, we have made a major concession. I would appeal to honourable Senators to go along that route and if there is any problem, I give the undertaking that we will come back if it is necessary, having regard to the nature of this measure."

And later on he said,

> "That is the reason we are saying "possession," and possession for the purposes of trafficking will be different. We have put in the Bill a higher amount if one is found in possession, in other words, the threshold has been increased, I explained if one has possession of a small quantity but one is in trafficking, one is in a different boat, if one is in possession of a higher amount than the threshold, one would will be in possession for the purpose of trafficking."

[18] My emphasis

F.

A Minimum Sentence Created

42. The learned judge then observed that from that reading of the Hansard it seems clear that Parliament wanted to make a distinction between persons who were in possession of dangerous drugs simpliciter and persons who were in possession of dangerous drugs for the purpose of trafficking. Browne-Antoine J opined that the first category of persons were considered to be persons who may have been addicted to the illegal substances, whereas the second category of persons were considered to be persons whose interest in the drug trade was mainly financial. It was against that backdrop the Court felt that the punishment for the second category should be greater since they were contributing to a social menace which helped to produce those who were addicted as well as to facilitating a culture conducive to violent crimes including murder.

43. Browne-Anotine J then went on to hold that- (1) the application to section 5(5) of the Act, of an interpretation that it does not create a minimum sentence in relation to possession of a dangerous drug for the purpose of trafficking could lead to absurd results; and (2) the statements from the then Attorney General and the proponent of the Dangerous Drugs Amendment Act No. 44 of 2000, as to the meaning Parliament intended for the phrase "imprisonment for 25 years of life," make it clear that 25 years was intended to be a minimum sentence.

Application to The Case at Bar

44. With the exception of the learned judge's finding that the term "25 years to life" is ambiguous, this Court respectfully agrees entirely with the reasoning of and the conclusions drawn by the learned judge in *Francis and Hinds* and I apply the *dicta* emerging from that case, to the circumstances of the instant case. It is abundantly clear and I hereby rule accordingly- that the intention of parliament by enacting section 5(5) of the Act, was to stipulate a mandatory minimum term of twenty-five (25) years; **and** a fine of $100,000- to be imposed on persons who are convicted on indictment of the offences of trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking. It is also equally clear that the

intention of parliament was to stipulate that a sentence of life imprisonment, being the natural life of the prisoner, is the maximum term that may be imposed for persons convicted of such offences. I therefore, hold accordingly.

45. It is the respectful view of this Court that it forms no part of its function to make law. The function of this Court is to interpret the law as enacted by Parliament and to apply it both in terms of its letter and its spirit. Where the intention of parliament is established either through the clear and unambiguous language that they have used in the statute or by the application of the well established canons or principles of statutory interpretation, it is the duty of this Court to give effect to and not frustrate the intention of the legislative arm of the State. Until a particular law is declared null and void or unconstitutional by a Court of competent jurisdiction, I consider it is the duty of this Court to scrupulously apply the law as enacted by parliament. In my view, that duty is to apply not only the letter but the spirit of the law also.

Further Assistance From Hansard References

46. The following additional references to the debates on the Bill as reflected in Hansard help to fortify this Court's views and demonstrate clearly that it was the intention of parliament to impose a mandatory minimum sentence under section 5(5) of the Act. I consider the substance of the matters discussed by the honourable members of both Houses of Parliament regarding the Bill, to be of invaluable instruction and insight into the intention of the legislature in respect of the instant questions. I therefore, propose to recount verbatim, some of the relevant excerpts from those debates.

Debate In the House of Representatives

47. On Monday, June 5, 2000 the then Attorney General and Minister of Legal Affairs, the Hon. Ramesh Lawrence-Maharaj began the debate in the House of Representatives on the Bill by outlining the general background and scheme of the proposed legislation. At page 203 of the Hansard Reports he stated that-

"… in 1991, with the enactment of the Dangerous Drugs Act, Trinidad and Tobago took the first step towards the domestic implementation of the provisions of the 1988 United Nations Convention against Illicit Traffic in Narcotics and Psychotropic Substances known as the Vienna Convention of 1988. By that Act, provision was made by the Parliament of Trinidad and Tobago, not only for the control of narcotic drugs and psychotropic substances, but for the confiscation of the proceeds of drug trafficking, on conviction for a drug trafficking offence. Ancillary provisions included the vesting in the High Court of the power to restrain assets pending trial for drug trafficking offences.[19] In 1994, with the Dangerous Drugs (Amdt.) Act, further steps were taken by the Parliament of Trinidad and Tobago towards the implementation of the provisions of the 1988 United Nations Convention.[20]" … "The Dangerous Drugs (Amdt.) Bill, 2000 which is now before the Parliament, is the final phase in Trinidad and Tobago's implementation of the obligations imposed by the 1988 United Nations Convention.[21]" … "Mr. Speaker with respect to interpretation, clause 4 of the Bill proposes to amend section 3 of the Act with the inclusion of the definitions of "Director of Public Prosecutions" and "life".[22]" …

"The definition of "life" in the Act means the natural life of the person. It relates to the introduction of stiffer penalties for offences relating to the possession of dangerous drugs. This is to make it quite clear that anyone sentenced to life imprisonment, it would be life imprisonment for the natural life of the person and that is obviously notwithstanding the powers under the **Constitution of the Minister** of National Security to make recommendation to the President in cases of mercy.[23]" …

