

*Leave of Absence**Thursday, September 28, 2000***SENATE***Thursday, September 28, 2000*

The Senate met at 1.35 p.m.

**PRAYERS**

[MR. VICE-PRESIDENT in the Chair]

**LEAVE OF ABSENCE**

**Mr. Vice-President:** Hon. Senators, I have granted leave of absence to Sen. The Hon. Wade Mark from sittings of the Senate for the period September 28, 2000 to October 05, 2000.

**SENATOR'S APPOINTMENT**

**Mr. Vice-President:** I have received the following communication from His Excellency the President of the Republic of Trinidad and Tobago:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON,  
T.C., O.C.C., S.C., President and  
Commander-in-Chief of the Republic of  
Trinidad and Tobago.

\s\ Arthur N. R. Robinson  
President,

WHEREAS Senator The Hon. Wade Mark is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, KELVIN RAMNATH, to be temporarily a member of the Senate, with effect from 28th September, 2000 and continuing during the absence from Trinidad and Tobago of the said Senator Wade Mark.

Given under my Hand and the Seal of the  
President of the Republic of Trinidad and  
Tobago at the Office of the President, St.  
Ann's, this 25th day of September, 2000.”

**OATH OF ALLEGIANCE**

*Oath of Allegiance*

*Thursday, September 28, 2000*

*Sen. Kelvin Ramnath took and subscribed the Oath of Allegiance as required by law.*

**CHILDREN'S AUTHORITY BILL**

Bill to establish a Children's Authority of Trinidad and Tobago to act as the guardian of the children of Trinidad and Tobago, brought from the House of Representatives. [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. F. Gangar*]

*Question put and agreed to.*

**CHILDREN (AMDT.) BILL**

Bill to amend the Children Act, Chap. 46: 01, brought from the House of Representatives. [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. F. Gangar*]

*Question put and agreed to.*

**ADOPTION OF CHILDREN BILL**

Bill to make provision for the regulation of procedures governing the adoption of children and to give effect to the International Convention on the Rights of the Child, 1990, brought from the House of Representatives. [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. F. Gangar*]

*Question put and agreed to.*

**MISCELLANEOUS PROVISIONS (CHILDREN) BILL**

Bill to amend certain laws affecting children, brought from the House of Representatives. [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. F. Gangar*]

*Question put and agreed to.*

**CHILDREN'S COMMUNITY RESIDENCES,  
FOSTER HOMES AND NURSERIES BILL**

Bill to make provision for the monitoring, licensing and regulating of community residences, foster homes and nurseries in Trinidad and Tobago, brought from the House of Representatives. [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. F. Gangar*]

*Question put and agreed to.*

**JUSTICE PROTECTION BILL**

Bill to provide for the establishment of a programme for the protection of certain witnesses and other persons; and to provide for matters incidental thereto, brought from the House of Representatives. [*The Attorney General and Minister of Legal Affairs*]; read the first time.

*Motion made*, That the next stage be taken at the next sitting of the Senate. [*Sen. The Hon. F. Gangar*]

*Question put and agreed to.*

**PAPERS LAID**

1. Report of the Dispute Resolution Commission appointed under Section 56 of The Tobago House of Assembly Act, 1996. [*The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar)*]
2. Report of the Eleventh, Twelfth, Thirteenth and Fourteenth Periodic Report of the Republic of Trinidad and Tobago International Convention on the Elimination of all forms of Racial Discrimination. (*Hon. F. Gangar*)

**SPECIAL SELECT COMMITTEE REPORT**

**Trinidad and Tobago Association of Professional  
Psychologists (Inc'n) Bill**

**Presentation**

**Sen. Nizam Baksh:** Mr. Vice-President, I have the honour to present the report of the Special Select Committee appointed to consider and report on a private Bill for the incorporation of the Trinidad and Tobago Association of Professional Psychologists and for related matters.

**ARRANGEMENT OF BUSINESS**

**The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar):** Mr. Vice-President, I seek leave of the Senate to deal with “Bills Second Reading” at this stage.

*Agreed to.*

**PROCEEDS OF CRIME BILL**

[Second Day]

*Order read for resuming adjourned debate on question [September 26, 2000]:*

*The committee of the whole Senate resumed its deliberations on the Bill.*

[Chairman: Mr. Hamel-Smith]

**Mr. Maharaj:** Mr. Chairman, may you permit me to say that some of the proposals which have been made have formed the basis of some amendments and just a short while ago, I looked at the final draft of the amendments and the draftsman will take about 20 minutes to come here to have it finalized.

Some of the concerns have been taken on board and there are some amendments. I do not know whether I would be asking too much to ask the Senate to be suspended for 20 minutes.

**Mr. Vice-President:** Could we have the amendments circulated prior to resumption?

**Mr. Maharaj:** Yes.

**Mr. Vice-President:** We will suspend the Sitting for 20 minutes by which time the amendments to be considered in the committee stage would be circulated for us to revert to committee. So the session is suspended for 20 minutes.

**1.45 p.m.:** *Sitting suspended.*

**2.15 p.m.:** *Sitting resumed.*

*Bill committed to a committee of the whole House.*

*House in committee.*

**Mr. Chairman:** Hon. Senators, we have the list of amendments which the Attorney General and Minister of Legal Affairs has circulated. They affect clauses 2, 21, and 55; and all the references to offender in Part I, which are clauses 3 to 42. So I propose that we will deal with the first amendment which would affect clauses 3 to 42 and then we will do clause by clause thereafter.

*Clauses 3 to 42.*

*Question proposed,* That clauses 3 to 42 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that Part I be amended as follows:

“Delete the word ‘offender’ wherever it occurs and substitute the word ‘defendant’.”

Mr. Chairman, I wonder if I can explain it. Yesterday, in respect of clause 10, the suggestion was raised that the word “offender” should be deleted and replaced by either “defendant” or “accused.” “Offender” appears in Part I of the Act, and as one knows, the Act would consist of persons who are charged, if there are restrained proceedings and if they are convicted. So in order to have a common denominator to represent a person in the civil proceedings for confiscation, we say that wherever the word “offender” appears it should be “defendant”.

**Mr. Chairman:** Does everyone understand what we are doing here? So whereas the clause that was reserved, was clause 10, we are, in fact, seeking your leave to make amendments to the entirety of clauses 3 to 42 constituting Part I, to the effect that they are all consequential on changing the reference from “offender” to “defendant” right through Part I. Is everyone up to speed with that? Any discussion? Maybe I could just put the question.

*Question put and agreed to.*

*Clauses 3 to 42, as amended, ordered to stand part of the Bill.*

*Clause 2.*

*Question proposed,* That clause 2 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 2 be amended as follows:

“2 Insert after the word ‘Order’, occurring in subclause (2) the words ‘subject to an Affirmative Resolution of Parliament.’”

Mr. Chairman, on the last day hon. Members had raised two questions as far as I can recall, in respect of clause 2 which are related: one dealing with “specified offence” meaning an indictable offence, an “offence specified” in the Second Schedule and the other one dealing with the fact that any addition to the Schedules should be by affirmative resolution.

In respect of the second matter we have the amendment that the Minister is subject to an affirmative resolution of Parliament by order of amending the First

and Second Schedules. In respect of the specified offence enumerating the offences, I have been advised that that would be very difficult, if not impossible, to do at this time, because of how the law has been amended over the years, and one may leave out offences. It is in that context that we could not mention all the indictable offences. But I will ask hon. Senators to understand that the confiscation proceedings would only come into place if there has been profit derived from an indictable offence. So I would ask that clause 2 be amended in terms of the circulated draft.

**Sen. Daly:** Mr. Vice-President, now that we seem to be on the right productive track, can I restate what is the problem with “specified offence” as I believe, one or two of my colleagues see it.

**2.25 p.m.**

I will keep it as simple as possible. I have no problem with “specified offence” including all indictable offences and all the Second Schedule offences where the confiscation part of the Bill is concerned. I have no problem with that.

**Mr. Maharaj:** Where the what?

**Sen. Daly:** Where the confiscation part is concerned. My problem remains with clauses 32 and 33. I thought about “specified offence” and I can live with it where the confiscation part is concerned, but we still have a problem with clauses 32 and 33, which is a related problem, namely, pre-conviction. There are new search powers and we were asking if, in relation to those two sections only, the search powers could be confined to offences against the Dangerous Drugs Act and the money laundering offences in this Act. That is still the part that troubles us.

In other words, we concede “specified offence” means all indictable offences but we would like clauses 32 and 33 confined for now to drug and money laundering offences. You see, that affects clause 18, I think, as well, where they can put a freeze, but let us take one step at a time. Our major concern now is that clauses 32 and 33, which give search powers and operate prior to conviction, go beyond drug and money laundering offences, and some of us would like that to be fixed. We have a problem, therefore, with “specified offence” in these two clauses only and we would like the offence to which this relates to be confined to drug trafficking and money laundering. So in other words we concede “specified offence” everywhere else except in relation to these two clauses.

**Mr. Maharaj:** Would you give me one second, please?

**Mr. Chairman:** Sure.

[Discussion off the record]

**Sen. Daly:** May I, Mr. Chairman, since we have a lull, say—I can only speak for myself—how pleased we are with the amendments that have been made in relation to clause 55(7). Those are really very, very progressive. So if we could solve this last problem, then—I mean, they really made a very, very serious and heavy amendment to clause 55(7), which is very pleasing.

**Mr. Maharaj:** Mr. Chairman, in an effort to arrive at consensus in this matter, I have instructed the draftspeople to do an amendment to the definition of “specified offence” to ensure that it does not include—that it would not take in clauses 32 and 33. [Desk thumping]

**Mr. Chairman:** I trust that by that acclamation that exercise is not a fruitless one.

**Sen. Daly:** May I say, Mr. Chairman—I trust she would not mind—that is actually what—we have many draftspeople here. That approach was the one that was just being agitated by Sen. Dr. Mc Kenzie. She thought it was better than my approach. I am happy to concede that.

**Mr. Maharaj:** Mr. Chairman, in my short stint in the Senate I think that I cannot help but recognize the drafting qualities and experience of Sen. Dr. Mc Kenzie, so I think by now she—[Desk thumping] [Discussion off the record] Mr. Chairman, the amendment would be to insert after the word, “schedule”, under “specified offence” in clause 2, the words, “except that in sections 32 and 33 ‘specified offence’ means offences under the Dangerous Drugs Act and Part II of this Act”, because Part II deals with money laundering.

**Mr. Chairman:** I trust everybody has written those words.

**Mr. Maharaj:** “Except that in sections 32 and 33 ‘specified offence’ means an offence under the Dangerous Drugs Act and Part II of this Act.” [Desk thumping]

**Mr. Chairman:** That constitutes two amendments under clause 2. Maybe we should take that one first, that is to the definition of “specified offence”. It was already read out by the Attorney General, so I will put the question. We will put the two questions because the two amendments are to the same clause so the second amendment to clause 2 is as per the draft in front of you, which is, to insert after the word, “order”, occurring in subclause (2) the words, “subject to an Affirmative Resolution of Parliament”. So there are two amendments to clause 2(2) and I will now put the question.

*Question put and agreed to.*

*Clause 2, as amended, ordered to stand part of the Bill.*

*Clause 21.*

*Question proposed, That clause 21 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 21 be amended as follows:

“Insert after the word ‘any’ occurring in line 4 of subclause (8) the words ‘legal or equitable’.”

Hon. Senators would recall that in respect of clause 21 subclause (a), the point had been made very forcefully that, the way this was drafted, one could exclude the consideration by the court of persons who may be living on the premises, like a wife and children, and who would be affected by any order of possession. What we are trying to do is make it quite clear that it includes any legal or equitable interest. So I beg to move that clause 21 be amended in terms of the circulated draft.

*Question put and agreed to.*

*Clause 21, as amended, ordered to stand part of the Bill.*

*Clause 55.*

*Question proposed, That clause 55 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 55 be amended as follows:

- “A. In subclause (6) insert after the word ‘the’ occurring in paragraph (d) the words ‘Act and the’.
- B. In subclause (7) insert after the word ‘may’ the words ‘subject to subsection (12),’.
- C. Renumber subclauses (8) and (9) as (10) and (11) respectively and insert new subclauses (8) and (9) as follows:
  - ‘(8) The designated Authority shall regard and deal with all information and documents which he has obtained in the course of duties as designated authority as secret and confidential.
  - (9) If the designated authority communicates or attempts to communicate such information to any person or anything contained in such document or copies to any person—

- (a) other than a person to whom he is authorised to communicate it; or
- (b) otherwise than for the purposes of this Act or any other written law,

he is guilty of an offence and is liable on summary conviction to a fine of fifty thousand dollars and to imprisonment for one year.’.

- D. Insert after subclause (11) as renumbered the following new subclauses:

(12) The designated authority in order to exercise the powers given to him under subsection (7) shall apply for and obtain an *ex parte* order of a judge of the high court, which order shall constitute the warrant for the designated authority to enter into the premises of the financial institution.

(13) The application referred to in subsection (12) shall show reasonable cause for the designated authority to enter into the premises of the financial institution to fulfil the requirements of subsection (7).’.”

Hon. Senators would also recall that in this section, there were very strong views expressed that the way this clause is drafted there can be misuse and abuse of power and, in order to provide the necessary safeguards, there should be amendments to the clause in order to ensure that there are sufficient safeguards against the clause being abused. What we have done is amended it to ensure that the designated authority could not exercise his powers under subsection (7) unless he applied and obtained an *ex parte* order, like a warrant from a judge of the High Court, which shall constitute a warrant for him to enter the premises of the financial institution and, in order to get that order, he will have to show reasonable cause to the judge so that he would be able to enter the premises.

Also, in respect of the information he gets, such information should only be used for the purpose of the Act or for any other law and that if he misuses that power—I think there is a mistake here. This was amended. It was initially a fine of \$50,000 but I said a fine of \$250,000, and to imprisonment for three years.

#### **2.40 p.m.**

We sought to put a heavy fine of imprisonment in order to use it as a safeguard.

**Sen. Montano:** I have a question. Exactly who is the designated authority and who is he authorized to communicate to?

**Mr. Maharaj:** Under the Act he will be authorized to communicate to police officers. He has no power to communicate with anybody else.

**Sen. Montano:** Is he appointed on an *ad hoc* basis or is it one individual that is permanently designated as a designated authority?

**Mr. Maharaj:** According to the amendment, he is appointed by the Minister but it does not say for what period of time. Obviously that is an administrative matter. As you say, it shows designated authority. Under the Act there is a designated authority and the authority, obviously, is a person and under that person there will obviously be a staff over a period of time. So this department will be getting the feedback from whatever suspicious transaction. The persons there would have to communicate with the law enforcement persons, and only then could there be a financial investigation, as part of the law enforcement agency. It is only if you get that then you could go to the Director of Public Prosecutions. So he or she cannot take that information and give it to the press or anybody outside there.

**Sen. Montano:** Could he give it to his Minister?

**Mr. Maharaj:** It does not seem so under the Act. What I could tell you is that if it is felt that Ministers could see these things then it is not correct because of the way law enforcement matters operate. Well that is my experience. I do not think they are entitled to see it under the existing law.

**Sen. Montano:** I think you are right, but I just beg the question here as to who is that person actually authorized to communicate to?

**Mr. Maharaj:** It does not anticipate that the Minister would see it, but I do not know whether in particular circumstances, if the Minister requested it on grounds of national security—I do not know. It does not anticipate that the Minister would see it. As a matter of fact, a minister of National Security does not get involved in the actual investigations. The report goes from the commission. It seems to me that the way it is done is purely by the law enforcement officials.

**Mr. Chairman:** Any further discussion on amendments to clause 55?

**Sen. Daly:** Mr. Chairman, only what substantial progress we have made, for which we thank the Attorney General.

**Mr. Maharaj:** Thank you very much.

**Mr. Chairman:** Just to underscore the fact that the circulated amendment has been further amended to the extent of the increased fine and imprisonment. Everyone should have a note of that amendment.

*Question put and agreed to.*

*Clause 55, as amended, ordered to stand part of the Bill.*

*First Schedule ordered to stand part of the Bill.*

*Second Schedule.*

*Question proposed, That the Second Schedule stand part of the Bill.*

**Mr. Maharaj:** We did the Second and Third Schedules last night.

**Mr. Chairman:** Sen. Dr. St. Cyr, do you have a question?

**Sen. St. Cyr:** Mr. Chairman, just to ask whether “gaming houses” or “pool betting” include National Lottery?

**Mr. Maharaj:** I do not have a problem if you want to be specific and put National Lottery and Lotto. Is Lotto a separate thing? Excuse my ignorance. *[Interruption] [Laughter]*

**Mr. Maharaj:** I did not know Sen. Daly that we are on the same footing there. *[Interruption] [Laughter]* So we will amend it to include National Lottery and Lotto.

**Mr. Chairman:** I take it that this is an amendment to the First Schedule—extending the list to include National Lottery and Lotto.

**Mr. Maharaj:** Where is the Minister? Could we put National Lottery On-line betting games?

**Sen. Daly:** I assume all these games come under the National Lottery Board. So why do we not simply put “games under the control of.”

**Sen. Dr. McKenzie:** Mr. Chairman, there are gaming houses and that is why I was a little concerned.

**Mr. Maharaj:** That is something private.

**Sen. Daly:** Could we put games under the control of the National Lottery Control Board or whatever they are called?

**Mr. Maharaj:** Would that not cover National Lottery On-line betting games? This would mean that anything they introduce in the future—

**Sen. Montano:** No, because that would not include the Scratch games and the regular ticket games every Friday night. So, I think that Sen. Daly's suggestion is probably better.

**Sen. Dr. McKenzie:** You see, the whole matter is—because of what I have heard—when someone wins a big sum of money you cannot cash the ticket by the agent. There are people who would be outside these places where you go to cash these tickets and so on and they have their own scouts. If they see you coming in they will ask you how much is your ticket and if you say, well, “I only win \$50,000 because I play number so and so many times” or “I win this”, they will arrange.

Mr. Chairman, remember you are only there with your little rubber slippers and your ordinary khaki pants and so you will look like a “scrunter” who spends \$2.00 and wins plenty. So nobody will suspect you having so much money because you are going to buy things that you never had before like a fridge or a stove, and those are ordinary things. They will give you more and take your ticket. So you will go with a legitimate ticket and the National Control Board will give you a cheque in the name of Eastlyn McKenzie winning the third prize or whatever. I will then go and put my money in the bank. It is a lotto board ticket so the bank will not ask me where I get the money. It is a security thing.

**Mr. Maharaj:** I think that is the most appropriate institution to put in this Bill.

**Sen. Dr. McKenzie:** There is a real racket in it.

**Mr. Maharaj:** Maybe I could get a loan from Sen. Dr. McKenzie. *[Laughter]*

**Sen. Dr. McKenzie:** I have never played that game in my life, but you are on the ground and you will hear these things. I think you have phrased it rightly, but I just wanted to explain where it came from. Scratch is just a little thing but it is the same system.

**Mr. Maharaj:** Scratch is a small amount.

**Sen. Dr. McKenzie:** But it is the same system.

**Mr. Maharaj:** That is a small amount.

**Sen. Dr. McKenzie:** It is the same system under the gaming houses.

**Mr. Maharaj:** Are we happy with this?

**2.50 p.m.**

**Mr. Chairman:** Are there any other comments on that suggested amendment to the First Schedule? The way I have it here is that it will read:

“...National Lottery on-line betting game...”

as a seventh activity.

*Question put and agreed to.*

*First Schedule, as amended, ordered to stand part of the Bill.*

*Preamble ordered to stand part of the Bill.*

**Sen. Montano:** Mr. Chairman, permit me to ask a question. Maybe I was asleep at the time, but where did we actually put to the vote the amendment that the hon. Attorney General just made to the definition of “specified offence”?

**Mr. Maharaj:** We did it.

**Sen. Montano:** Did we put it to the vote?

**Mr. Chairman:** In clause 2.

**Sen. Montano:** I beg your pardon.

**Mr. Maharaj:** Mr. Chairman, before you put the question, may I put on record, thanks to the Members of the Senate, both the Independent and Opposition Senators, for the assistance they provided in finalizing this Bill. I know at times we have had emotions running high but notwithstanding that, I say that the Government appreciates very much the comments and suggestions made. They have been very helpful and I think we have displayed, notwithstanding that we may have differences of views and we may have strong feelings of not compromising, when the time comes that we have to make decisions in the interest of the state and consensus has to be arrived at, we can all do that. I put on record my sincere thanks to both the Opposition and Independent Senators.

**Sen. McKenzie:** Mr. Chairman, I would also like to say that we admire the Attorney General for listening to the opinions and ideas of even the lay people. We appreciate it. Personally, I have had the experience where he listens to the voice of us, lay people, and he bends at times. We want to congratulate him on that and thank him because here we are at a holy hour, sort of wrapping up a difficult situation. Sir, it is reciprocal.

*Question put and agreed to, That the Bill, as amended, be reported to the Senate.*

*Senate resumed.*

*Bill reported, with amendment.*

*Question put, That the Bill be now read the third time.*

*The Senate voted:*      Ayes    29

**AYES**

Gangar, Hon. F.

Baksh, Hon. S.

Phillips, Dr. The Hon. D.

Gillette, Hon. L.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, Ms. J.

John, W.

Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

Ramnath, K.

Mohammed, Ms. N.

Montano, D.

Jagmohan, M.

Shabazz, M.

Yuille-Williams, Mrs. J.

Job, Ms. E.

Teelucksingh, Rev. D.

Daly, M.

St. Cyr, Dr. E.

McKenzie, Dr. E.

Kenny, Prof. J.

Ramchand, Prof. K.

Marshall, P.

Valere, Mrs. Sultan-Khan L.

*Question agreed to.*

*Bill accordingly read the third time and passed.*

**EQUAL OPPORTUNITY (NO. 2) BILL**

*Order for second reading read.*

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Vice-President, I beg to move,

That a Bill to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal and for matters connected therewith, be now read a second time.

Mr. Vice-President, the Constitution of Trinidad and Tobago in its Preamble recognizes equality and in the Constitution itself, equality of treatment is recognized. Under (b) of the Preamble is stated:

“respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;”

That clearly shows the recognition of equality, based on a merit system.

In the Constitution itself, apart from the Preamble, sections 4 and 5 of the Constitution, which deal with the enjoyment of fundamental rights, the Constitution expressly states at section 4:

“It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely—

- (b) the right of the individual to equality before the law and the protection of the law;
- (d) the right of the individual to equality of treatment from any public authority in the exercise of any functions;”

I am reading some of the other relevant matters.

- “(h) freedom of conscience and religious belief and observance;
- (i) freedom of thought and expression;
- (j) freedom of association and assembly; and
- (k) freedom of the press.”

Mr. Vice-President, what the Constitution does is enshrine that there should be equality of treatment and, as we know, there is, both in the Independence Constitution and in the Republic Constitution, a section that gives to the court the powers to declare any action of the state, whether it is legislative, executive or judicial, unconstitutional and illegal, on the ground that the action violated equality of treatment as mentioned in the Constitution.

Mr. Vice-President, constitutions do not contain all the necessary laws to give effect to the matters enshrined in the Constitution. It is recognized that the rights declared in sections 4 and 5 as the fundamental rights are declared in very broad terms and that there is an obligation on governments to set up the necessary institutions and take the necessary steps in order to ensure that the rights are enjoyed by the people of Trinidad and Tobago.

Governments have not yet been challenged on this, but there is clause 5(2)(h), which further and better particularizes the rights in section 4:

- “(h) ...the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms.”

There is, in my view, an obligation—not only a political obligation but a legal and constitutional obligation—on governments to take steps to ensure that there are the necessary procedural rights and provisions and machinery to give effect to the protection of the rights and freedoms enshrined in the Constitution.

It is recognized that in order to promote equality in a society and in order to have equality, harmony and peace on the basis of equality, law alone cannot solve the problem. This Bill is being premised on the fact that it recognizes that law

alone cannot solve the problem. As a matter of fact, in order to have the enjoyment of rights in a society and in order to have harmony and peace in a diverse society like Trinidad and Tobago, the education system, the churches and the religious institutions all play a very important role in doing this.

It is recognized that in Trinidad and Tobago the Inter-Religious Organizations, the church, the different religious bodies—the Hindus; the Muslims; the Thusians, the Baptists; the Orisas; all the religious institutions and the fact that I have not mentioned any of them should not be taken that I do not include them—have all played a very important role in promoting equality.

I do not think it is recognized by many that when one goes to a public function and sees the major religious bodies on one platform being represented, there are only a few countries in the world where that can happen. Sometimes one does not recognize that when one sees the different races in Trinidad and Tobago, people with different cultures and the multi-dimensional culture of Trinidad and Tobago, all living in harmony, one probably does not recognize how blessed we are in Trinidad and Tobago.

As a matter of fact, when one looks around the world—all over the world—one sees how many people are being killed. Children are being massacred. Homes are being taken away from people. We saw it very clearly on television the other day where, in certain parts of civilized Europe, people were driven away from their homes because of ethnicity; and the matter of ethnic cleansing has become a cancer in some of these societies.

**3.05 p.m.**

Mr. Vice President, the Government of Trinidad and Tobago recognizes that, in Trinidad and Tobago, the people have themselves promoted equality. They themselves have a strong culture for equality. The Government recognizes that we have a population in Trinidad and Tobago which has striven for and ensured that there is mutual respect and tolerance so that there would be equality in Trinidad and Tobago.

Mr. Vice-President, it is also recognized that even though societies have all these: the churches, all the religious institutions, the non-governmental organizations, the schools, and the people playing these important roles, and although it is recognized that the members of society have promoted these values, it is also important for law, in a pluralist society especially, to play its part. In the final analysis, at times, the law has to play its role in addition to these matters.

A person, sometime ago, said: “The ultimate measure of whether a society can probably be called civilized is how it treats those who are near to the bottom of its human heap.” A yardstick which can be used to measure whether a society is really civilized, is whether it treats people who are considered to be not as privileged as others, not in the majority, people who may not be the majority in religion, people who have minority views, and people who are poor and not as socially and economically advanced. If you take how society treats these people, it is said that is the best way to determine whether a society is civilized or not.

Mr. Vice President, the law plays an important role in regulating relations among all sections of societies: in ensuring that the rights of majorities and minorities are protected, and ensuring that there is equality before the law—justice for all, *justitia omnis vox* that is the Latin expression.

Mr. Vice-President, there are three ways in which one can see how law has been used in these matters, when dealing with law in relation to a pluralist society. In some countries law has been used to entrench the dominance of the majority and secure the continuing monopoly of power and influence by the majority. In some of the societies in the world, where there is a pluralist society, it is felt that this is how to deal with the problem. The way to deal with the problem is to ensure that the majority people remain in dominance and they have a monopoly of power and influence; whether it is the church, race, whatever the situation is. That is how it is felt. For example, that happened in Sri Lanka, South Africa, some of the southern states of the United States of America until the 1950s, and it has happened in Northern Ireland. One sees how the law has been used in one kind of situation.

In another kind of situation, the law has been used not to ensure a sort of subjection of the minority, but to recognize its existence as a distinct entity, but seeking to avoid any conflict by according to the minority its own rights and institutions. That happened where there is segregation and in some countries where there is apartheid and you recognize that there is a minority, but you want to treat them differently, separate and apart, and ensure that there is no conflict. There is the one with domination; where you protect, at all cost, the majority and that you make the minority subjected to the majority. On the other hand, there is autonomy, in which you recognize that there are differences, but you keep them separate and apart.

The third way is where there is a more integrated approach. That is the approach which the people of Trinidad and Tobago have recognized. That is to guarantee that all citizens whether the majority or the minority—no matter what

station in life, no matter what race or creed, even in the watchwords of the nation, “Together We Aspire Together We Achieve”—no matter what creed, race, colour or origin, all should be treated equally and the minority, or whatever reason for minority, shall not be subject to adverse discrimination.

The hope has been, that with this kind of legal system—with education and the passage of time, the role of the churches, the religious bodies, the role of the non-governmental institutions, the role of the Christian, Hindu, Muslim Churches, all other religious institutions and the role of government—that would ensure that there are institutions to protect any kind of violations, that we have institutions which would cover all areas of these violations with mutual respect and tolerance—we will have bonds of common citizenship being strengthened.

Mr. Vice-President, that is the approach we have had in Trinidad and Tobago. That is why when we decided to become a nation in 1962, it was recognized that we could go forward unless all were treated equally and unless it was recognized that all must be equal.

It is in this context that we must look at this measure which is before us. It is a measure to promote equality of treatment. It is a measure in which it is recognized that there is going to be further developments in institutions to promote greater equality in other areas, but, there has to be a starting point. This philosophy of the people of Trinidad and Tobago; of having it on the integrationist approach—that is to say: all are equal and the law must perform that role—has solid foundation in international law if we look at the *Universal Declaration on Human Rights*. This is regarded as the document which the entire international community recognizes to be binding on them: that all human beings are born free and equal in dignity and rights. That is in article one of the *Universal Declaration on Human Rights*.

The second article states that everyone is entitled to all the rights and freedoms in declarations, without any distinction of any kind such as race, colour, sex, language, religion, political or other opinion. We see that the philosophy of the people of Trinidad and Tobago—the contract which they entered into with Government and succeeding governments—is that there should be equality for all, and there should be institutions to promote and protect equality for all.

Mr. Vice-President, this Bill before us—may I mention at the outset that there are certain amendments to the Bill which are being circulated. I would go through those amendments. I think I owe a duty to give some background to how this Bill has come here.

**3.15 p.m.**

Upon taking office, Mr. Vice-President, this Government identified the need for comprehensive equal opportunity legislation as a priority in fulfilment of its manifesto promise to establish an equal opportunity commission. Trinidad and Tobago had already committed itself internationally to the elimination of discrimination by acceding to the international covenant on civil and political rights and the economic, social and cultural rights in December of 1978, and by ratifying the international convention on the elimination of all forms of racial discrimination in October 1973, and the United Nations Convention on the elimination of all forms of discrimination against women in February 1990.

Trinidad and Tobago, however, did not take steps to incorporate the principles in these conventions into domestic law. So we have a situation that for 1978, 1973 and then in 1990—although at an international level we decided that we would uphold these principles, and in which we needed, apart from having them in the Constitution, additional measures to protect and promote the rights of equality—for whatever reasons, we did not take steps to implement them.

Furthermore, there were findings of the 1974 Braithwaite Commission of Enquiry into race relations and the private sector, and the report of the 1987 Hyatali Constitution Commission which also examined the question of setting up an equal opportunity commission.

The Hyatali Commission agreed, in principle, with the proposal for the creation of such a commission, but expressed the view that it should not be included in the body of the Constitution. At that time the UNC, along with other bodies such as the African Association of Trinidad and Tobago and the President of the Bar Association, made representations to the Hyatali Commission in favour of the establishment of an equal opportunity commission.

In November 1995 the Law Commission was requested by the Attorney General to prepare a working paper on equal opportunity legislation with a view to drafting reform legislation. The Law Commission completed its task in January 1996. In order to ensure greater acceptability for its recommendations and to encourage the widest possible consultation, the Government directed that the working paper be laid in Parliament and be published for public comment. Recognizing the need for the matter to be carefully studied by the legislature, the Government moved that a Joint Select Committee of Parliament be set up to consider the working paper and manage the public comment process.

The committee was appointed in October of 1996 and reported in November 1997. In order to expedite the process and to enhance the consultative process the Attorney General also instructed that the Equal Opportunity Bill 1997 be drafted to give effect to the recommendations of the working paper and that it be published for public comment. It was so published in April 1997, and the comments were forwarded to the Joint Select Committee of Parliament. The overwhelming comments from the public supported the need for an equal opportunity commission, and the need to prohibit by law certain types of discrimination.