"The current provisions of the Dangerous Drugs Act created hybrids for the following offences: one trafficking in dangerous drugs; two, trafficking in a substance other than a dangerous drug which is represented as or held out to be a dangerous drug; and, three, possession of a dangerous drug on any school premises or within 100 metres thereof. The current state of the law, therefore, is that prosecutions for any of the offences which I have just mentioned can be taken either summarily, which is in the Magistrates' Court, or by trial or indictment in the High Court after committal proceedings in the Magistrates' Court. The amendments proposed in clause 6 to section 5 subsections (5),(6) and (7) and the inclusion of the new section (7B) are at the election of the Director of Public Prosecutions and the consent of the accused. In addition to this, the offences attract greater penalties except where proceedings are taken summarily in the Magistrates' Court. So that the amendments dictate that proceedings for any offence under clause 5 of the Bill are done indictably. Summary trial as provided for in the proposed section 5 (7B) is at the election of the Director of Public Prosecutions and the consent of the accused. The proposed section 5(5) will now read:

[19] Monday June 5, 2000, Page 203: The Attorney General and Minister of Legal Affairs
[20] Monday June 5, 2000, Page 204: The Attorney General and Minister of Legal Affairs
[21] Monday June 5, 2000, Page 204: The Attorney General and Minister of Legal Affairs
[22] Monday June 5, 2000, Page 204: The Attorney General and Minister of Legal Affairs
[23] Monday June 5, 2000, Page 205: The Attorney General and Minister of Legal Affairs

(5) Subject to subsection (7), a person who commits the offence of trafficking in a dangerous drug or of being in possession of a dangerous drug for the purpose of trafficking is liable upon conviction on indictment to a fine of one hundred thousand dollars or, where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term of twenty-five years to life.[24]" …

"It is proposed under the new subclause 5(9) of the Bill to increase the threshold quantities in excess of which the law would deem that a person is in possession of a dangerous drug for the purposes of trafficking and within which a person could be charged with possession *simpliciter*.[25]"

48. The Hon. Attorney General then went on to further outline the general intention and scheme of the Act when he stated that-

"What we have done here is recognized that under the current formula, where the threshold quantities were at a minimum, persons who had no financial interest and were in possession of the dangerous drug- that person who was not a trafficker could have been caught by the deeming provision and be found guilty of possession for the purposes of trafficking. So persons caught in possession of dangerous drugs who are not legally authorized to possess such substances can only be either traffickers or addicts. It would be a continuing defect in our law if persons who are faced with the serious problem of drug addiction continue to be treated by the law in the same way as persons whose only interest in drugs is financial. So therefore the new proposals by the Government in this Bill related to putting in this threshold so that, having regard to the quantity, if the person is found in possession of these amounts they would be deemed to be in possession for the purposes of trafficking."[26]

49. The Hon. Attorney General at page 251 then stated that-

"In respect of the minimum sentences, […] in countries which have written constitutions, like the United States, they have held that minimum sentencing is not unconstitutional. I will give you the references. Mr. Speaker, there is extensive authority from the United States of America to support arguments upholding statutory minimum sentences; for example, the United States and Brockston, 926 Federal 2D. 1180, District Circuit Court 1971; the United States and Hoyte, 879 F. 2D. 9 Circuit Court 1989. The United States Supreme Court has held that the Constitution does not guarantee individualized sentences, except in capital cases. In a case there is Locket and Ohio, 438 United States Report 586, 1978. So that from a constitutional point of view – I am just talking from the legal point of view – minimum sentencing

[24] Monday June 5, 2000, Page 206: The Attorney General and Minister of Legal Affairs
[25] Monday June 5, 2000, Page 207: The Attorney General and Minister of Legal Affairs

[26] Monday, June 5, 2000, Page 248: Mr. H. Bereaux:

is not unconstitutional. But I take the point that in relation to young people that, probably, we should put a safeguard. The young person, as we said, should be under 21 years or whatever we want to do.""[27]

50. The Hon. Attorney General also commented that:

"Mr. Speaker, I think I owe a duty to say that one of the things that has been found to really encourage the drug trade– if I may use that expression– is that if the sentencing is very low, it would mean that people could decide, "I will take the risk, spend ten years in jail, still probably operate while in jail, or other persons could operate", so therefore it is not really having a deterrent effect. Even if the maximum imprisonment is there and even if it is not used on occasions for young persons, but if it is there, it would mean that the state always has the option in respect of persons who are not seasoned criminals or repeat offenders to decide whether this person should be freed. … What I want to say from the Government's perspective is that you have to understand that very severe penalties would go a very long way in preventing people from taking risks. There have been instances of young persons under 21 years who are used by the drug people and therefore, you have to take that into consideration and find a way of punishing the older persons with heavier sentencing, so even if they are using the younger persons, with this amendment you could get at them. Those are the matters which have influenced some of these changes.[28]"

51. During the ensuing moments of the debate in that House, the Bill was submitted to a committee of the whole House for fine tuning and during those exchanges there was considerable discussion by the members about the issue of minimum sentences as contained in the Bill; what, if any, would be the Court's discretion in respect of same; and in particular there was much discussion about the need to not have those minimum sentences apply to 'young offenders". The result of those extensive discussions is what is now contained in section 56A of the Act which provides that-

"[w]here a person under the age of twenty-one years appears before a Court and is found guilty of an offence under this Act, the Judge or Magistrate may impose a lesser penalty on such a person than that specified for the offence in this Act."

52. It was at the conclusion of those discussions also that section 5 of the Act, and in particular section 5(5) thereof and the other related sections were confirmed in their present forms. Indeed, it was the Hon. Mr. H. Berauex, then Opposition MP who during those discussions first used the expression "25 years to life" when he stated in respect of the offence of

[27] Monday, June 5, 2000, Page 251: Hon. R.L. Maharaj:
[28] Monday, June 5, 2000, Page 253: Hon. R. L. Maharaj:

cultivating marijuana that- **"I am recommending a term of 25 years to life on indictment for planting marijuana"**- the precise wording for which reflects itself in the present formulation of section 5(3)(b) of the Act.

53. It should also be noted in that regard that when the House resumed the Bill was *unanimously* approved by all twenty-six (26) members of the House of Representatives who were present at the time.

Debate In The Senate

54. The debate on the Bill was then taken to the Senate where, on August 8, 2000 the Hon. Attorney General, after again recounting the relevant background to this piece of legislation stated that-

> "Mr. President, I do not think we can doubt that the illegal drug trade presents one of the greatest threats to democracy and it also produces one of the greatest threats to human development, and it is in that context that countries throughout the world have been expending a lot of resources and money in order to combat this illegal drug trade. Governments have recognized that laws alone are not sufficient and although laws can deal with the question of prosecution, trying to set an example to persons who traffic in this trade, for society to know that persons will be punished and also to confiscate their assets, governments and the international community also recognize that one also has to take steps to ensure that there is a demand reduction for drugs. One, therefore, has to take steps to ensure that societies are educated; better information is given so that the young people would know that this is an evil trade, it is harmful and that society, generally, would develop an anti-drug culture. I want to say that this Government recognizes this and this Government does not produce this Bill as an answer to all the problems relating to the illegal drug trade. What the Government does is, it presents this Bill as a piece of ammunition together with other ammunition that the state has, as part of its arsenal in order to fight the drug trade. The international Drug Trade Act provides a formidable enemy and the statistics have shown that the international drug cartels and those who are associated with them have financial resources which few national governments have and they can use these financial resources without formal restraints on them as to how they can be used. The drug syndicates also have the advantage of experience, and long before transnational crime had become recognized as a genuine threat to international stability, the syndicate of the drug world already had in place the impressive network of supplies centres, distribution networks, foreign bases and reliable entry into governments throughout the world. These drug syndicates, Mr. President, pioneered many of today's advanced money laundering techniques and they hired first rate accountants and invested in state of the art technology. International drug trafficking has become more sophisticated every year. Although the collective efforts of governments to cut the drug trafficking over the years, and in 1999 have kept drug traffickers on the defensive, it is a fact that the drug traffickers are

still able to move hundreds of tons of cocaine, not only to the United States of America, but throughout the world. … I say this because I think hon. Senators would recognize that although the fact is that the problems are great, it does not mean to say that governments must sit and do nothing in order to deal with some of the problems.[29]"

55. At page 512 and 513 he went on to state that-

"With that little background, Mr. President, I want to go through the Bill so that Hon. Senators would try to understand what is happening in the Bill. I am sure they would have read it and with that in mind, the way I propose to deal with the clauses in the Bill would be under seven headings– interpretation is one heading; offences dealing with possession is the second heading; precursor chemicals is the third heading; the fourth heading is supply of dangerous drugs; the fifth heading; burden of proof and presumption; the sixth heading, ICs and then miscellaneous.[30]" …"For "life", the intention here is where it is stated "life imprisonment" in the Act, it means: "-the natural life of a person." So that the law can be quite clear that it means "life" and it means the natural life, of the person.[31]"

56. Then at page 517, the Hon. Attorney General stated that-

"It must be recognized that persons who are found with these drugs are either drug traffickers or persons who are drug addicted, and, therefore one has to make a distinction between those who have it in their possession for trafficking and one who has a serious problem with respect to drug addiction. Therefore the law is trying to make that distinction so that persons who have the problem would not necessarily have to face the consequences of being a drug trafficker.[32]"

57. He then proceeded to explain the various aspects of the Bill. In particular he addressed clause 19 in the following manner:

"Clause 19A was an amendment that was inserted in the –it was redrafted, I think. It states:

> "Where a person under the age of twenty-one years appears before a court and is found guilty of an offence under this Act, the judge or magistrate may impose a lesser penalty on such a person than that specified for the offence in this Act."

What we tried to do there, Mr. President, is that we recognized that persons under the age of 21 years could find themselves in difficulties. Although the Bill does have heavy penalties we would still want to

[29] Tuesday, August 8, 2000, Page 510 and 511: Hon. R.L. Maharaj:
[30] Tuesday, August 8, 2000, Page 512: Hon. R.L. Maharaj
[31] Tuesday, August 8, 2000, Page 513: Hon. R.L. Maharaj
[32] Tuesday, August 8, 2000, Page 517: Hon. R.L. Maharaj

leave some discretion with the court– a judge or a magistrate – to give a lesser penalty on condition that the person is under the age of 21 years.[33]"

58. At the completion of the Hon. Attorney General's address, there then ensued an extensive debate on issues in the Bill. In his reply the Hon. Attorney General stated that-

"Mr. President, there was much talk here today from hon. Senators on the other side, quite justifiably because they are entitled to make their contributions and they are entitled to make statements about minimum sentencing and giving courts the power to reduce the minimum which Parliament has passed. I would merely like to read some newspaper cuttings of some of the sentences that have been passed. I would just read about three in some of these matters. The first one is February 9, 1999 in the Express." [*He then referred to several articles in the newspapers where persons were give relatively low sentences for serious drug offences*] … Now, Mr. President, in my respectful view, of it is felt that legislation performs an important role in sending signals to lawbreakers, especially people who traffic in cocaine, any Parliament must be concerned if the policy is that traffickers must be severely punished and that you can yet give to the Courts the power to frustrate the will of the people in the Parliament by giving short sentences. Therefore, the international community has recognized that there are certain categories of cases, and drug cases is one of those categories, in which it has become necessary for government to undertake to pass legislation in which sentences would be very severe."[34] …