We got historically—not only from the Hyatali Constitution Commission Report and from what was required in the Constitution, but also from a general consensus that—there is need for an equal opportunity commission and the need to have some machinery to prohibit and to ensure that persons are not discriminated against.

The Joint Select Committee in its report endorsed the recommendations of the working paper with some minor reservations, and recommended the introduction of legislation. The earlier Equal Opportunity Commission Bill was consequently redrafted and laid in Parliament by the hon. Prime Minister on March 13, 1998 as the Equal Opportunity Bill 1998. That Bill lapsed because, even though it was published and laid, the Government through the Law Commission continued receiving comments in respect of the matter, and it was felt that the Government should not go ahead with it at that time but to consider all the comments, even comments in respect of the Joint Select Committee report and the working paper, so you had a situation where there had been changes over a period of time.

The Bill was, therefore, referred to the Legislative Review Committee of the ministry and there were amendments, and the Bill was again laid before the House as the Equal Opportunity (No. 2) Bill in October 1998. Mr. Vice-President there was the prorogation of Parliament, and the bill was reintroduced with now further amendments. The Bill went to the other place, and based on what happened there, there was further consultation in respect of the Bill.

I think it is public knowledge that the Prime Minister met representatives of the different organizations including: the Areya Preti Nidhi Sabha, the Maha Sabha, the Kabir Panth Association, the Divine Life Society, the Muslim Organization, Spiritual Baptists, the Roman Catholic Church, the Presbyterian Church, the Anglican Church and the Ethiopian Orthodox Church. I think that he also met with representatives of the Seventh-Day Adventists, the Sanatan Dharma Maha Sabha, the Council of Orisa Elders, ASJA, the Trinidad Muslim Faith, the

Baha'i Faith, the Divine Life Society, the Hindu Faith, the Trinidad Muslim League, the Inter-Religious Organization, and members of the Thusian Institute for Religious Liberty. Based on what was discussed, we have made certain amendments to the Bill, which I will explain when the time comes.

May I say, Mr. Vice-President, I would like to put on record on behalf of the hon. Prime Minister and the Government of Trinidad and Tobago, that the Government is very indebted to these organizations for going to see him to discuss this Bill. The Government has looked at their suggestions, and they have recognized that the Bill, basically, is good but that there need to be certain changes, and they made certain recommendations.

Mr. Vice-President, I think it is important for the Senate to have an idea as to what happened in this matter when the Equal Opportunity Bill 1998 was introduced. Since the first Equal Opportunity Bill 1998 was laid in Parliament and the amendments made, there have been changes; some can be referred to as cosmetic changes. I would not go into the changes which were made, but there are certain changes as to the rewording and definition of "race", and there was an amendment to clause 4 to make it clear that clause 7, which deals with offensive behaviour, was not restricted by clause 4.

Clauses 11 and other clauses were amended. In respect of some of the more substantive comments received from the public and in light of recommendations to improve the Bill emanating from the Government, the Bill has also been altered in the following ways: clause 7 was amended to accommodate the concerns of the public, particularly members of the media and the entertainment industry, that the elements of offensive behaviour were too wide. They felt that persons who committed harmless acts of expression may be unjustifiably caught under clause 7 and the freedom of expression unduly restricted.

In response to this, clause 7 was amended to require that in order to succeed with a complaint of offensive behaviour, a person would have to establish the elements of both the offensive behaviour and inciting hatred. Thus, while the person could have laid a complaint under the previous Bill if he was offended, insulted, humiliated or intimidated on the grounds of his race or religion, under the new Bill that person must now prove that such offensive behaviour was done with the intention of inciting racial hatred.

Even earlier on the Government was very flexible, and considered and amended clause 7. One would see that with the amendment which is now before this honourable Senate, that under clause 7 it states:

- “(1) A person shall not otherwise than in private, do any act which—
- (a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;
  - (b) is done because of the gender, race, ethnicity, origin or religion or the other person or of some or all of the persons in the group; and
  - (c) which is done with the intention of inciting gender, racial or religious hatred.”

So one sees that there are three conditions to be satisfied. One would see from the amendment that a place of public worship will not be considered a place which is caught under this Bill, and I will go to that when I am dealing with the amendments.

Mr. Vice-President, in respect of clause 7 this section does not apply to acts committed in a place of public worship:

“‘place of public worship’ means a church, mandir, temple, mosque or other similar building or temporary structure in which religious activities are conducted whether permanently, intermittently or temporarily.”

That is to, in effect, ensure and make it quite clear that there is no inhibition on people in places of public worship expressing their view as to how they see their religion.

I was talking about some of the amendments we made to the 1998 Bill. Clause 7 was also amended to cater for the concerns of the women’s movement by extending this provision to offensive behaviour. In order to enhance the powers of the Equal Opportunity Commission to effect compliance with the Bill before having to resort to legal proceedings before the Equal Opportunity Tribunal, the Bill was amended to give the commission the power, in cases where conciliation efforts failed, to publish a report on the matter with its recommendations, for public inspection.

Then the parts of the Bill dealing with the Equal Opportunity Tribunal were substantially amended from the 1998 Bill in order to answer some of the concerns which were raised, and to ensure that the Chairman was appointed by the Judicial and Legal Service Commission. The Bill over a period of time has been distilled, has been examined, re-examined, looked upon, and all the considerations have been taken into account in order to have a Bill suited for the people of Trinidad and Tobago.

Mr. Vice-President, the Equal Opportunity (No. 2) Bill 1999 was chiselled from the legislative models of Federal Australia, Victoria, Canada and Hong Kong. There is also part taken from the United Kingdom model. American anti-discrimination initiatives and laws can be considered the first model for other countries such as Canada, Australia and Europe. From as early as 1962 the American Equal Pay Act was passed. In 1963 the Civil Rights Act was enacted which guaranteed equal access to employment to people, whatever their race or sex, and an equal opportunity commission was established in 1963 with offices in each state.

Many other countries, motivated by the obligations under international conventions and the nature of the pluralistic societies, have followed suit. While some jurisdictions have sought to deal with discrimination and equality of opportunity under separate anti-discrimination legislation, others have introduced single comprehensive equal opportunity legislation.

The United Kingdom, for instance, has three principal statutes: the Sex Discrimination Act 1975, the Race Relations Act 1976, and the Equal Pay Act 1970. Issues, such as racial hatred, are dealt with under yet another Act, the Public Order Act 1986. Similarly, Federal Australia has enacted major pieces of legislation such as the Racial Discrimination Act, Sex Discrimination Act, Disability Discrimination Act and the Human Rights and Equal Opportunity Commission Act 1986. There are other states, like Victoria, which have done likewise.

The models from these jurisdictions all had a common structure. There were certain grounds for discrimination and certain fields of activities in which discrimination would be unlawful. The basic grounds included sex, race, religion and disability, with some variation depending on the social circumstances of the country.

### **3.30 p.m**

The United Kingdom Act does not provide for the grounds of sexual orientation. While four of the Provinces of Canada have included that ground along with age and political belief, Hong Kong has gone as far to include union membership or activities to its grounds under its Bill, obviously to suit its social history.

Mr. Vice-President, the fields of activity which fall under the purview of anti-discrimination legislation are usually a standard for employment, education accommodation and the provision of goods and services. Australia, however, has also included discrimination in the sale of land.

Having examined some of these pieces of legislation in different parts of the world and the Commonwealth, the Law Commission assisted the Government greatly in having the Bill flavoured for Trinidad and Tobago. In devising the legislative model for Trinidad and Tobago, it was recognized that it would be ambitious to attempt to deal with all aspects of discrimination and satisfy all the matters in an initial Bill.

The working paper prepared by the Law Commission emphasized the need for comprehensive research and analysis into the existent nature and extent of discrimination in all areas of life in order to adequately guide all the parameters of any anti-discrimination legislation. The paper then proceeded to recommend the starting model upon which we can build.

The Joint Select Committee of Parliament echoed these sentiments. It was the committee's stated view that it would be impossible to legislate to deal with all aspects of discrimination, but the best approach would be to formulate legislation which will constitute a good starting point from which the law can develop to suit our needs.

Thus, while the Equal Opportunity Bill, 1999 represents a very bold and pioneering move in the region, it was not possible to capture every shape and form of discrimination. We must tread carefully in what is yet undeveloped areas of law in the Caribbean. Some of the public comments, however, criticize the exclusion from the Bill of provisions for sexual harassment, homosexuals from protection against discrimination; pregnancy as a ground of discrimination; age as a ground of discrimination; *de facto* relationships under the definition of marital status and persons with HIV Aids from the protection against discrimination on the ground of disability.

Mr. Vice-President, with respect to the exclusion of sexual harassment from the Bill, the Government adopted the recommendation of the Joint Select Committee that the matter should be dealt with under separate legislation or even a separate provision in the Bill can therefore be introduced at a later stage.

Many jurisdictions such as Australia and Victoria have included in their anti-discrimination legislation a specific provision to address sexual harassment in a direct manner. In the meantime, it should be noted that the phrase "subjecting the person to any other detriment" in clauses 9(c) and 10(b) of the Bill has been interpreted by the United Kingdom to include sexual harassment in certain circumstances. So perhaps the equal opportunity commission and tribunal, when established, would adopt the United Kingdom's jurisprudence in this area and

therefore, there will be some protection afforded for sexual harassment even under this Bill without specific expressed provisions.

The Government of Trinidad and Tobago is committed to dealing with this issue and we recognize it is a matter which ought to be protected but we also recognize that it cannot be given at this time and, therefore, the Law Commission has been directed to continue its research so that the Bill can be improved on after it has been enacted.

Under the heading "homosexuals", the Bill by clause 3 does not prohibit discrimination on the basis of a person's sexual preference or orientation. Again the Government was guided by the report of the Joint Select Committee. The committee, despite its diverse membership and consultation with specialists in the social arena, declared that it was unable to arrive at a definitive position on this issue.

The working paper also recommended that, as a starting point, such a ground of discrimination should not be included. The Government has decided that in the light of the ground-breaking nature of the Bill we should not include this at this time because it should be subjected to further study. In any event, inasmuch as homosexuality has not been decriminalized in Trinidad and Tobago, it cannot be recommended that the legislation extends to protect homosexuals at this time.

Mr. Vice-President, with respect to the exclusion of pregnancy in the Bill as a ground of discrimination, the Joint Select Committee did not address the issue of pregnancy in its report and, as such, did not recommend that it be included as one of the initial grounds of discrimination under the Bill. However, although pregnancy is not specifically included in the Bill, places in the United Kingdom have established child-bearing and the capacity for child-bearing as characters of the female sex, therefore discrimination on the ground of pregnancy constitutes discrimination on the ground of sex. Obviously, these matters would have to be interpreted by both the commission and the tribunal and, as one would see, there is an appeal by the court and the court can interpret the law as it sees fit until Government and Parliament come with expressed specific legislation dealing with all the issues.

Mr. Vice-President, the Government's commitment to the protection of pregnant women in the field of employment is nevertheless evident in this recent introduction, an enactment of the Maternity Protection Act in 1998. This Act gives to female workers the right to maternity leave with pay, the right to return to work after pregnancy under the same terms and conditions, and the right not to be dismissed on the ground of pregnancy.

**Sen. Mohammed:** Mr. Vice-President, is the Attorney General aware of the fact that to this date parliamentarians are still discriminated against with respect to women being pregnant and being sitting Members of Parliament?

**Hon. R. L. Maharaj:** I am sure the Equal Opportunity Commission Bill will assist in that respect because it would apply to discrimination based on the interpretation of law.

**Sen. Mohammed:** Thank you for giving way again, hon. Attorney General, but I really raised it in the context of the Maternity Protection Bill that you just mentioned.

**Hon. R. L. Maharaj:** I really do not know and I am not the Minister responsible, but if you want me to take any message to him I will be happy to do so.

Mr. Vice-President, the Bill does not prohibit discrimination on the ground of age, and when I say it does not prohibit, I mean it does not cover that. This is based on the recommendation of the Joint Select Committee that such a ground be omitted until the implications are more fully explored and settled. The Government agreed with this recommendation since the impact on compulsory retirement, youth wages and youth and elderly benefits would have to be properly analyzed and specifically be preserved under the legislation.

In respect of *de facto* relationships, such relationships have not been included under the definition of marital status and, therefore, do not fall under the ambit of the Bill. The Joint Select Committee—again, when I say Joint Select Committee, I think we understand that it is a Joint Select Committee consisting of all Members of the Opposition, Government and the Independent Senators—recommended that this matter be deferred until the general law relating to such relationships has been reformed. The Government has since introduced legislation to deal specifically with co-habitational relationships and the rights of persons in such relationships, namely the Co-habitational Act 1998. That Act, however is of recent origin and *de facto* relationships did not make its way into the Bill because other issues relating to this are now being looked at, such as succession matters and other matters related to this. This matter can be incorporated in law at a later date to afford persons who are in common law unions protection from discrimination in certain fields on the ground of marital status.

With respect to the exclusion of HIV Aids as a ground of discrimination, it is to be noted that the definition of “disability” under the Bill is restricted to present physical and mental disabilities and does not cover the presence in the body of

organisms capable of causing disease or illness. Again, this issue was not specifically dealt with in the report of the Joint Select Committee. Nevertheless, the Government recognizes that there is a high incidence of HIV infection and AIDS in Trinidad and Tobago and in December 1998 instructed the Law Commission to prepare a working paper, which has been prepared, and there have been some reforms of the law dealing with these matters. The Government would like to consider this matter further before including it in the provisions of this Bill.

Before embarking on an analysis of the provision of the Bill, the scope of the Bill should be clarified. First of all, the Bill does not create any new criminal offence. A person found to have committed an act of discrimination under the Bill would not be subjected to any criminal liability. Instead, the Bill provides for civil sanctions which may include an injunction and damages so that I think we should get that clear in the Bill.

Secondly, the provisions of the Bill bind both private individuals and the state because private persons, businesses and public bodies can sue and be sued under the Bill.

Finally, there is an underlying emphasis in the Bill of an alternative dispute resolution mechanism. Conciliation is a mandatory feature of the complaints process and it is encouraged every step of the way.

The primary objectives of the Bill are to prevent discrimination in certain aspects of our lives, to provide a new avenue for redress when discrimination occurs, to promote equality of opportunity. In seeking to achieve these objectives, however, the Bill takes into account the fact that a person's freedom of choice in certain instances and social norms has to be preserved.

Single sex schools, single sex clubs, the employment of personal or domestic staff, calculation of insurance risk and the ordination of priests are some of the types of matters that have been expressly preserved and kept out of the ambit of the Bill.

Mr. Vice-President, the Equal Opportunity Bill defines discrimination as a less favourite treatment of a person on the ground that that person's status of being of a particular race, sex, religion, origin, marital status or disability when compared with the treatment of a person of another status in circumstances which are the same and not materially different. If a man and a woman both have the same qualifications for employment, and their circumstances are the same, or not very different and the woman is treated less favourably than the man purely because of her sex, then it can be said that this woman may have been discriminated against under the Bill.

The Bill by clause 7 also attempts to deal with the most disdainful form of discrimination, offensive ridicule and intimidation by persons on the ground of a person's race, ethnicity, religion or gender and the incitement of racial, religious or gender hatred.

The Equal Opportunity Bill is intended to operate with certain parameters, only certain types of discrimination would be actionable under the Bill. The Bill prohibits discrimination only on particular stated grounds, that is on the grounds of a person's sex, race, including ethnic origin, colour and mixed race, ethnicity, origin including geographical origin, religion, marital status or disability.

All these grounds have been collectively referred to in the Bill as a person's status under clause 3, thus whenever the word "status" appears in the Bill it refers to these several attributes of a person.

Mr. Vice-President, the effect of this provision is that the Equal Opportunity Commission would not entertain any complaint which does not fall under the stated grounds of discrimination.

The Bill by clause 6 also prohibits discrimination by victimization where a person is victimized because he or she has brought proceedings, or given evidence against a discriminator and is being unfairly treated by the discriminator.