59. Then at page 588 he continued-

"Mr. President, you know, minimum sentences is a recognized feature of the law. In some countries they have passed the death penalty for trafficking in cocaine. The mandatory sentence is death. Does it mean that because a country has passed that law, that takes away the human rights and fundamental freedoms of people? I do not know if Hon. Senators are really appreciating that this Bill does not take away anyone's rights. What it does is, in certain procedural matters; make it inconsistent with the full procedural rights, which are protected in the Constitution under sections 4 and 5. The Constitution gives the authority to Parliament to get a certain majority when passing law that is inconsistent with that provision. It has done that. I think in the 1994 amendment Act there was a specified majority.[35]"

[33] Tuesday, August 8, 2000, Page 517: Hon. R.L. Maharaj

[34] Tuesday, August 8, 2000, Page 587: Hon. R. L. Maharaj:

[35] Tuesday, August 8, 2000, Page 588: Hon. R. L. Maharaj

60. He then, at page 593, stated-

> "Mr, President, I think that I made it quite clear also, because the impression has been got and has been given that if, for example, a person is sentenced in accordance with the minimum term of imprisonment, there is no hope for that person. What is the policy in this Bill? It is that with respect to a person 21 years and under, the court does not have to follow the minimum sentence. So, for under 21 years of age, the court has that discretion, but we are dealing here with trafficking in dangerous drugs. It may be that we can consider whether the Interpretation Act should be relaxed for possession of drugs, and be kept for trafficking and precursor chemicals, and so forth, but we are dealing with people who traffic, because what we have done here is remove the threshold." … What I will be prepared to consider, and what the Government will be prepared to consider, is that yes, possession of dangerous drugs could be in a different category. What we did in the Bill is that we did not touch, if you notice at all, Mr. President, the provisions dealing with possession and dealing with the punishment in possession.[36]"

61. Further at page 594 he stated that-

> "This legislation makes a distinction between the possessor and the persons who are involved in the trade, because those are the people one wants to target, but from what I have said this morning, it also recognized that some people who are involved in the trade have the people who are behind them. Because the law was such that although they were in control of the person and the law, how it was drafted, they would not be in possession for the purposes of trafficking. That is how we amended the Bill also. We amended the law so that for the possessor, we recognized that most of these persons have an addiction problem. It must be that most of them have an addiction problem. Therefore, one cannot treat them in the same way as one would treat traffickers; persons who have this drug for the purposes of killing other people. … There is where the law, as it is, provides a remedy for persons who feel that apart from that remedy, there is another kind of remedy for persons who are convicted and feel that having regard to the circumstances they deserve mercy. What has happened under the existing measures is that one can go to the Mercy Committee, one can apply, and the Mercy Committee can take those matters into consideration, but there is a policy consideration to which we have to agree. That is to say, if it is that one is going to pass laws in which one is required as a government to take steps to ensure that offences are not only there, but punishment is meted out to those who breach the law, do you want to have a system in which, although it is, one can have not only minimum sentences, but disproportionate sentences?[37]"

62. Then at page 595 he continued by saying that-

> "As a matter of fact, Mr. President, I want to say here that since I have been at this Ministry, I have caused to be done an extensive sort of study on inconsistent sentencing and sentencing. One would be

[36] Tuesday, August 8, 2000, Page 593: Hon. R. L. Maharaj

[37] Tuesday, August 8, 2000, Page 594: Hon. R. L. Maharaj

amazed to see how inconsistent sentencing and sentencing could undermine the criminal justice system. What other countries have done is find ways and means to improve that. It is not that a young person who is convicted, or an old person, is unable to have any recourse even to challenge that conviction."

63. The Hon. Attorney General then went on to explore and explain Clause 19 of the Bill and in the ensuing contribution, he said that-

"What this clause 19 does, it says that in relation to the provisions of this Act, that is to say, in matters relating to offences under the Dangerous Drugs Act, the power of the courts would be taken away. The only rider to that, however, is that when you look at an amendment which was done, I think in the other place under clause 19A – and I am saying this because it shows that this matter was looked at I do not want to use it as any influence but just as a matter of information, it was looked at. It says: "Where a person under the age of twenty-one years appears before a court and is found guilty of an offence under this Act, the judge or magistrate may impose a lesser penalty on such person than that specified for the offence in this Act. … Mr. President in respect of clause 19, we are required to pass laws in order to ensure that the penalty for drug trafficking offences would be very severe to all persons.[38]"

64. At page 597 he continued-

"Mr. President very harsh or severe and it is recognized that at times government has to pass very harsh or severe laws but as to whether they are harsh or severe, that has to be balanced. There would be people in our society who would, obviously, believe-and I am not referring to hon. Senators here-that if we have a law which punishes people for marijuana, it is a severe law. I am not referring to anybody here. There are other people who believe, also, that the death penalty is a severe law but that does not mean to say that governments throughout the world have not passed those laws and that some people do not consider them as not to be severe and not to be draconian, having regard to the circumstances. So that yes, as a matter of fact, if you want to say they are draconian and you believe they are draconian, I would also ask for you to put it on the social scale. On the one hand, there are people who are peddling cocaine, killing and poisoning young people.[39]"

65. Then at page 598 he stated-

"Mr. President, I just want to put on the record that the Vienna Convention on drugs did not make any exception for persons who are under 18 years or who are between 18 and 21 years. We in the Government decided, notwithstanding that, we could find a way to give to the court the discretion in

[38] Tuesday, August 8, 2000, Page 596: Hon. R. L. Maharaj

[39] Tuesday, August 8, 2000, Page 597: Hon. R. L. Maharaj

respect of persons under the age of 21 years. We used the fact that it is in accordance with our constitutional procedures, so I wanted Hon. Senators to know that I think the Government has done more than required, if I could put it that way, in that it recognized that there should be some mechanism that for person under the age of 21 years the court should have a discretion. The Convention as you know is in very general language, and it indicates that governments have a responsibility to ensure that where there is need for these matters, it must be done. I do not think that it could be disputed that in respect of the trafficking in drugs there should not be these severe measures. Mr. President, I wanted to say that the Government, therefore, in pursuance of its obligation under the convention of the need to deter the commission of such offences and to ensure that the courts or other competent authorities are fully aware of the serious nature of these offences, in order to ensure that the non-punishment of these offences do not frustrate the law, the Government has decided that this should be a policy contained in the measure. There is another aspect of this debate which – [Interruption][40]"

66. He was interrupted by the Hon. Sen. Dr. St. Cyr, who at page 598 enquired as follows-

"On clause 19, since there is concern about the Interpretation Act could not one allow the court the discretion, and where there is too light a sentence, appeal that sentence?[41]"

67. To this, the Hon. Attorney General replied:

"There is that possibility, but I think that one has to take into account what one is saying. I do not want to go into individual cases, but there are cases in which one sees that even with the appeal processes what happens by the time the case reaches the Court of Appeal. I do not know if Sen. Daly was here this morning, but Sen. Shabazz mentioned some of these matters where you have people being charged and they leave, they go, the courts do this and that. The policy which Parliaments have to consider is whether they want in relation to matters like these, in which the parliamentarians are accountable to the people, that there should be certain minimum punishment in respect of offences like these; that is the hard question. The hard question which parliamentarians would have to decide is: do you want to give that to the courts in which you have instances in which the law is being frustrated? There are many instances. Sen. Shabazz mentioned a few cases today, but the fact the fact of the matter is, if you have an obligation- that is why it is said, it is being contended that if you take away the discretion of the court it may be that you are affecting fundamental rights. That is one of the points that had been raised and we as parliamentarians in the other place had to consider. It was decided that from a policy point of view this is what was needed in our country. Therefore, the policy position which hon. Senators would have to decide is whether they would go along with the question of the minimum sentence being a sentence

[40] Tuesday, August 8, 2000, Page 598: Hon. R. L. Maharaj
[41] Tuesday, August 8, 2000, Page 598: Hon. Dr. St. Cyr

which Parliament would pass as representing the people, but also recognizing that with persons 21 years and under, you have a situation in which the court's power is not taken away. So you have situations in which people are either in possession, over the age of 21 years, or trafficking, that they will have to meet the full brunt of the law. I mentioned when I was making my contribution just now that one of the matters that we could consider and discuss at the committee stage is whether in respect of possession we can see whether we can protect – if I can use that expression – in respect of persons with the possession, but not in respect of trafficking and so forth. That is something which I would be prepared to consider and I am sure Members of the Government would also be prepared to consider at the committee stage. I appreciate some of the difficulties Senators have, but I ask them also to look on both sides of the coin.[42]"

68. The debate in the Senate continued with Hon. Senator Daly at page 611 thereof, stating as follows:

I said at the beginning that I had no problem with the liability provisions in the Act and I had a problem with the penalty section and explained why. I do not know what it means, I am not quite attracted to the suggestion that one abandons the Interpretation Act only in relation to trafficking. The whole thrust of the contributions from the Independent Senators, as I remember it, was that we wanted to have the laws of severe import in order to get to the people who drove the trade, and I assume that the people who drive the trade are the traffickers. If it is necessary to suspend the operation or abandon the operation of the Interpretation Act, we should be looking at the big offences, not just possession. I appreciate that there are provisions about money laundering, so maybe we can make a list. That is why I am thinking about it, that maybe we can say that the Interpretation Act will not operate in the cases of trafficking, money laundering: we could specify the big offences and the ones that deal with the big people. … So, maybe we can pick out the offences for which we want to abandon the Interpretation Act. I accept money laundering and trafficking. I do not know what the precursor chemical offences are.[43]"

69. In response, the Hon. Attorney General stated at page 612 and 613 that-

"Manufacture of chemicals. The use of chemicals in the manufacture of drugs. Mr. Chairman, I think that what we have done is a major concession which is to say that we are saying it is limited to the possession of drugs. It means that we are saying that we recognize possessors are mostly people who have addiction problems, and therefore, in respect of that, we have made a major concession. I would appeal to hon. Senators to go along that route, and if there is any problem. I give the undertaking that we will come back if it is necessary. Having regard to the nature of this measure. I would ask hon. Senators. … Mr. Chairman, I do not think I want to go into what that Bill does, but if one reads the Bill, one would

[42] Tuesday, August 8, 2000, Page 598 and 599: Hon. R. L. Maharaj
[43] Tuesday, August 8, 2000, Page 611 and 612: Sen. Martin Daly

see that that is a kind of long-term situation. We have immediate problems. These measures were really supposed to be put into place shortly before 1988. We have gone the route in order to show a genuine basis in order to try to get consensus, and I really think they will be asking too much of Government at this stage to postpone this measure in order to get a list when the policy of the Bill really is to recognize a distinction between the possessors and the other people who are involved in the manufacture of drugs and in money laundering and things like that. It is only a matter of style, really. … That is the reason we are saying possession, and possession for the purposes of trafficking will be different. We have put in the Bill a higher amount if one is found in possession. In other words, the threshold has been increased. I explained, if one has possession of a small quantity but one is in trafficking, one is in a different boat. If one is in possession of a higher amount than the threshold, one will be in possession for the purposes of trafficking."[44]

70. He concluded at page 628 by observing that-

"Mr. Speaker, clause 19 of the Bill dealt with the question of minimum sentencing and for the court not to have discretion in relation to varying what the Parliament has decided. In the other place, it was agreed that this should be confined to the question of possession of dangerous drugs, in that the courts should have a discretion, when it comes to possession of dangerous drugs, not to keep, if it so desires, the punishment laid down in the Act, that it could pass a lower sentence. But in respect of trafficking and other matters the courts have to keep to the minimum sentencing laid down in the Act. That is what this is about.[45]"

71. At the conclusion of the formal debates in the Senate, the Bill was referred to a Committee of the full Upper House and it should also be noted that here as well, when the Senate resumed the Bill was ***unanimously*** approved by all twenty-nine (29) members of the Senate who were present at the time.