Fields of activity in which it is unlawful to discriminate: the Bill is further restricted to dealing with discrimination only in certain fields of activity. The Bill prohibits discrimination on the ground of a person stated in four fields of activity namely: employment, education, the provision of goods and services to the public and the provision of accommodation.

Clauses 8 to 10 of the Bill prohibit discrimination in the field of employment and are inspired by the United Kingdom Sex Discrimination Act. Under these sections, discrimination against job applicants in the selection procedure in the terms and conditions of employment and not offering employment is prohibited. Employers are also prohibited from discriminating against employees in relation to their terms and conditions.

Clause 15 deals with the field of education. Educational institutions are prohibited from discriminating against applicants and students in admissions, access to benefits and expulsion on the ground of the status of the applicant and of the student.

Clause 17 provides a valuable means of protection for the public against discrimination in the manner in which persons provide goods, facilities and

services to the public. There are certain necessary exceptions and, as mentioned before, the Bill recognizes the need to create exceptions to the general prohibition of discrimination.

In the field of employment, clause 11 protects an employer from being accused of discriminating against an employee on the ground of that person's sex, if being of a particular sex is a genuine occupational qualification.

**3.45 p.m.**

This caters to instances when the physical attributes of a particular sex are required in the employment for reason of authenticity, privacy and decency. Race is also included as a genuine occupational qualification for reason of authenticity. This would be particularly important in dramatic performances, modeling, advertising and the production of works of art. Such a provision exists in all the legislative models examined. The Bill also does not apply to the employment of persons in a religious shop where obviously that religion is a factor. Employment of domestic personal staff: the Bill also would not entertain a complaint of discrimination on any ground where a person is seeking to employ domestic or personal staff of not more than three persons.

Employment in family businesses: it was thought necessary to protect the widespread phenomena of family business, so Clause 13 was tailored after provision of the Hong Kong model. A person, therefore, would not be able to claim discrimination if only family members are employed and trained in the family business. Employment of a person with disability in cases of discrimination and employment on the ground of a person's disability: the employer is afforded the defense in certain circumstances. Disability is defined in clause 3. The Bill would not apply to an employer in relation to the employment of a disabled person if that disabled person is unable to carry out the requirements of the job, or, if the provision of special facilities would impose an unjustifiable hardship on the employer, or, if there will be a risk of injury.

Single-sex schools, clubs, landlords and others are dealt with in Clauses 16 to 21 of the Bill. The Bill also contains general exceptions which are common to almost all of the anti-discrimination legislation. The Bill would not apply to aspects of competitive sport, *et cetera*, as are mentioned.

The Equal Opportunity Commission, Part IV of the Bill, is of great significance to the history of Trinidad and Tobago. It establishes the Equal Opportunity Commission. This is the driving force of the Bill. The Commission is the administrative and investigative force, entrusted with the responsibility of

working towards the elimination of discrimination, through the undertaking of research, educational and other programmes.

More importantly, the Commission receives, investigates and conciliates complaints of discretion. The Commission is comprised of five persons in order to ensure their independence. Commissions are appointed in the same manner as the Chief Justice and the Ombudsman. That is by the President, after consultation with the Prime Minister and the Leader of the Opposition.

Clause 26(4) is of a particular interest. It mandates that membership of the Commission reflects, as far as possible, a balance of race and gender. One would see from the amendments that we have amended the Bill to reflect that in respect of religion, where the Commission is determining matters involving religion, there would be a panel consisting of all the established religions in Trinidad and Tobago, and the Commission must consult and take their views into consideration.

Part 7 of the Bill lays down the procedure for the complaint of discrimination. All complaints of discrimination on the Bill, or of offensive behaviour and hatred, must be lodged with the Commission in writing, and then it provides for the lodging of the complaints and the Commission would try, as far as possible by conciliation, to get the matter resolved; and if it is not resolved the Commission would take the matter before the Tribunal. So the person does not have to even pay lawyers to do this. The Commission itself would take the matter before the Tribunal, but the Commission would first try to ensure that the matter can be resolved.

Then you have the Equal Opportunity Tribunal. The Chairman of the Commission is assisted by two lay assessors. The new provisions insulate the Tribunal's independence. The manner of appointment is the way it is done also with respect to a judge. An appeal will lie from the Tribunal to the Court of Appeal. So that there is the Commission, the Tribunal and the Court of Appeal.

The amendments which have been circulated would reveal that we have defined what "family business" means because it was not defined. We have also made it clear, it does not apply to public worship. I would ask hon. Members to note that in relation to the definition of "public worship" one of the matters which were discussed was, if it is confined to a building, what if people are having a crusade or something other than in the building. That is why it is drafted in such a way to cover even those situations. Not only for the Christian faith, because sometimes in the Hindu faith there is Ramayan outside of the temple. Therefore it covers all those kinds of situations.

In respect to clause 15, there is, obviously, an understanding, a sort of concordat and, therefore, in respect of the educational establishments it is subject to any agreement or practice between the state and any educational establishment, board or other institution.

In respect of unjustifiable hardship, we have, in effect, extended it to cover cases where the employers, in certain circumstances, would have the defence, because in the case of clause 18(a), to include the defence of unjustifiable hardship in the fields of education, accommodation and the provision of goods and services at present, the Bill only allows for the defence in the field of employment and justifiable hardship can be used as a defence to an allegation of discrimination on the grounds of disability where the facilities required of a disabled person could cause unjustifiable hardship, in light of some of the comments we have received since the Bill was passed in the other place.

In respect of clause 26(c)(3), we said that:

“There shall be a panel of advisers to the Commission comprising representatives of every established religion in Trinidad and Tobago.” Clause 27(2) says:

“The Commission shall, whenever considering a complaint of discrimination, on the grounds of religion, consult with and consider the opinions of the panel in making its decision.”

In respect of clause 30, based on the meetings that we had with the religious bodies, they felt that clause 30 should be amended. Instead of twelve months after for the complaint to be filed, they said that it should be reduced to 6 months, but, in exceptional cases, the Tribunal and the Commission would have the power to entertain.

Basically, what we have done in this Bill, recognizing that under the existing law in Trinidad and Tobago, if there is inequality of treatment by a private entity, there is really no common-law action generally to get redress, if there is inequality of treatment by the state one can file a constitutional motion or in some cases, seek judicial review. So this would provide redress to the citizen. I think it was President Nelson Mandela, when he took office, one of the first things he did, he said he wanted an Equal Opportunity Commission. He wanted that Commission, not because he wanted to go against white people or, not because white people in South Africa dominated the system over the years; he wanted an Equal Opportunity Commission to support the whites and the blacks. He wanted to ensure that there is machinery, that if there is an allegation of discrimination, this Commission would be able to investigate it.

He also said that in his experience the feeling of discrimination is the greatest blight which occurred in human history; and that the way he felt and the experiences he had, one of the best things that a country can do, if it is a diverse society in which there are different races and cultures, is to set up machinery in order to investigate these matters.

**3.55 p.m.**

All that the Government is doing here, Mr. Vice-President, is setting up additional machinery, this time not a court, because under the existing structure the court can investigate violations by the state for equality of treatment. We are instead setting up machinery which would provide greater access to justice, in that the ordinary person in Trinidad and Tobago, or persons in the high or middle-income bracket, could go to the commission, the commission can investigate complaints and will try to resolve them, and the person would have to pay no fees to lawyers.

If the commission believes—because the commission would be equipped with lawyers—that an injustice is being done to the person, the commission would go itself to the tribunal and would be able to take steps in order to get redress. That is what this is about, and Mr. Vice-President, I think I should put on record that even without an institutionalized Equal Opportunity Commission, the hon. Prime Minister of this country, as Leader of the Opposition, started an Equal Opportunity Commission. It was started, complaints were being received and efforts were being made to try to get redress for these people who believed that they were being discriminated against.

Mr. Vice-President, injustice or the feeling of injustice can really transform the life of an individual. When a person feels that he is unjustly treated and he feels alienated from society, he can nurture in his mind ambitions to break down the society and he can nurture in his mind many things that he would not normally nurture if he did not feel he was treated unjustly. Therefore, it is very important for governments and peoples to recognize that, in order to have peace and harmony in a society, God, the church and religious institutions come first, and that these institutions play a very important role. However, we must also recognize that unless there are civil institutions to investigate these allegations to have people believing and feeling satisfied about their feelings, getting some form of redress even by the investigation, then injustice would be bred, would be bred, would be bred, and we would not know how it would explode. We have seen in other societies how that has exploded.

*Equal Opportunity (No.2) Bill*  
[HON. R. L. MAHARAJ]

*Thursday, September 28, 2000*

Mr. Vice-President, I feel very privileged and honoured to be part and parcel of the legislative process bringing this piece of legislation to the Parliament of Trinidad and Tobago and I think that every lawmaker should feel honoured and privileged to be part and parcel of enacting such a piece of legislation. Mr. Vice-President, I beg to move. [*Desk thumping*]

*Question proposed.*

**Sen. Joan Yuille-Williams:** [*Desk thumping*] Mr. Vice-President, my comments this afternoon on this particular piece of legislation do not have anything to do specifically with the commission, how it is intended to operate, its role and function or with the tribunal which has been set up. I want to look at the whole principle behind this legislation and, clearly, the need for the legislation and whether or not at this time we really needed this piece of legislation or whether or not there were other things that we could have done or we should have been doing.

I also wanted to note—I heard the hon. the Attorney General say, and he went through the history of such legislation in other countries, and I am one of those persons who says—that I do not believe simply because other countries needed something that Trinidad and Tobago also needed it; and I have been saying that for quite some time. It seems as though we get much pleasure here when we talk about what other countries did, how they did it, and then we bring all the things that they have had from several other countries together and try to impose them on us. Trinidad and Tobago is very unique and we have to recognize that. [*Desk thumping*] We might be a plural society but we are quite different, and if one looks at our history one will see our history is quite different from a number of other countries.

In fact, when the Attorney General started his presentation, I wanted to applaud him on the fact that he was recognizing the uniqueness of the peoples of Trinidad and Tobago. In fact, he referred to how, at functions where we have our interfaith invocations or services as we would say, it is only in Trinidad one could find that, and I applauded that. He also talked about everybody here living in harmony and he noted how very blessed we were living in harmony in Trinidad and Tobago. He also noted that people in Trinidad and Tobago promoted equality and that there was a strong culture for equality and that was recognized by the Government. To me, he was almost leading up to say that we were on the right track and that we did not need the piece of legislation.

I sat and listened to him and therefore one was a little disappointed when one recognized how he started his presentation and how he ended it. He started by

saying he recognized that there is harmony in Trinidad and Tobago, he recognized that we were promoting equality and he recognized we had a strong culture for equality, yet at the end of the day he told us that this piece of legislation was absolutely necessary for a number of reasons which I did not bother to write at this time. He also said that the Prime Minister himself had started some sort of organization or some strategy, whatever it was, for receiving complaints. One wondered why he did not continue with it.

I remembered the last administration did two things. One was, we set up the Centre for Ethnic Studies at the University and I want to read the mission statement of that centre which was funded by the government. The mission statement for the centre said, to promote equity and excellence by providing a viable, humane and comprehensive educational policy framework, an essential ingredient of a plan leading to the attainment of knowledge, values, competencies and skills which will equip each learner to function as a useful citizen. There is a difference between this and the legislation.

What has happened over the years is, we have come from a certain type of situation. I remember my uncle, a pastor, has some newspaper clippings—I could not find the relevant one today—and one of the newspaper clippings which he always showed to me was for a job on Coffee Street in San Fernando. At the end of the advertisement it was marked “fair complexion”. He kept that over the years, that the person they wanted to employ had to be a person with fair complexion. We have passed that stage for a long time. We would not see that again in Trinidad and Tobago.

How did we arrive at that? It was not the legislation at all that brought us to that situation. That is what the centre was going to do with our people. It would have helped to promote in us that ability to appreciate each other as human beings and to work together. We also had the “round table”, and that was a grouping of leaders of most of the religious denominations. They met with the Prime Minister on a weekly basis and they worked together to develop that whole business of tolerance among the different religions. [*Desk thumping*] If a problem arose in the society it would come to that round table and they worked it out there and therefore the need for all this legislation was not there.

I was surprised when I saw that we were pushing this to the nth degree because as a child I remember I lived in San Fernando, I moved up to Vistabella Presbyterian, to San Fernando Methodist, to Naparima Girls, to the University, to St. John’s up in Lengua where I worked as a teacher and to Couva Junior Secondary and I never saw the need for this type of legislation. In fact, this

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Government is saying, “You cannot turn back now” but I thought this was turning back because we could have done without this legislation as we moved on, quite clearly. [*Desk thumping*]

There are other things that one does with people to bring this tolerance of living together rather than by bringing legislation. This legislation is not developing this. This is strictly about complaints. If something happens one goes here and one gets there. This legislation would not develop a people at all. [*Desk thumping*] It would not develop that kind of tolerance. This is something where one has to—the values as I said, the competencies and the skills which we require to equip people to function as useful citizens will not come through this piece of legislation, and that is my fear, that when we put the legislation in place we will say to each other, “We have put that there and therefore we can dwell together in unity”. I say, that is not so. It will not happen automatically. [*Desk thumping*] In fact, if we look at it, and we will see it later, we have a legal system and for most of the things for which we feel we want redress, there are opportunities for us to go to the legal system. If there is anything we want to do, and we are accustomed to doing it, if there is anything in that legal system we want amended, we could simply have that done.

Let me just mention some of the things. Do you remember the student with the hijab dispute? She went to the court and that was clarified. Even last week there was an incident with two brothers who went to school with their plaits. We do not want legislation. There was consensus, because we have to develop and grow as a people, and through consensus that was ruled out and the young men are in school ready to appreciate the others who will come in. We do not have to put a legal system in place for that. Not every single thing is solved by legislation. We do not have to do that, and that is how it works.

Today, just before I came here, I listened to the CCN matter where they felt they were discriminated against with the cellular licence, and I heard where the court said that the CCN people should have been granted the licence and the Prime Minister had no right to interfere. So the law is there if one feels one is discriminated against. What I say at this time is, we are spending all this time trying to put these laws in place but that will not help us to develop as a society. We have to go beyond this and therefore I say we are turning back. On our own we moved out of colonial days, we moved off the discrimination which the colonial masters had put onto us. On our own we are forging together as a people. At this point, if we recognize that there are large divisions in the society we have to ask ourselves, who brought them and why?

While we were in the last administration, I remember the Opposition at that time always talking about equal opportunity legislation and I always wondered why they wanted it, and what does one do to get equal opportunity legislation. One of the things I read said, one creates division in one's society, creates as much discrimination, creates as much inequality and therefore when one brings the legislation people will say, "That is why we are bringing the legislation". [Desk thumping] We have reached that point where they have created so much division, so much discrimination and so much inequality that if one says anything now, the first thing one will be told is, "That is why we have put this legislation in place". I say, we could do without it. [Desk thumping] We could do without the legislation.

I was looking at some of the clippings that came out around that time. I want to read, and I agree with pastor Vernon Duncan from the Divine Encounter Fellowship and I just want to read what he said about this Bill:

"The Trinidad and Tobago Government's proposed Equal Opportunities Bill is said to be aimed at prohibiting offensive behaviour in public, but there is built-in danger for the well-being of a society that has been blessed with a relatively high level of racial and religious peace."

This is something with which the Attorney General almost agreed this afternoon.

"The Government's proposed attempt to legislate cultural, social and religious behaviour that have become the norm in our society, seems certain to backfire and irreparably injure the relative societal harmony that Trinidad and Tobago now enjoys."

#### **4.10 p.m.**

"The Bill seems set to create every opportunity for one citizen to take 'subjective' legal action against another, ultimately destabilising a nation where, in the words of our National Anthem, 'Every creed and race find an equal place'."

I like what he said.

"...ultimately destabilising a nation where, in the words of our National Anthem, 'Every creed and race find an equal place'."

I agree with him because this is doing nothing more than that. I feel that we could have done without the legislation and I feel that the legislation will not solve what you perceive to be a problem in Trinidad and Tobago.