[44] Tuesday, August 8, 2000, Page 612 and 613: Hon. R. L. Maharaj

[45] Tuesday, August 8, 2000, Page 628: Hon. R. L. Maharaj

IV

CONCLUSIONS DRAWN
FROM THE DEBATES IN BOTH HOUSES

A.

The Imposition of a Mandatory Minimum Sentence

72. It is abundantly clear therefore, that having regard to the nature of the debates on the Bill as well as the extensive consideration given to the issue of mandatory minimum sentences, the intention of the legislature is neither doubtful nor ambiguous. Indeed, it was clearly the intention of parliament to impose a mandatory minimum sentence of twenty-five (25) years under section 5(5) of the Act.

B.

Ousting the Interpretation Act For Possession Simpliciter

73. Additionally, section 61 of the Act provides that "the provisions of section 68(2) and (3) of the Interpretation Act *shall apply **only** to the penalties prescribed for **possession*** of dangerous drugs under this Act." Section 68(2) and (3) of the Interpretation Act provide that- "68(2) Where in any Act or statutory instrument provision is made for any minimum penalty or fine, or for a fixed penalty or fine, as a punishment for a criminal offence, such Act or statutory instrument shall have effect as though no such minimum penalty or fine had been provided, or as though the fixed penalty or fine was the maximum penalty or fine, as the case may be"; and "68(3) Where in any written law more than one penalty linked by the word "and" is prescribed for an offence, this shall be construed to mean that the penalties may be imposed alternatively or cumulatively."

74. Therefore, where, according to section 5(1) of the Act, the offence of "simple possession" of a dangerous drug is created and where according to subsection 5(1)(a) it is provided that- "Subject to subsection (2), a person who has in his possession any dangerous drug is guilty of an offence and is liable- (a) *upon summary conviction* to a fine of twenty-five thousand dollars *and* to imprisonment for five years;" the Court may nevertheless impose *either* a fine or a term of imprisonment and the Court may, in any event, award a fine or impose a term of

imprisonment that is less than what is stipulated in section 5(1)(a) of the Act. In other words, the Court may award either a fine *or* a term of imprisonment and in either case may impose a fine that is less than twenty-five thousand dollars or a term of imprisonment that is less than the stipulated five years, because in respect of *this offence*, the provisions of section 68(2) and (3) of the Interpretation Act still apply. It is clear that in neither case can the Court impose a fine or term of imprisonment that is greater than what is stipulated.

75. Similarly, where according to section 5(1)(b) of the Act, it is provided that- "Subject to subsection (2), a person who has in his possession any dangerous drug is guilty of an offence and is liable- (b) upon *conviction on indictment* to a fine of fifty thousand dollars *and* to imprisonment for a term which shall not exceed ten years but which shall not be less than five years" the Court may nevertheless impose *either* a fine or a term of imprisonment and the Court may, in any event, award a fine or impose a term of imprisonment that is less than what is stipulated in section 5(1)(b) of the Act. In other words, notwithstanding the specificity of the language used in section 5(1)(b) where it provides that a person so convicted is liable "to imprisonment for a term which *shall not exceed ten years but which shall not be less than five years* , it is clear that the intention of the legislature was to allow the Court to retain its discretion to award lesser fines and to impose lesser terms of imprisonment than those stipulated in that subsection of the Act. The Court may therefore, award *either* a fine or a term of imprisonment and in either case may impose a fine that is less than fifty thousand dollars or a term of imprisonment that is less than the stipulated five years, because in respect *of this offence*, even upon conviction on indictment, the provisions of section 68(2) and (3) of the Interpretation Act still apply. Again, it is clear that in neither case can the Court impose a fine or term of imprisonment that is greater than what is stipulated.

76. Thus, both section 5(1)(a) *and* (b) must be construed against the backdrop of section 61 of the Act, and with the application of section 68(2) and (3) in mind.

77. Indeed, at pages 215 and 216 of the Hansard Reports of June 5, 2000 the Hon. RLM after quoting the sections 68(2) and (3) of the Interpretation Act, went on to make it clear that-

> "[t]he inclusion of a new section 61 [of the Act[46]] serves merely to clarify the powers of the court on sentencing of a drug trafficking offence. It merely wants to make it quite clear that the provisions of section 68(2) and (3) of the Interpretation Act shall not apply."

C.

Court's Discretion Retained in Specific Circumstances Only

78. Thus, under the Act the Court's discretion to impose sentences in retained only in the following circumstances:

(1) In respect of persons under the age of twenty-one regardless of the offence under the Act for which he is convicted, whether summarily or on indictment. (section 56A)

(2) In respect of all persons who are convicted, whether summarily or on indictment, of the offence of simple possession of any dangerous drug. (sections 5(1) and 61).

(3) In respect of offences under section 5(3)(b) of the Act where any person is convicted on indictment of cultivating, gathering or producing any marijuana is liable to the penalties stipulated in that subsection. In such a case, where the person convicted is twenty-one years or over, the Court may, upon such a person being convicted before them impose **EITHER**- (a) a fine of one hundred thousand dollars or where the is evidence of the street value of the marijuana, ten times the street value of the marijuana, whichever is greater; **OR** (b) a term of imprisonment from a minimum term of twenty-five years to life. Where on the other hand the person convicted is below the age of twenty-one years, the provisions of section 56A of the Act would apply, so that the Court may impose lesser penalties than those specified in section 5(3)(b) for the offence or they may impose either a fine **or** a term of imprisonment.

[46] My emphasis

Ruling

79. It is abundantly clear therefore, and I hereby rule accordingly- that in respect of the subject matter of these sentencing proceedings- the intention of parliament by enacting section 5(5) of the Act, was to stipulate a mandatory minimum term of twenty-five (25) years; **and** a fine of $100,000- to be imposed on persons who are convicted on indictment of the offences of trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking. It is also equally clear that the intention of parliament was to stipulate that a sentence of life imprisonment, being the natural life of the prisoner, is the maximum term that may be imposed on persons convicted of such offences. I therefore, hold accordingly.

80. The legislative intention with respect to the general provisions of the Act as well as the more specific provisions of section 5(5) thereof, is neither doubtful nor unclear. This fact is derived not only from the references to the debates in Hansard, but more so from the plain meaning of the clear words used in section 5(5) itself.

81. If therefore, *the intention* of parliament *is clear* then the Court must give effect to that intention even if it would result in the imposition of a penalty that is less favourable to the Accused; and I would add even if it would produce what may be perceived as an absurd or unreasonable result. That is because the *intention of parliament has been made clear* and the Court is duty bound to give effect to such intention. In this case the Court is driven to such a construction not only by the reference to the debates in Hansard but more so by the plain, clear and unambiguous words *of the enactment itself*.

82. In this case, Parliamenthas intended that the minimum sentence of twenty-five (25) years be imposed on a person convicted under section 5(5) of the Act and they have expressed this intention by the clear words of the legislation, distinctly enacted. In my respectful view, the words used therein are unambiguous and are not equivocally capable of any construction to the contrary. Indeed, this Court takes the view that the words of section 5(5) of the Act are unequivocal and the expression "imprisonment for a term of twenty-five years to life" is lucid and ambiguous. In this Court's view, there is no doubt, reasonable or otherwise, as to what they mean. They were intended to create a mandatory minimum sentence of twenty-five (25)

years be imposed on a person convicted under section 5(5) of the Act, and a maximum of life imprisonment.

83. Thus, by the clear and unambiguous words of the Act itself and in particular the words of section 5(5) thereof, the legislature has discharged its burden to clearly and unequivocally warn the public as to what actions would expose them to liability for penalties and what the specific penalties would be in any given case. Indeed, this burden that lies on lawmakers to relieve the situation from all doubt has, in this case, been discharged- (1) first of all by the plain and unambiguous language of section 5(5) of the Act itself; (2) then by the clear and unequivocal language of section 61 of the Act; and (3) is merely reinforced by reference to the debates in Hansard.

V

RELEVANT PRINCIPLES OF SENTENCING

General Principles

84. I turn now to relevant principles of sentencing in each particular case. The jury by its verdict clearly demonstrated that it accepted the evidence of the witnesses for the State and rejected the version of events advanced by the prisoner. It is therefore, on that factual basis that I must now proceed to sentence you, Mr. Lancaster. Having regard to the jury's verdict, it is clear that this is one of those cases where you were virtually caught red-handed with the drugs in your possession.

85. In those circumstances, rather than enter an early guilty plea and throw yourself at the mercy of the Court, which was an option that was available to you throughout the entirety of these proceedings, you chose instead to take the matter to trial and to do so by launching what can only be described as a most audacious defence. Although you cannot and indeed, will not be penalized for exercising your right to put the State to strict proof of its case, you Mr. Lancaster, did far more than say to the State, "prove your case against me!" You in fact launched the most egregious and scandalous attack on the character and integrity of the police officers in this case by claiming that they had framed you with the drug, and consequently this

case. It is indeed, fortunate for these officers and their individual reputations that, the jury were astute enough to see through your tissue of lies.

Mitigation

86. Your learned counsel, in his usual thorough and articulate style, was constrained to concede that there was not anything at all in this case, by way of mitigation that he could advance on your behalf.

87. However, you have told this court that when you came out of jail in 2004 you worked for some time with the organization known as vision on a mission, which is engaged in charitable and rehabilitative work for ex-convicts. What this all has suggested to this Court is that you are someone who knows where to find help if you need it and that you are aware that there is in fact a better way to live than in pursuit of criminal enterprises.

Aggravating Features:

88. I have however, given this matter the most careful consideration and in that regard, I have taken into account the facts that you are now thirty-three (37) years of age and that you have two previous convictions- one for possession of marijuana in 2002 for which you received a fine and the other for possession of marijuana for the purpose of trafficking in 2004 in respect of which you were sentenced to a term of twenty-eight (28) months with hard labour.

89. While I bear in mind in your favour, the fact that the dangerous drug which you have been convicted of being in possession of is marijuana, as opposed to cocaine, which is a hard and more highly addictive and dangerous drug, I note however, that this is your second conviction for the offence of possession of marijuana for the purpose of trafficking, which of course is quite a serious offence. It is clear from your antecedents that you have a penchant and proclivity for dealing in this particular type of dangerous drug with the intent to traffic it others. In that regard I also note that the amount of marijuana involved was quite substantial, being some 10.47kg, and as such it can in no way be said to have been for your personal consumption. Indeed, it is clear that the drugs in this case were destined for the commercial

market perhaps locally or even internationally. The nature and packaging of the said drugs is also quite telling, and the only reasonable inference to be drawn from this is that that "stash" is merely a small part of a much larger and more sophisticated distributorship and criminal enterprise. So, I bear these things in mind as aggravating features of this particular case.

General Considerations

90. In fashioning what is the appropriate sentence this court must be guided by the well established principles of sentencing set out in the various authorities on this point, among which are the cases of *James Henry Sergeant*[47], and *Mano Benjamin v. R*[48] which are both well-known authorities. Those principles are: deterrence, punishment and rehabilitation.