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I want to tell you when it all started. I have here with me two newspaper clippings, one from the *Trinidad Guardian* of May 20, 1999, entitled "UNC leadership not national—Suruj". That was written by Suruj Rambachan. I need to read it for you because he was a part of the administration of which the Government now was also a part.

“Commenting on a statement made by UNC parliamentarian John Humphrey (St. Augustine), that there was racism in the UNC, Senator Rambachan, declared that Humphrey’s statement must be taken seriously.

‘You cannot claim that your struggle is for equality and against discrimination and ‘apartheid’ if this is what the leadership of the UNC practices in its behaviour,’...

One of excluding the other races in the population; one of denying the right to freely participate in the affairs as important as elections. Such leadership can never, should never, and will never be trusted with the mantle of national leadership and the role of government.’”

In fact, that was before and by now you have seen what has come to pass. He continued:

"Mr. Panday is a political psychologist and knows that if he succeeds in having people believe that there is discrimination he will be able to divide the people."

I think we need to ponder on that at this time because as far as I am seeing, we are seeing all the evidence where people have decided that there is discrimination and it is pushing to that division.

In fact, the political guru himself who walked out on you is one of those people who said in your political strategies to try to emphasize the division and, true to form, that is what I have seen happening. So that you make this relevant and you want to know why.

Let me look at somebody who is now a part of the Government, the Minister of Public Utilities, when he was a member of another party and both parties were together. You will remember CLUB 88. At that time, an article in the *Trinidad Guardian* of October 3, 1988:

"..charged Basdeo Panday and his colleagues for ‘creating CLUB 88 as the centre-stage for their machinations, attempting once more to divide the country along racial and regional lines.’”

That is said by Minister Ganga Singh. I want you to notice what is happening because since they were in Opposition, they were talking about this commission.

One of the things we are seeing is that people are moving to divide the country along racial lines to give the perception that there is discrimination, therefore, the need for this, so that any time anything happens, they say there is the law as they proceed. But, when you look at this law—and I do not want to talk about the operations—when you take anything to a court, even if it takes five years, whatever you talked about, the discrimination will still persist over that five years until you get a hearing, but we could go through that. He said something else further:

"Ganga Singh nevertheless accused the former NAR deputy political leader..."

That is the Prime Minister.

"...of never extending 'that hand of equality to the young people of the country, for his policy has always been one of marginalism and tokenism.'"

Nowhere further can we see that whole thing. That is very evident, tokenism. Tokenism to pretend that the whole group is with you in this whole business of national unity as they want to say, therefore, it is very evident, this whole business of tokenism—I need not go into the details—but, clearly, anyone who could see the machinations, can see the strategies similar to what this Minister of Public Utilities who is a member of the Government today had said, that was the policy of marginalism and tokenism. That is the policy still and that is being emphasized today. Therefore, governments with policies like that would certainly want to bring legislation like this in a Parliament when, to me, it is not necessary. Well, I like this:

"He added that 'there are amongst us those who may be intoxicated with the sweetness of Panday's rhetoric.'"

Today, we had the sweetness of the Attorney General's rhetoric as we went through. We need to be serious about it because since when have we come to this stage where we needed this legislation? This has only come about and I do not think we need it; this has only been forced on us and certain things are being pushed on us that we needed to accept it.

If you notice with this legislation there are so many exceptions in this Bill. For everything, you can find an exception. Clearly, if you have so many exceptions, it also tells us that there was no need for it. Every time you read something, you will come up with an exception. I want to go through some of what was said in here. I

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have just looked at it. In fact, I was not impressed. I know that you have gone a long way, even with this clause 7, which is the clause that created many problems. A number of people and discussions went around with clause 7 and I do not know if the amendment would have solved any problems at all. That was the bit that caused the problem. I still do not understand it because it says:

"A person shall not otherwise than in private, do an act which is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of persons."

I do not know if any amendment has been done to that but that is so wide and so vague and we do not really understand what it really means. I remembered when this was going on, people started speaking about if people sang about others, whether that was being classified as an act that was likely to offend or insult.

I remember when Super Blue did the Soca Baptist song, that was something against which some of the members of the Baptist community reacted. I am wondering, in light of the legislation, whether that can be taken as a part of this legislation and we can apply to the commission for redress, when sometimes consensus or discussion and education as a people will work. What will happen with that?

I remember when the Hallelujah band came up. I think Peter Minshall had a band called Hallelujah, I remember that. What would we have done in terms of this legislation? Where would that fit in? Would the Christian churches have gone to the Equal Opportunity Commission for redress against the use of that band? I know a number of people spoke and a number of things happened.

Do you remember Iwer George's "Bottom in the road"? A number of people came out and spoke about it. These are some of the things that we need to ask ourselves.

The Prime Minister himself, if you are talking about it, when he called teachers "criminals"; what would teachers have had to do? Use it and go to the commission? Remember he called them enemies of the Government. I remember all of those. Ken Gordon—pseudo racist. He took his own somewhere else. He found an opportunity or he knew there was some place he could have gone with it like most people. I am wondering in terms of this, whether or not we do not highlight or create greater divisions when we bring in legislation like this, whether we are willing to educate people, or whether we will be able to use the legislation that is there, because Ken Gordon did not come here. The Caribbean

Communications Network did not wait for this legislation at all to get what they thought was discrimination.

There is something called public censure which still works for us in Trinidad and Tobago in many ways. What I am about this evening is not necessarily—I do not care how this commission works. I am behind the principle of this whole thing. I really did not see the need for it and I am also saying that the Government itself, in its strategies, had been trying to create the situation where it felt that this Bill is necessary. I do not know what it is covering by it.

When we talk about discrimination in employment, where is the Industrial Court? Clause 9 says:

"An employer shall not discriminate against a person employed by him—"

I still think the Industrial Court is there and I do not know if there is something here that they feel should be put into the laws that govern the Industrial Court, why do they not put it? Why do they have that here and we also have the Industrial Court? I am saying there are places where things can happen.

Then we talked about the exception of domestic services and family business. That is very difficult for us to define. I notice that there is a definition there about family business, but I remember in the *Sunday Express* of May 26, 1996, Selwyn Ryan talked about the business of family business and said the problem was in the implementation of this Equal Opportunity Bill. He stated:

"How are we going to persuade or compel small businessmen that they should not use race or gender instead of kinship as the criterion for recruiting employees, especially if they are convinced that the profitability and sustainability of their investment requires them to do so?"

I think we needed to look at that quite clearly. It is all well and good for us to say family business but some of those family businesses that we have seen have grown so large that they have passed family business and you could still discriminate under the guise of family business.

While I am looking at Prof. Ryan's article he, too, did not see the need for it, nor how it would operate. He also said:

"One should also note that the Equal Opportunities Commission legislation exists mainly in large societies where one has relatively small visible ethnic minorities. Can the system work in a plural society such as Trinidad and Tobago, where almost everyone claims to belong to some minority, whether imagined or real?"

People have questioned it but we have gone so far with this legislation that I believe by now we feel that we have to come with it again after a time. I almost thought this legislation would have died on its way to the Senate but this is it. Therefore, if we just look further into the legislation, we had discrimination in other fields and I want to ask whether they feel they can stand up to this.

Clause 15 states:

- |  |  |
|--|--|
| <p>‘Education: Discrimination<br/>against applicants<br/>and students:</p> | <p>(1) An educational establishment shall<br/>discriminate against a person—<br/>(a) by refusing or failing to accept that<br/>person's application for admission as<br/>a student."</p> |
|--|--|

Do you know what you are really saying there? I have just come out of the secondary schools last week where people had to refuse applicants. They were refused—all those repeaters from secondary schools who were in the same schools and tried to get back, were refused. They chose who they wanted and left the rest. Is this applicable?

- "(a) by refusing or failing to accept that person's application for admission as a student."

The fact that you took some, you looked through some and said, "I do not want you." Or, "I want you." what are you saying therefore? Could those who were left out take the principals, the Ministry or the Government to court? That is clearly what it says. Education—discrimination against applicants and students. It is in black and white. It is quite clear and we ask you about it. What does it really mean? I would like to know: Should we or could those students who did not find places or were not accepted, if this is in place, then apply to the commission for redress?

It also said at subclause (2):

- "An educational establishment shall not discriminate against a student—  
(a) by denying or limiting the student's access to any benefits, facilities or services provided by the educational establishment;"

Sometimes while things happen abroad, we are in a country here where we are limited in terms of what we can offer. Therefore, we do not have enough school places or opportunities for everybody and when you put that in here, clearly, therefore: what about me? I even looked at the children who were thinking in

terms of the subjects they wanted to do. You said in this legislation you should not deny:

"...student's access to any benefit, facilities or services provided by the educational establishment;"

Do not put things in the legislation to which you know you cannot hold fast. That is quite clear. It may look simple to you but I am telling you that is what it says.

**4.25 p.m.**

The Government should not put things within the Bill that it knows it cannot hold fast to. That is quite clear. It may look simple to the Government, but I am telling you this is what it says. In a country like ours we have grown to accept certain things because we know that certain resources are limited.

When it comes to the legislation, it means that the state must provide it. Therefore, the floodgates should be soon open to all those persons who would say that they are being discriminated against in both ways. That is one. The way the whole thing is going to operate, is that it will take so long for them to get redress that by the time it gets through to the courts or the commission to get redress, the time would be passed. It is all well and good to look and see what other countries have, but the Government should not put anything into legislation that it knows it is not going to hold on to.

Clause 15(2)(b) states:

“by expelling the student or subjecting the student to any other detriment.”

There are some schools which have policies after one or two misdemeanours. Sometimes a student may take drugs in the school and he is caught, some schools do have consent from the Ministry that some students are expelled. I would like to find out from the Attorney General, this whole thing about discrimination in other fields, especially discrimination in the field of education. Especially now that the Government is walking a platform where it is saying that it has universal secondary education and it is catering for everybody. Because the Government is catering for everybody it should not only be those who are 11-plus and were placed into schools; it should be everybody: those who wanted to repeat and are 16 years old, and those who want to do science and are told that they cannot do it because the science class is full. We have to look at that. Tell me how this is going to fit into those categories that I have just mentioned.

Again, we have another set of discrimination: discrimination re: provision of goods and services. Probably we never thought we would have reached this stage when we first drafted this Bill, but everything must work together. Clause 17(1)(a) states:

“Any person concerned with the provision (whether or not for payment) of goods, facilities and services to the public or a section of the public shall not discriminate against a person who seeks to obtain those goods, facilities and services—

- (a) by refusing to supply the goods, provide the facilities or perform the services;”

That is one. I also wanted to take this in with the others on education. As we have come out of this foray over the education system that we have gone through, we saw, quite clearly, there was some discrimination in the way the goods were distributed to the different areas.

I am looking at this under education as well. I asked myself: “Was there some kind of discrimination when we opened our schools—I am very straight on it—and some people were able to go into empty halls, with no furniture or tutors?” Some people went into buildings that were air-conditioned and had excess furniture that they were able to hand over to other people. We ask ourselves: “Is there some kind of discrimination?” It is the Government who has put this here, that is why I am asking the question. That was quite clear. We saw it. Some people had nothing when they entered, and they still have nothing. We had some who had so much that they were able to give, even air-conditioned areas.

Whereas we like standards—I agree with people in trying to give the best—we ask: “What is the balance?” “How is it that some have so much while others have none?” If you go through this with a fine-tooth comb, you will see that there is discrimination in that. One could easily say so.

Under normal circumstances, some of the things will not attribute to discrimination. When the Government brings a Bill like this, it has just opened itself up. We are going to see areas where some people have and some do not. Some people have opportunities and others do not, and we would cry discrimination. As we said before, there are a number of exceptions to the rule with respect to everything that we have seen in this Bill.

When we went through all those exceptions we came to clause 36, which deals with failure to comply with conciliation notice. There was a fine of \$1,000

which was placed on it. One wonders whether or not that is the only way we have within our society to get people to understand what is happening in a plural society.

As I said today, I am not interested in the commission itself. I am not interested in the tribunal. I am interested in principle. I am saying that, here we have a plural society and we are not doing anything to foster that togetherness and tolerance. A lot has been done on its own. If we have money to spend, and we are going in a certain direction, why not try that? We have come a long way. This is taking us back. This is opening up the perceived divisions, which I feel this Government has set in train.

Somewhere along the line, I remember reading where the Prime Minister spoke—I think it was in the other place—about the fact that he made a speech from a lawn. He was not in the road. He was on the lawn making the speech. He said a number of people gathered, he was arrested and taken to court, and he was freed. I think he said under this, he would have been accused, because it would fall under clause 7. There were many people there, and the things he was saying as a union leader could have insulted, humiliated or intimidated. That is a dangerous precedence. Here he said he was standing on a lawn in a yard. I am saying to myself: “If you get into your yard—I heard the change was for churches—and you decided to articulate certain comments, and this same crowd gathered, you are part of the offensive behaviour of clause 7.” I think we need to look at that. Even though the Government has come up with an amendment to clause 7, I do not think that would satisfy those persons who were totally against it.

Clause 7(1) states:

“A person shall not otherwise than in private, do any act which—

(a) is reasonably likely, in all the circumstances...”

The whole thing is “reasonably likely”. Some of us are offended so easily.

“...to offend, insult humiliate or intimidate another person or a group of persons;

(b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group;”

A number of the politicians, especially from that side, would soon have to go before this commission, because we are in a state of war.

**Mr. Vice-President:** Hon. Senator, you have 10 minutes left in your contribution, I do not know if you would be concluding, or we should now break for tea. Would it be convenient to break you in stride and allow you to return? We will take the tea break. It is 4.35 p.m., we will return at 5.05 p.m.

**4.35 p.m.:** *Sitting suspended.*

**5.12 p.m.:** *Sitting resumed.*

**Sen. J. Yuille-Williams:** Mr. Vice-President, I was trying to use the time to look at some of the amendments which were circulated so that if there were changes in the original legislation I would not just be wasting the Senate's time going through them.

I just want to sum up with a little overview before I make a few comments on what I think should happen, not only as a support to this Bill, but as a support to the society itself. I want to do so by going back to discrimination, to which the Bill applies in Part II. When I look at clause 7 there is one thing I thought of when I looked at the amendments. The amendment states that when you talk about a place of worship it means:

"a church, mandir, temple, mosque or other similar building or temporary structure in which religious activities are conducted whether permanently, intermittently or temporarily."

In terms of a Christian church, preaching the gospel and converting persons to that religion is a part of the mission, and you will do all that you can to convert someone towards the particular faith, and that is part of it. There is where I think we may have problems with the Christian church with this clause 7, because it is just as in politics where you try to convert persons from one political affiliation to another.

Those of us who sat last night heard people struggling along to convert persons from one affiliation to the other, and while they were doing so—if this Bill was passed—they were trying to offend, humiliate, intimidate other persons from the platform. We all heard it throughout Trinidad and Tobago. [*Desk thumping*] It was going too long so some of us went off to sleep. In so doing, that kind of converting persons, obviously, that happens, and it is the same type of thing if you are trying to convert people from one religion to another, which is a mission, some people may feel that you should not say certain things at all.

What I am looking at here is that the Minister talked about the places of worship, church, mandir, whatnot or a temporary structure. What if you have a

crusade and you use a tent? I wondered about the open-air meetings, those at the roadside. You could say something in the church, you could say it under the tent or at the savannah, but if that structure is not over your head, you cannot say it there. This is true, because you usually have these meetings at the street corners at certain times, trying to reach the people who pass by. Again, you are trying to convert, and you are kind of limited now, because, apparently, what you could say inside the church or under the temporary structure, you just cannot say it there. We need to look at it, because that place becomes a place of worship, and the mission that you are carrying out there is the same mission you are carrying out within the church.

I am wondering, if somebody stands by and did not like what you were saying, or he or she interpreted it differently, what is the recourse? Can those persons take you before the commission when you were only doing what your mission states? It is very touchy when coming to religion. I think that you are going to have to look at that very closely. I really want you to look at that point, because I know that this is what most of the Pentecostals and even the Christian churches felt.