91. In that regard therefore, I bear in mind that in any given case, the Court must- after having regard to all of the relevant considerations, determine which, if any, is the most dominant of the sentencing principles and in doing so must strike the necessary balance that the sentencing exercise requires. Thus, I have given careful consideration to the matters raised by your learned counsel during his plea in mitigation on your behalf and I make the following observations.

92. Although, with respect to the principle of punishment or retribution, Mr. Wilson has effectively urged this Court to temper justice with mercy- yet according to the *dicta* in the case of *James Henry Sergeant-* "There is however, another aspect of retribution which is frequently overlooked: it is that society through the courts, must show its abhorrence for particular types of crimes and the only way in which the Courts can show this, is by the sentences which they pass. The Courts do not have to reflect public opinion. On the other hand courts must not disregard it."

93. In fashioning what is the appropriate sentence in this case, the law therefore, requires that I must take into consideration what is the proper punishment first of all. In other words,

[47] [1974] 60 Cr. App. R. 74
[48] (1961) 7WIR 459

having regard to the law, understanding the nature and seriousness of the wrong, and having particular regard to the peculiar circumstances of this case, what is the proper punishment for it? In that regard, I am therefore, no doubt, obliged to take into account the fact that offences of this nature are far too prevalent in our society and that their effect today on the fabric of our society is far more deleterious than in times past.

94. Quite apart from the issues of punishment or retribution, the law also requires me to take into account the deterrent effects against you and others who may be like-minded. That is to say, my sentence must deter you from offending again and the law also makes it clear that I must consider the deterrent effect against other potential offenders. This Court must always be concerned and vigilant therefore, to ensure that other persons who are like minded, who are inclined to act in a similar fashion and to engage in the unlawful possession of dangerous drugs- are deterred from doing so by the sentence that the Court passes. I therefore, bear that in mind.

95. Further, the Court must prevent you from being in a position to offend again if you remain a threat. Unfortunately, there are some offenders for whom neither deterrence nor rehabilitation will work as they will continue to commit crimes as long as they are able to do so. In those cases, the only protection which the public has is that such persons should be locked up; some for longer periods than others but custody is definitely the only thing that would get their attention and protect the public interest at the same time. While I do not for one moment think that you are beyond rehabilitation, I am nevertheless convinced by your antecedents that you have a very high prospect of reoffending. This is particularly so, not only because of the temerity which you have displayed in the face of being caught red-handed by the police with the drugs on you, but by the incendiary allegations of police brutality and of this being a "frame-up" that you have advanced. Additionally, your history of offending and reoffending suggests that insofar as you are concerned, there is an extremely high risk of recidivism. I therefore, take that factor into account as well.

96. Finally the Court must take into account the rehabilitative aspect. Can you be rehabilitated, to what end? I have no doubt that if you put your skills, such as they might be, to their right use then you will well be on your way to merging yourself harmoniously and productively into society.

97. Having considered these general principles I come now to this issue, namely what is the dominant sentencing principle applicable to this case. The law makes clear that in any given case, one principle, one factor might be of more importance than others in determining the appropriate sentence. So while bear in mind all of the general principles of sentencing, in this case I consider that the most important factors are those of punishment and deterrence. I am also convinced that in this case the appropriate sentence is a custodial one.

Rationale for Custodial Sentence

98. In short, the reason why this Court is of that opinion that a custodial sentence is warranted is that offences of this nature are particularly damaging to the fabric of our society in an almost irreparable way. They are far too common and much too serious for this court to simply treat them with a measure of unwarranted leniency. To do so, would in my view send absolutely the wrong signal to the rest of the society, particularly those who may be minded to do commit the same type of offence.

99. So that you are clear Mr. Lancaster, what I mean is that it may not be manifestly obvious to you on face of things but people like you who engage in the commission of these types of crimes are a scourge on this society and contribute in a very significant way to the overall downward spiral in other types of crimes that now plague our society. As, a crime, drug trafficking can never be viewed in isolation. It must of necessity be viewed in the wider context of that degenerative matrix of criminal activity which does so much damage to the fabric of our society.

100. In the view of this Court, if I may borrow from and apply the words of Wooding CJ in the case of *Bardoon v. The Magistrates*[49] to this case when he said that this type of person referring to

[49] (1965) 8 WIR 399 @ 401

the professional bailor (but the sentiment is equally applicable to the drug trafficker) is a type of person who ought to be stamped out of this community, particularly because of the ill effects which follow from his activities here, and we think the courts ought to be astute to do everything possible to put an end to them. He is a serious curse in this and indeed, the international community, and we are determined so far as we can to stamp their illegal activities out. That therefore, along with your particular history of committing this type of offence is why the Court is imposing the particular sentence Mr. Lancaster.

VI

DISPOSAL

Sentence Pronounced

101. In all of the circumstances, bearing in mind the mandatory minimum sentence that the law prescribes- the sentence of this Court is that-
    (1) you will serve a term of twenty-five (25) years with hard labour; and
    (2) your are fined the sum of $100,000 (in default of payment of the fine you will serve a term of fifteen (15) years- which period shall commence at the end of term of twenty-five (25) years.

102. What that means Mr. Lancaster is that- (1) you will serve the next twenty five (25) years in jail with hard labour; (2) you will also pay a fine of $100,000. If you do not pay that fine, you will serve an additional term of fifteen (15) years, which will commence at the completion of your 25 year term. These sentences will commence, take effect and run from today March 23, 2011.

Advised of Rights of Appeal

103. You are also hereby advised of your right to appeal within fourteen (14) days of today's date, that is, you have fourteen (14) days from today to appeal either your conviction, the sentence of this Court or both your conviction and sentence.

André A. Mon Désir
Judge