Even though you are including things in the church, the mandir, the temple, the mosque or the tents for the crusades, which people could hear from outside, I still think about those open-air services, which I, myself, have participated in several times. What is going to happen with those pastors who decide that they are going to convert people? You have to always remember what is the mission of these churches.

On that same score, I really have this interesting article here in which the Attorney General, himself, talked about the calypsoes. When this Bill came out I know a number of artistes felt that this was aimed at them, for one reason or another. I could probably see the reason why, because I am looking at a *Newsday* article of February 21, 1997, page 3, in which the Attorney General was speaking to the Tunapuna Chamber of Commerce and he said:

"Government will have to decide if the promotion of racism (through calypso) is a criminal offence."

At the end of the article, I am seeing where the Prime Minister, himself, on his return from India said:

"We as a Government will ensure that it will never happen again."

This was in obvious reference to some calypso sung at the savannah where some people, including himself, were the butt of severe criticism in song. I think, yes,

the censorship is there, but we need to look at it very closely, because I do not think, even with the changes that you made, this whole business of censorship or of social commentary would have still taken a back seat. I think we need to look at it very closely. Therefore, I do not think we have gone far enough in the amendments to clause 7. I do not know if that will satisfy all of us who feel that there are severe limitations, and as someone with religion or with any form of culture that you are being muzzled at this time. Still, one wants to know the reason this should come into it.

Mr. Vice-President, let me just briefly look over this before I go to the part that I wanted to make some more comments on. The area for discrimination that was offensive behaviour, it was in employment, and then we had other fields. One area that I thought about was discrimination concerning accommodation. I should have touched on that before.

Clause 18(1) states:

"A person shall not discriminate against another person—

- (a) in terms on which he offers the person accommodation;
- (b) by refusing an application of the other person for accommodation."

This is happening right now, but in any case with this legislation all these cases of discrimination in other fields there is no way you could really find out the reason for what you would consider discrimination. I think the commission is going to have a very hard time.

Someone applied for an office to put an election office, and the office was granted. Three days later they were given reasons why they could no longer have the office. The person who granted the office clearly told us that she was scared and, therefore, she would have liked us to take back the money which we gave to her. Under this clause it will come as discrimination, but there is no way that that woman would go to any commission or court with you to tell them what really happened. She would find some reason, whether it is flooring or something, and there is no way you could go through the five or six years to get some redress. Therefore, all of this will not help.

You go to a bank and several times you are not granted a loan for some reason. They would always find some reason why you are not eligible for the loan, therefore, what redress do you have, especially with how this whole thing functions? I was just thinking in terms of discrimination in the other fields:

education, goods and services, discrimination according to accommodation, it is extremely difficult to pinpoint the reason for the discrimination and, therefore, as good as you feel this piece of legislation is, it is going to be most ineffective. Where do we go from here then?

I heard the hon. Attorney General talk about, what I would want to call, a complaints bureau that he said the Prime Minister started. I compliment him for it, whatever it is, because it is an attempt, and probably he should have it strengthened. We talked about the round table that we had, where we tried through discussion and consensus to arrive at certain positions, and I thought it was a very successful one. You would notice during that time in the last administration you hardly had any religious problems outside there. You hardly heard leaders complaining, because they all sat around and discussed things and came up with solutions, consensus. That is the way we go in Trinidad and Tobago. You have heard about the Centre for Ethnic Studies. I would say that all these should be left in place.

But we have a nation to deal with, and when I say legislation has failed us, it will continue to fail us if we do not see the long-term. What do we do? I say we go back to our schools. There are some things that we need to put back into the schools, and we have to look at the school curriculum, because if we do that we will have a nation of people coming forward who would appreciate and understand each other. Part of the problem we have in Trinidad and Tobago is that we do not understand each other. Some people just do not take time to understand each other.

When it was the early colonial days and we all had the same type of suffering, we bonded together. After that when the colonial people left, we are now trying to separate each other. I will go back to the schools. I remember in our schools we did things like the history of Trinidad and Tobago, West Indian history, where we understood where we came from and what we were doing. We started to understand each other. If you look at some of the syllabuses now in the schools, that has gone, we have opted for other types of studies. We have to go right back fundamentally to those things; we have to do that.

People understand how all these races came to Trinidad, but we need to know about each other. That is why I would always say when the last administration said that we would have Arrival Day and people thought that we were really trying to be discriminatory and we did not want East Indian Arrival Day. That was not the point. It was for this very purpose: we would all understand each other on that day. We all arrived and our histories would be brought forward on

that day, and as a country we were all going to celebrate and we would have taken time to go back into it. Now, we do not have that focus. People misunderstood what was being said or what we wanted to do, but that was what we wanted to do.

Until we recognize that we are one people and we understand the different people here, we will always come up with this thing where we feel that we have some perceived discrimination. People do not understand each other. Children are now being made to not like the other one because of race and all that kind of thing; that did not happen before; I went through school. As you saw from my school career, I went to a number of schools where there were various ethnic groups within the schools and we got along very well. Now, children are being made not to understand that, and you wonder why.

**5.25 p.m.**

**Mr. Vice-President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. N. Mohammed*]

*Question put and agreed to.*

**Sen. J. Yuille-Williams:** We need to understand. We need to go back. Long ago, we heard the names "coolie" and "nigger". Those names came from the colonial people and we used to call each other that without thinking what they meant. As we further understood each other, we recognized that they left us with derogatory terms and we dropped them. We did not have this commission to tell us to drop them. We have to continue to educate people along those lines because we will go nowhere with the whole thing. [*Desk thumping*]

We have several religious holidays of different groups in this country. We have not taken the opportunity to use those to teach our children. We do a bit of physical things: we look at Christmas and Divali and see the lights, but no one really understands what it is. If a child of another group sees these lights and decides to throw water and knock them all down, one cannot blame that child. We have to start working with the system. We have to see ourselves culturally. We say it is a plural society. We have to go back to basics, get back in that book and teach it.

I remember at university we had a comparative religion programme where we were studying different religious groups. We do not want to reach there. This is not China, Hong Kong or Australia, this is Trinidad and Tobago. Our people are built differently. The groups are quite different from other groups and we need to

know about each group. I feel we need to go back and look at the syllabus in the schools.

We talked about gender equality and discrimination against our women. This legislation will not stop it. [*Desk thumping*] Look at the way we socialize. As our boys and girls come through, we have to teach them how to respect each other and then we can talk about anything else. I remember at one time certain activities were male and certain female and as we progressed we had moved to a place where people recognized that we needed that kind of socialization. We did not ascribe things to certain groups on the basis of their sex, so the whole matter of gender equality does not come overnight. It does not come by going to one lecture. We still have to go through that teaching in our schools and probably in our homes.

When I spoke on the whole business of education and I spoke about textbooks, it was very important. When I talked about cultural relevance then and said that the books we were assigning to the children were not culturally relevant, that is what I meant. If there were culturally relevant books and they were reading these books throughout their career, they would understand what a plural society is; they would understand tolerance; they would understand each other and, therefore, we would not have reached this stage.

As long as we continue to go along the lines we want to go—look at the stage where we are saying that we are having a revolution in education. We failed to look at the cultural relevance and we have to go back to get those texts to go along with us because we need to know about each other. We need to understand each other. We need to be a part of each other.

One other area I talked about was the business of the suitability for jobs. I am saying this lack of transparency is going to continue as long as we see each other differently. Things do not happen overnight, probably some of us have been into it for a long time, but how do we feel about each other? We have thought about each other in such a way where we have almost reached a point that we feel we are so different and we have started to move away from each other.

Sen. Mahabir-Wyatt has this Motion in Parliament where there are about 50 per cent women in Parliament. We see several things like that and that is because we do not recognize the value and the strength of each other and we still have the stronger and the weaker sex as the case may be. I am saying that education should play a major role in the change we need in this country.

We have started, things were going quite well. We have started along a line of dividing the races for whatever reason. We have pushed ourselves further apart. We need to bring ourselves together and for the young people in the society, we need to give them the opportunity to understand each other.

Mr. Vice-President, when I said today that I was not speaking on the tribunal or the commission, my business was on the principle. I am not talking only for today, but Trinidad and Tobago as a nation down the road, what must be done. So that this Equal Opportunity Bill will really be ineffective. We should have no need for this in a society like Trinidad and Tobago. The rest of the world probably needs it, they were built differently, I do not know, but Trinidad and Tobago does not need this.

If we do not understand what we must put in place to ensure that we live as one, “Here every creed and race find an equal place” could easily come to pass without this piece of legislation.

**Sen. Martin Daly:** Mr. Vice-President, I make a very brief contribution on what is a very extremely complex subject but I regret I would not be able to stay this afternoon.

My position in short is simply this: our country has a very good track record in terms of the evolution of relationships between the various groups in the society. It is a very enviable track record and, therefore, I am also inclined to the view that legislation of this kind is not only unnecessary, but could actually disrupt the evolution process.

I really want to make a very brief contribution. I would not develop on this except to give one example, and I choose this example because, while I had a very well-integrated and modest growing up, it was, except for Mayaro, largely urban. I am actually 56 years old today which is why I am leaving early. [*Desk thumping*] The relevance of this is to nail down when I speak of my childhood and my teenage years growing up near the savannah. The first time I ever knew there was an outside world, apart from Mayaro, was when I went into Form 1 in St Mary’s College and met boys who came by train. That was my first knowledge that there was a world outside of Port of Spain.

The whole train culture—and people of my age would know exactly what I am talking about—including the fact that children from outside of Port of Spain, particularly from San Fernando, boarded in Port of Spain to go to St. Mary’s and Queen’s Royal College (QRC) and went home only on the weekends and there were a series of little “Gingerbread Houses” of Frederick Street where all the train

boys who came further than Chaguanas spent during the week and that was a whole eye-opener, both for them and for us. They saw things when they came to Port of Spain that they did not know about either. Indeed, if you read Michael Anthony's books—the first time I read a Michael Anthony book, I was amazed at the story of the young man going to San Fernando for the first time and finding it a big city and coming to Port of Spain and being frightened at the height of the buildings, and we are talking about the 1950s.

I give that example to show how—and of course, I did not know about cultural exchange, I certainly knew nothing about racial discrimination because I lived near the savannah and I was an only child, so every afternoon after school, I went to the savannah. If it was football season, I carried my football, and if it was cricket season, I carried my bat and ball, and whoever came in the savannah, I played with them. I got a lot of blows, but I just played with whoever came because I had no brothers and sisters. So I grew up in a very well-integrated world and, with respect, I think it shows. That is how cultural exchange began for me, and that is why I can speak about the evolution so passionately.

To me, the most outstanding example of how Trinidad has changed from that strict division about which I was speaking—it was a physical division and the train was the only real bridge between the two major schools for boys and the major schools for girls in Port of Spain. You must remember at that time we still had Catholic priests who were very intolerant and discriminated hugely against non-white, non-Catholic children. Sen. Prof. Kenny will, no doubt, speak about that, and I saw the most amazing acts of racial discrimination and religious intolerance visited on me because I was an Anglican in a Roman Catholic school. I would not bore you now with the debates we used to have about Henry VIII and the Bourgeois Popes and the number of times I was nearly expelled from St. Mary's College for having my own mouth, and that still gets me into trouble.

That was the world in the 1950s and, notwithstanding all that, the society has progressed way beyond that very small thumbnail sketch I am giving, to very good relationships despite our differences. We seem to know how far to "cuss" each other up and then stop as we do in Parliament as well, as we see how different life can be on a Thursday from a Tuesday.

The thing that really struck me, for whatever reason when we first had Divali as a holiday—it is just a coincidence—for some reason I had never left home. I was not doing anything and I distinctly remember—I think it was in the 1980s some years after Divali had become a holiday—the first thing that happened was the Harvard Club started lighting up on the roundabout, then that was followed by

Adam Smith Square, and in the space of four or five years, if you lived in Port of Spain and you were non-Hindu, going out to see the Divali lights became a natural thing to do. Nobody told you that you had to do it, it just became a natural thing. On Divali night now you cannot get into Adam Smith Square and there are now not enough deyas for the children to light. When it was first started it was a work to light all these different deyas. That is the most amazing example and I give it because it is an urban example.

Now, wherever you drive in urban Port of Spain on Divali night, there are very few homes that are not lit in some form or fashion. Indeed, many of us who were uninitiated still have, I suppose you have to call them, grease or oil stains on our steps. That was before Hi-lo introduced the user-friendly deya. We were there lighting this match with this oil and staining the steps. We still have oil stains on the front steps. That was a completely natural evolution. Nobody told you to do this. It just became the "done" thing; just like visiting at Christmas was the "done" thing.

I just give that very brief example and we need to be very careful not to create an avenue for people who are incapable. There are some people who are incapable of evolution, they stay in a box all the time. We need to be careful not to create an avenue for mischievous people or people who are limited, who do not understand evolution, to create mischief.

So I am really not keen on this Bill, but I recognize it is part of the Government's manifesto and, ultimately, it is a matter for them. I would not spend longer trying to persuade you that we do not need this Bill, but that is really my position and, of course, my views on civil liberties are well known. I would examine this legislation to see where that takes us, but I do not want to spend any more time on that, Mr. Vice-President, because this is the Government's wish, and that is fine.

I want to deal with clause 7 very briefly. I have circulated a proposed amendment which I really hope will take the true, true politicians off the hook. If we could just look at the existing clause 7 and what I think is so horrible about it, we cannot progress as a society unless we offend each other.

#### **5.40 p.m.**

In fact, we offended each other greatly on Tuesday evening, and out of offending each other on Tuesday evening came a piece of work about which we are all proud. You cannot have a society unless it is some kind of dictatorship where we do not offend each other. I mean, that is how you make progress.

Things that you thought to be absolutely outrageous 10 years ago, are now accepted. So I do have a problem with making any kind of offence or complaint on the basis of offend, insult or humiliate. I have suffered many, many humiliations in my life and it has only done me good.

I just give one example—giving a wrong reference as a student to my pupil master in London and not telling him that the case I had cited had been reversed on appeal. When I opened the door to the coffee shop where all these high lawyers frequented, he announced this as I opened the door. I mean, I still feel shame when I think about it. One thing it taught me is that I never ever cited a case again without checking, rechecking, and rechecking on its status and that was a piece of humiliation that did me good.

Even intimidation—not maybe physical aggression—is a necessary part of living. It is something, of course, you do not want it to be excessive. Now, I appreciate that we tie as a condition to all of those things; race, ethnicity, origin, religion and so on, but the point about it is that some people are more thin-skinned than others; that is the point, particularly as this Bill makes a sort of test really from the point of view of the victim, whether they are offended. Some people are much more thin-skinned than others. I am always pleased to see Sen. Ramnath here and some people can withstand a speech in disagreement with them, by Sen. Ramnath; and some people cannot. That is a very good test of the thinness or thickness of skin of a victim.

So I think we have got to be very careful not to make it subjective, whether someone is offended or insulted. Some people take offence very easily. They are thin-skinned; their blood is close to their skin. To me, the structure of the clause is all wrong, and what I am proposing is very simple. My amendment which I hope people would look at and continue to promote—even though I really, for personal grounds, have to leave fairly soon.

What I have done in my amendment is that I have kept the core of the mischief there. “Persons shall not otherwise than in private, do any directed act”; the gender, race, ethnicity, origin, religion, and so on. So I have kept the core of it, but you do not want to attack people on these grounds. But what is different is that I am even insisting it has to be done with the intention of inciting hatred, because I may say something even political, I do not intend to incite hatred of anybody, but I might offend, humiliate or insult them in the course of my ordinary dialogue and in the course of putting forward my only views. What I should be punished for is intending to hurt them because they are a different race, gender and so on; not because it happens but because I intended it to happen. I think that

is an absolutely essential and fundamental change that has to be made in the structure of this clause. Then I have limited it to hatred, inciting hatred or intimidating; using race, gender and so on to intimidate; and using race, gender and so on to incite. I think that is crucial rather than this waffly thing about “reasonably likely, in all the circumstances.” No two peoples’ offence or pain threshold, when it comes to being offended, is the same. So clause 7(1)(a) is just crazy.

Then I think it is very important; we do have zealots, you see them in the newspapers, and I will use hypothetical names. I do not want Brown reporting Harrilal to the Commission on Monday and Harrilal striking back at Brown by reporting him to the Commission on Tuesday. They keep this place fomented forever and ever. I invite you to look at the newspapers, particularly the Sunday’s newspapers, and see if what I am saying, by reference to certain of those pages, are not true. I am not saying that their point of view is not valid, but they see the world through a certain tint, and they write the same thing week after week and they clearly hate each other, whatever protestations they make. So they would keep this Commission busy all the time. They would become the equivalent of vexatious litigants, and we do not want that. What we want to do is we do not want groups in the society to attack other groups.

Therefore, I have made this a group offence. I have removed from the clause any suggestion that one individual can take another individual to the Commission. You have to go on the basis that you offended a group in the society. That is why I have suggested amending clause 30 to say that a complaint is not accepted unless it is made by a group of not less than 10. I would have liked to make the number much higher, but I looked up and six persons could put you up for election; *[Interruption]* but six is too low; so I mean 10 is arbitrary. It is no good one of these zealots saying, “So and so said something and it offended me. I am going to the Commission.” They must get a few other people who felt the same way. That is a sort of litmus test of their *bona fides* and it will stop certain zealots monopolizing this Commission and creating foment in society. So I have changed it to a specific intention to hurt; using the word “hurt” broadly. I have removed it being an individual offence and saying it is an offence against groups. One individual can sin against a group but the complainant must be a group and I really would not like it to be less than 10. I really contemplated a much bigger number but, so be it.

Most importantly of all, even though I have made it a specific intention and, therefore, it is a little inconsistent, I think it is very important. It is well

established as part of free speech; and it is well established in the cases about obscenity and so on; it is a well established test, both in the English law and the United States Supreme Court, that something can be highly incitive, if I may use that word, but have redeeming social merit. For example, caricatures can be incitive, and they may be even done to incite but somehow or other they may be saying something valuable; either artistically, or they may have social merits. None of this is creative work on my part. I simply go and look up the traditional precedents.

Therefore, I think it should be a defence if an act complained of, has redeeming artistic or social merit. So in that way, if a—take a simple example, a calypso, clearly, is just for want of a better word “stink” and it really has nothing in it except “stink”, well then the person is not protected because I do not accept that any group in this society, whether they are performers or anything else, have some special *laissez passer* or some special exemption—I am using the word “stink” generally—I do not think that anybody in a society like ours has earned the right to be completely excepted from upsetting others, but, of course, you have to make sure that you are not introducing some kind of indirect censorship.

I dare say that 99.9 per cent of the parody in our society; whether it is in calypso; whether it is in all of these comedy clubs that have sprung up all over Port of Spain—and believe me the material there is not only very ardent, it is very brutal—but they are commenting on things and we do silly things. We may not—particularly the people in authority—realize how pompous and silly we are. They could see it, and, of course, well, you know, “Sprang” is my favourite and “Sprang” is a philosopher. He may see something that is really silly and parody it in a very brutal way, but it may have a value. It may cause us to say, when we see a caricature, “Boy I really looked like that, albeit in caricature form, but that is really how people view me” and it is redeeming. It redeems you from excess. It is a corrective kind of thing. Unfortunately, because I am always so confused by what is the parliamentary time-table, I did not bring with me some examples of what comedians get away with—if you want to put it like that—in the United States of America.

### **5.50 p.m.**

I really regret that I have not brought these things so that I can read them into the record, but one only has to put on any of the late-night shows that are available on cable—Letterman, who is the other guy, Jay Leno, and the fellow who does “Politically Incorrect”, Bill Maher. I mean, I really would have liked to have read into the record the things they said about Clinton’s cigars. Politicians

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here would blame the media, and I see the Member for Nariva is the latest. They need a wake-up call. I really regret that I do not have this material here. I defy anyone to find anything in our media that even vaguely approaches the insult or parody that is contained in “Scarfe”. Many of you who read English newspaper would know that “Scarfe” in the *Observer* draws everybody with long, sharp noses. “Spitting Image”, which was a puppet show on British television and “Private Eye”—we would not find anything in our media that even approaches that; yet the United States is alive and well, and people watch these shows.

Make no mistake, when the President comes in the room, whether he has used his cigars inappropriately or not, they see the President. They do not see Clinton or Danny or Cabrera. They see the President and they play “Hail to the Chief”, and it does not matter how they have parodied him. They have seen the office of President and that is the hallmark of a mature society. The next night “dey gone” on television and talk about what he did with his cigars again, but when he comes in the room they play “Hail to the Chief”. They see the President, they do not see the individual, and we have to make these very important distinctions.

I repeat, there is nothing that appears in our media that is remotely comparable to some of the examples I have given. Unfortunately, I do not have them with me because I have been saving them up for a very, very long time and I dare say that people would be quite shocked if I had with me and read these examples of what is said in mature countries about their politicians. Probably that is one of the things that is wrong with our system, the fact that we really do not debunk our public officers enough so that all these plaintive, stupid cries about the media this, the media that and the media the other would soon stop if they realized how kind and caring our media is by comparison to the media abroad.

So, Mr. Vice-President, I would ask the Government to consider very carefully the amendment that I have proposed. I do not believe that there is any political constituency that would not find that clause 7, the way I have restructured it, does not meet their fear that they are being suppressed. So, Mr. Vice-President, may I again thank my colleagues. May I apologize for leaving shortly but I would like—I have made this brief contribution in order to see whether we can get a clause 7 that is less controversial and does not interfere with our fairly good traditions of free speech. Thank you, Mr. Vice-President. [*Desk thumping*]

**The Minister of Culture and Gender Affairs (Sen. Dr. The Hon. Daphne Phillips):** [*Desk thumping*] Mr. Vice-President, thank you for the opportunity to make a few comments on this Bill, a Bill which I welcome because it emphasizes

the importance of sticking to a philosophy of equality in our society. We do not expect that legislation is going to cure all ills or address all problems but legislation, of course, has its role. In all the issues and problems we have in our society, legislation has a particular role. I just want to make a few comparisons, particularly on the line of thinking which says that something has been happening in our society, we have a certain norm, we have a certain pattern which over time is evolving so we leave it to evolve—the issue of—and perhaps this is my pet issue—domestic violence, beating up wives, that has been happening all the time.

Do we leave it to evolve and over time we will get some kind of wisdom? No. We made law. We made law since 1991 and we put certain things in place and then we strengthened that law right here in 1999 to have certain effects and to exacerbate a process that emphasizes where we want to get. We want to get to equality, we want to talk about human rights and we want to make that real in people's lives. So we put law in place, but that is not all.

Legislation is not all that is necessary. We have done various policies, programmes, education and so forth which will altogether address the problem we have. We certainly also changed our law in relation to what we now call marital rape which is now—I am not sure if it is proclaimed yet—a crime, according to the new law, and that was happening all the time and perhaps it has evolved into coming out of that situation, but we have made legislation.

The role of legislation has its place in relation to all our norms and so forth, and in relation to the rate at which we evolve to the position we want. We want equality. We want equality in gender, we want equality in race, religion, human rights, access to goods and services and access to materials. We want equality and if legislation is going to help us to escalate the rate at which that equality is evolving, if it is at all, then why not? We need the legislation.

I want to make a few comments about this issue of racial tension in our country. I did not intend to speak on it but I must because, you see, Mr. Vice-President, when we could make statements in this Senate that we here, in this period of time, have started along a line to divide our society racially, that is totally not in keeping with the reality and with our history. Just briefly, and I know everybody is acquainted with the history, but there seems to be a theory now, a thinking now, that this Government somehow is creating the racial tensions and not addressing them and not trying to engineer and carry out a process in which we will be more tolerant. Let me give a little history.

In Trinidad and Tobago, as in several of the other colonial countries, our racial tensions started under colonialism—we know that—with the European

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colonial masters and the African slaves. In Trinidad and Tobago the Indians came in after the end of slavery. We had chattel slavery, we had emancipation and there were tensions right there because the Indians were put to work on the plantations and therefore reduced the bargaining power that had begun to develop between the old planter class and the slave class—ex-slave class now—and that tension was there based on economic, political and other realities of the day. We know that. That has happened. Those tensions were there. Then we moved to internal self-government and so forth and eventually to independence and we know the history through Albert Gomes, Butler and Cola Rienzi and we know their struggles. [*Interruption*] Eric Williams came much later. [*Laughter*] We know their struggles. So those tensions were part of the ideological and other bases in the society at the point in time.

At independence, with Butler and those fellas struggling through the trade union movement, the struggle now became a struggle to control the state—it is there in the history—and in that process the Indian/African tensions were escalated. To come here and say, Mr. Vice-President, that we were in a peaceful society and that everything was hunky-dory and nice and sweet before this time is certainly not correct. [*Desk thumping*] Indeed, we are now coming into a period where we can—and listen, the history is there and the analyses are there. Racial tensions were not nice and sweet and everything nice and beautiful before. We are now coming into a period when we are beginning to understand equality and we are beginning to understand that equality must be based on the whole idea of human rights, the whole idea that we are all people, we all have rights in our society, the whole idea of acceptance of our culture, the cultural evolution that we have brought from different parts of the world, and we are coming into an understanding of that.

So it is not correct to say that this Government has started to divide the society along certain lines and we were not divided before. In fact, it is now that people are beginning to see that they have rights—everybody has rights. Women have rights, men have rights, rural people have rights, urban people have rights—everybody has rights. No matter what our race, sex or other creed, whatever, we have rights and this Bill is attempting to strengthen that process. Just as we have strengthened the process through the gender violence issues, we have put it in a certain direction through legislation as well as through our policies and programmes and I must say as well involving our NGOs—our non-governmental organizations—and our churches, and we are trying to bring in the churches in a different way now to work on this programme. So therefore, Mr. Vice-President,

this Bill attempts to strengthen that whole philosophy of equality for all of us based on gender and whatever rights.

In relation to gender, if we look at some of the provisions of the Bill in relation to education, equality of access to education, equality of access to employment, equality of access to materials, services and goods, the Bill is saying that on the basis of gender there should be no discrimination and there should be no victimization. What is wrong with that? If you look, Mr. Vice-President, at access, what is the difference in access to resources based on gender? I have here a report, for example, of the access to credit based on gender.

For 1992, if we look at loans to males and loans to females from the Agricultural Development Bank, we will find that loans to males were certainly much more than loans to females. For example, loans to males from the Agricultural Development Bank amounted to over \$4 million in 1992 compared to \$470,000 for females, and that was just about 11 per cent. Eleven per cent of loans went to females and 79 per cent to males. We find a similar kind of distribution under the Small Business Development Programme of the IDC in 1990.

**6.05 p.m.**

We find a similar distribution in the Industrial Development Corporation/Small Business Development Programme in terms of who receives loans and who receives money. The distribution of property for women is far below that of men, even in agricultural areas where there are men and women doing the work. The access to loans in banks is very much lower for women than it is for men. That is the reality. Access to resources—we all have to live.

**Sen. Shabazz:** Mr. Vice-President, the Minister is speaking about the disparity of women getting loans in relation to men. What is the ratio of applications? How many women as compared to men are applying for loans and how many women as compared to men are applying for land?

**Sen. Dr. The Hon. D. Phillips:** All right. I have some of that information here. Under the Industrial Development Corporation/Small Business Development Programme, the pattern that emerged from 1985—1989, though a bit dated, was that females received an average of 37 per cent of all loans, but only 15 per cent on average of the total value of the loans. Even in 1988 where females received 50 per cent of all loans, the value of those loans was only 13.6 per cent of total loans disbursed for that year. It is not quite the same question. I

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am telling you about the value of loans for women, and even though they received the same number of loans as for men, it is quite small.

That is an area which we need to look at and there is no problem in looking at legislation which will carry on that process, accelerate that process and assist women in living in a world in which, to a large extent, women have the responsibility of their families, sometimes without any assistance. We need to look at things like those.

In relation to employment, Mr. Vice-President, we are very thankful for these parts of the Bill, for example, clauses 8 and 9, which look at the whole issue of employment. It says here in clause 8:

"An employer or a prospective employer shall not discriminate against a person—

- (a) in the arrangements he makes for the purpose of determining who should be offered employment;
- (b) in the terms or conditions on which employment is offered; or"

Many women experience different terms and conditions than men do and clause 9(b) says:

"(b) in the way the employer affords the person access to opportunities for promotion, transfer or training or to any other benefit, facility or service associated with employment,..."

That applies to many women and we heard it demonstrated in Singing Sandra's song "Die With My Dignity", I think is the name, where she talked about the humiliation that women have to go through. I am sure it is more evident, perhaps, for women who are less powerful, who are less independent, but it is so for all women. All women face it.

This Bill is saying that this is discrimination and there is legislation that can be brought. In fact, we do not have sexual harassment legislation yet, but this can be used in the way in which you are offered employment. What kind of terms? In the terms or conditions in which you are offered employment. This is necessary and until we have other legislation to deal directly with this thing, it is necessary because too many woman have to go through this, as Sandra so eloquently explained in her calypso: It is humiliation. Therefore, why not? The legislation is necessary and it is welcome.

There are many other ways in which we need to look at equality. What is wrong with looking at equality and putting legislation in place to emphasize and

to accelerate that process of bringing us equality in all areas? Many of the criteria we have identified on which discrimination and victimization are based, are ascriptive criteria, which you cannot help. You are born whatever race; you are born whatever sex. Why should we bring legislation? Why should we be discriminated against? Why should we bring legislation which says, "No. That is wrong." even if the process is going on in a consensual way over time and it is being evolved? Why not? We want to strengthen that process.

Mr. Vice-President, in the whole issue of the provision of goods and services, we have seen, working again with women, that too many of them have lack of access to training, lack of access to productive resources and some of them require immediate assistance and immediate action. We see as well that some of our young men, because of their gender role socialization, have certain kinds of problems as well and we want to address them.

Some of our young men are role models and are doing very well, but not all. Too many of them are caught up in an understanding of themselves and an understanding of their role, which makes them tend towards behaviours that are destructive of themselves, as well as of others, and we need to address those issues. Those are gender issues that we need to address. If we have legislation that will help and direct us, even direct some of our policies and programmes in our various ministries and non-governmental organizations in the private sector: why not?

In our country, we know that in the public sector, equality of opportunity is higher. There is a higher probability of opportunity for men and women in the public sector in terms of promotion, *et cetera*, than in the private sector. The figures say that. The statistics show us that. If we have legislation that will compel employers of whichever sector to deal equally with men and women, what is wrong with that? In fact, we will carry that process of equality much further and much faster. This legislation is very much welcome.

#### PROCEDURAL MOTION

**The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar):** Mr. Vice-President, on a procedural point, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until 10.00 p.m., at which time we should be completed with this particular matter.

*Question put and agreed to.*

#### EQUAL OPPORTUNITY (NO. 2) BILL

**Sen. Dr. The Hon. D. Phillips:** Mr. Vice-President, there is one more point I want to raise briefly, that is, the whole issue of censorship, which, it is assumed,

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this Bill addresses—censorship in what we say; censorship in our culture; censorship in our expressions. This Government has been accused of wanting to censor calypso, *et cetera* but, as I said before, under this administration, calypso has not ever been the recipient of as much resources and as much services and new institutions as in the past. In terms of financing, in terms of funding, in terms of organization, in terms of administration, the ability and opportunity to run its own affairs; it has never received such attention.

Mr. Vice-President, I heard on one of the radio stations—and my colleague said that nothing is wrong with the media—

**Sen. Shabazz:** What is wrong with the media?

**Sen. Dr. The Hon. D. Phillips:**—this morning that one calypsonian who had offered himself for service with the UNC was accused of losing his credibility. All of a sudden he has lost his credibility because he is identifying with the UNC as a probable candidate, but I never heard that other calypsonians, who had identified with the PNM and who claimed to be PNM till they died and all that, never lost their credibility. We know some of the names, including some of those who are very well known and well respected in our country. The bias in terms of analysis, I think, is a little too much to be taken.

All the dimensions which this Bill covers—race, religion, gender—

**Sen. Shabazz:** What about class?

**Sen. Dr. The Hon. D. Phillips:**—region; we think are very legitimate. We are not saying our society is all honky dory and we are now, with this Bill, introducing divisions. That is totally erroneous. Our whole approach is to strengthen the philosophy of equality and we are doing that with legislation, as well as with other policies and programmes and various other activities.

I fully support the legislation. I know it will redound to the benefit of many of our groups, particularly our women, as well as men, because there are certain problems which men have, which can be addressed by this piece of legislation.

I thank you.

**Sen. Prof. Kenneth Ramchand:** Mr. Vice-President, I am glad to have an opportunity to speak on the Equal Opportunity (No. 2) Bill, 1999. Its main purpose, it seems to me, is to ensure equal opportunity for all citizens in certain areas of social life by prohibiting discrimination on the ground of what the Bill calls "status". The Bill is very clear about the fields in which it is dealing at the present time, which are employment, education, the provision of goods and services and the provision of accommodation.

Now, Mr. Vice-President, there are other areas of social life where discrimination on the ground of status occurs. Discrimination on the ground of status does not only affect equal opportunity but, as I understand it, the Bill is only a start, and the Government does not want to wait until it has made out and tested a complete list of all the areas of discrimination, or of all the consequences of discrimination, before bringing legislation to Parliament.

**6.20 p.m.**

Mr. Vice-President, the Attorney General said that this is a beginning, with room for additions. I can think of additions such as age. I know it would be very complicated to deal with discrimination on the grounds of age. At the moment, you are retired or have to retire at the age of 65, when many people feel they could go on working, but there is compulsory retirement.

If the university advertises a professorship now, and I felt I wanted to go back there, I could not apply for it, because they would not employ somebody who is age 61. Of course, there will be all kinds of problems with pensions and so on. If you try to deal with age it is going to be complicated. But, I can see a time when age may have to be brought into this Bill.

I see this Bill, not as a Bill one might have in a country such as the United States of America; where African-Americans have been discriminated against for generations, and you are trying in a massive way to redress racial imbalance. I resent it sometimes, when people associate our problem with problems like that. We are not dealing with anti-slavery. We are not dealing with the oppression of one race over another. This is, as far as I am concerned, social legislation, and it has two main purposes. As we become more aware of the kinds of unconscious attitudes we hold—for instance attitudes towards women—the society needs to recognize that women have been disadvantaged for generations, and we need legislation that would try to redress this. We recognize, more and more, the needs of children. Again, we need to pay attention to children and certain other underprivileged groups. This does not have anything to do with race, colour, slavery, or indenture: this is social legislation, seeking to redress imbalances in our society that we have become aware of, as we become more mature and more thinking.

Secondly—this is a sad thing, but it is a necessary thing—it is to put brakes on certain negative developments that commenced, I would say in the 1950s, when party politics began. Since we began to understand that government is a business, and if you control the business you can give your friends money and contracts; and you can buy and sell because you are controlling the purse, as soon as this possibility came into being, and as soon as party politics began to develop, people began to learn to take a side, people who have no racial prejudice suddenly became racial or tribal; they are backing a side.

I have been discriminated against by people who really do not have racial prejudice. They know I am more Trinidadian than them, but, they will take advantage of the fact that: “Why you give that Indian the work for?” They really do not believe it, but they want the work. So they would say: “Why you giving the Indian the work for?” Much of the so-called racial prejudice in this country is not really racial prejudice, it is just people finding an excuse to practise discrimination and to serve their self-interest, to get what they want, and they will use anything. Race is so easy to use.

I agree with Sen. Daly that this country and this region has been, for centuries, an arena for the meeting of peoples and cultures; even before Columbus but, with the arrival of Columbus, this process got internationalized. In spite of all the tribalism that politics may have introduced, in spite of a lot of the ignorance we have about one another, I still think this is a country that is the *avant-garde* of multiculturalism of the fusion of a people out of diverse cultures. We are still the world’s most startling, brilliant and productive example of unity in diversity.

Therefore, I agree with Sen. Daly: this legislation should not have been necessary and, fundamentally, it is not really necessary; but, I am arguing against myself, maybe, in a way, by saying that certain developments, since the 1950s, have made it necessary for us to take safeguards and, maybe, remind the society of what, in its guts, it really believes in. This is one of the strangest places.

It is said that the country is going to vote racially whenever the election is held. I tend to believe that. But I know that the next day, people are going to start living together as they used to. They are going to take a side and take a camp, and declare their tribal thing when they are going to vote, but, after that, they would start living with one another as before. That may be optimistic or old-fashioned, but I feel that is what we are like. I still, nevertheless, have to support some aspects of the legislation.

Mr. Vice-President, I have some comments on some of the details. The Bill sends the message that discrimination on the grounds of status is morally wrong. The Attorney General was very clear that he was not making criminal offences: people who practise discrimination are not going to be put in jail, or fined. The Bill is intended to give redress or compensation to the victims of discrimination.

So, we have the commission which investigates complaints, and the tribunal which takes it further. I feel that I would want to disagree with the way in which it is set up. I feel that once a commission investigates a complaint and finds that there is substance in the complaint, the matter should go to the tribunal, and the tribunal should then treat it as a criminal offence. If conciliation fails, the tribunal should act as if it is now dealing with a criminal offence, and the person who discriminates should be prosecuted and be liable in a criminal way. "I am giving you a chance to have your matter settled by the commission, and if you want to be wrong and strong, I am going to 'shook' the tribunal after you."

The reason for doing it that way is, I would want the tribunal to do the prosecution. So the poor, little man who cannot afford to hire a lawyer to fight his case in court will find the police/government is fighting his case for him and prosecuting a criminal. That is one change I would like to see in the legislation. Of course, I am just a bush lawyer. Learned counsel, I am sure, would find good reason for going against me.

**6.30 p.m.**

I am going to come back to learned counsel again, because learned counsel has said that homosexuality has not been decriminalized. I have searched the laws of Trinidad and Tobago and I do not see anywhere where homosexuality is criminalized. Sodomy is criminalized, but learned counsel will have to show me where homosexuality is criminalized; I will come to that. *[Laughter]* *[Crosstalk]* I will come to that too.

Mr. Vice-President, it is an accepted practice to use law to wake up conscience or to make people behave as if they have conscience, and although this kind of engineering seldom changes hearts, it does offer some measure of control over behaviour and may eventually alter sensibility. So I welcome the legislation in principle.

I have circulated a list of amendments and will speak to them at the appropriate time, but I thought I would mention under "status" that I am very uncomfortable with the use of "origin" followed by "geographical origin", and I would suggest the replacement of that by two terms, one, "social origin" and the other "ancestry". I should go into more detail about that at the committee stage.

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Incidentally, I hope the Government realizes that if the Equal Opportunity (No. 2) Bill becomes law the Concordat with its 20 per cent, which privileges people of a certain denomination and which discriminates against those who do not belong to that denomination, is coming under fire. I hope the Government realizes that. I am very glad to see that the Government recognizes that the Concordat needs to be adjusted. I can go back to the speeches by Dr. Eric Williams in which he analyses the results of the use of the Concordat and where he shows beyond a doubt that children of a certain social origin and ethnic group were being systematically discriminated against through the use of the Concordat. That is just a little warning, and I am not encouraging the Attorney General to pull back the Bill.

**Sen. Ramnath:** Was that work published?

**Sen. Prof. K. Ramchand:** Dr. Eric Williams' work? Yes. I can get the reference for you. So I come, Mr. Vice-President, to some comments on clause 7.

The Explanatory Note to the Bill tells us that clause 7 is not strictly part of the equal opportunity legislation. I would just like to read the explanation. Although the explanation is not part of the Bill, it tries to help us to understand the Bill. The explanation says:

"Part II of the Bill provides for the types of discrimination, which are prohibited under the proposed Act. According to clause 4, the proposed Act only applies to discrimination in relation to employment, education, the provision of goods and services, the provision of accommodation and offensive behaviour under clause 7."

So that is a very different thing, "offensive behaviour under clause 7". Clause 7 would prohibit offensive behaviour in public which offends or insults another person or group on the ground of race, origin or religion and would prohibit the inciting of racial or religious hatred. There is no necessary connection between that and the denial of equal opportunity, so, technically, clause 7 is not dealing with equal opportunity. Mr. Vice-President, clause 7 has had the Government making promises to so many different people, that they could not possibly keep. I am just giving them a way out to drop clause 7 altogether.

I can tell you that I was a member of the Joint Select Committee of Parliament dealing with the background to this Bill. Nowhere in our report is the matter that appears in clause 7 to be seen. Nowhere in our minutes would you see any discussion of that; nowhere in the verbatims do you see any discussion of that. The report we signed did not in any way deal with or mention the items covered

in clause 7. Nothing wrong in that; I am just saying that when we were doing the groundwork we did not consider these matters to be a part of equal opportunity legislation.

It seems to me, looking at the Bill, it is not—and looking at the reaction to the Bill, what clause 7 has provoked is a discussion about freedom of expression, artistic expression, religious and cultural expression, and questions of censorship; that is what clause 7 has led to. I am humbly submitting that clause 7 is not part of the Bill. If the Government is going to stick to clause 7, I want to suggest that when the Bill speaks about what constitutes an act done in private or not done in private, I believe that a compromise has to be found for the calypsonians.

Traditionally, with the authentic calypso tent, you could say what you liked, except under the days of the colonial authority, and even in those days they would sing it in patois and the colonial authority would not understand it. The calypso tent is traditionally the place where you can say what you like. If the Government is going to persist with clause 7, may I suggest that in the same way that you can say what you like in the mandir, I think we should define calypso tent, very specifically, as a place where calypsoes are sung during the calypso season from November to carnival, and say that any performance or rendition of a calypso in the context of the calypso tent is exempt from this legislation which would call it "calculated to arouse racial hatred" and so forth.

If it is on a compact disc (CD), on a tape or if it is a public performance in another place, then it is liable. So the calypsonian may go into the tent, improvise, say and sing what he likes, but it cannot be taken out of the tent, and if you are big and bad and brave enough to go in the tent and you know you would hear them sing about you, just take what you get. You could avoid it by not going there. If people do reviews of the calypsoes and quote them and say so and so is being said, they could get into trouble.

I believe that the calypso tent or the freedom of the calypsonian to offer criticism and say what he likes within the confines of the calypso tent, is a freedom I would like to preserve. I know that when it gets out of the tent it can be a very disruptive thing and, therefore, I would have to find a way of prohibiting the transfer of that kind of performance, which is allowed in the tent, to any other place in the society.

We know that that is part of the way in which the society has been defanged. You would go to the calypso tent and calypsonians would offer all kinds of analyses of what is going wrong politically, and we would applaud and sing, but

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as we walk out we are still UNC, we are still PNM and we are still NAR. In that moment in the calypso tent we become human beings who laugh at the follies, vices and corruptions; [*Laughter*] we are liberated from our self-interest and our tribe and our side, and we participate in the “picong”, but as soon as we get outside, we are back to where we were. I do not think any government should be afraid of the freedom of the calypso tent. I do not think that clause 7 is properly part of the Equal Opportunity (No. 2) Bill, but if it is going to be retained I would like to see some freedom for the calypsonian to be preserved in something defined as a calypso tent.

I come now to a very delicate area and, having been burnt before, I want Senators and the media, if they are here, to be very clear about what I am saying. [*Laughter*] I am saying—listen good—that homosexuals and lesbians are human beings and the Equal Opportunity (No. 2) Bill discriminates against them, and I want to speak out and argue against this inhumane and unconstitutional proceeding. [*Desk thumping*]

I think everybody is familiar with the Bill, but I have to go to clause 3 and look at what "status" in this Act means. “Status” in relation to a person means the sex, race and so forth of that person, but above that we are told that sex does not include sexual preference or orientation. I will not steal the thunder of one of my colleagues who has a line about this. I would just deal with what this is saying.

What we are being told here is that if you have a homosexual working for you and you want to fire him because he is a homosexual, you may do so. If a homosexual applies for a job and you do not want to give him the job, you can refuse him the job because he is a homosexual, and he has no recourse. Not only is this human being being denied opportunity as a citizen of the country and as a human being, but the Bill is sending a signal to the larger society that you could do them what you like. The Bill is encouraging the society to bash them, to abuse them.

Mr. Vice-President, I really do not want to bring up what hon. ministers say in public and get lambasted for by ministers of religion and so forth; I really would not bother with it, but we are all aware of incidents like that. I want to look at this unreasonable and unconstitutional deprivation which, as I said, has the consequence of adding to the possibility of inhumane treatment of an already victimized class of human beings—inhumane treatment by a society that I think we can describe as homophobic. If you do not want to go so far as to call them homophobic and you want a more technical description of a society, you can say it is a society whose institutions and values are constructed on the premise and the

unconscious acceptance that heterosexism is the thing; that anybody who is not heterosexual is not right, is outside.

Do you know, Mr. Vice-President, that the thing is so heterosexist and male oriented with its heterosexism, that it does not talk about lesbianism. If you check the 1925 legislation, there is nothing about lesbianism. If you check the 1975 legislation, there is nothing about lesbianism but homosexuality. That is part of the macho heterosexism of the society.

**6.45 p.m.**

In a study by a law student, we have a definition of heterosexism which I would like to share with Senators. Heterosexism, simply put, is the belief that heterosexual is the only way to be. It is a form of discrimination supported by cultural, economic and legal institutions in which equality is denied to a person because that person is not heterosexual. This occurs by a simple process of human rationalization. *[Interruption]*

This is not a joke, you know. I do not know what is so funny about it. I am appealing to Christian charity and to understanding for human beings, and to your humane impulses, and I am not joking.

This occurs by a simple process of human rationalization called normalizing. It has been theorized that human beings, as they develop into a community, make normalizing judgments in the creation of their social institutions. These judgments compare and contrast differentiating between all individuals according to that norm. The norm for us is sexism and heterosexism. The reflection in the Bill of heterosexism gives us a chance to look at many of the institutions and values in our country which are built upon heterosexism.

The author of the paper from which I have just drawn reference, has done a sort of survey of the scholarship in the field and he reports on how prevalent this kind of attitude is throughout the Caribbean.

Again I know it is late but I need to allow hon. Senators to understand what oppression we thoughtlessly inflict upon human beings in our society just because they have a different sexual preference from us, and what we like to think of as different sexual preference from the norm.

In a study done in Barbados, "Attitudes to the Concept of Homosexuality", people were polled. Of those polled, 69.8 per cent found homosexuality totally wrong, and were not even aware of the scientific studies that have been done that show that there is a genetic basis to a lot of the homosexuality that occurs. The

people just cannot help it. That is their genes. So what is he talking about that is wrong? Is it wrong for a fish to swim? People are not saying everybody should be that. We are saying when you are dealing with people who are homosexuals, you have to recognize that they are not just vile, evil and corrupt people who are looking for a thrill in any way they could imagine. There is a genetic factor in homosexuality. Of the respondents, 1.6 per cent conceded that it was all right but they would not do it. No one who was polled in Barbados said that it was totally right. One person said: "I feel them kind ah people want killing man" while another said: "That type ah person have no right living under this sun." One of the most extreme views expressed was "If I had "mih" way I "woulda" bun all the homosexuals in this place." Another said: "If I had to deal with them I would put them in a barrel, burn them and throw them in the ocean." The more lenient minority tried to make excuses. One person saw it as a malfunction of the hormonal system. Another one said: "Maybe it was a habit from childhood."

**Sen. Dhanny:** Mr. Vice-President, may I inquire from Sen. Prof. Ramchand whether he would agree that genetics could be modified either by volition or otherwise?

**Sen. Prof. K. Ramchand:** I hope very much that Sen. Prof. Kenny would give you a better reply to that but I certainly would not want to be genetically modified if I were like that and I do know that some of the results of cases where homosexuals took therapy to try not to be homosexuals did not work. So I know that therapy, even by somebody who has been persuaded it is wrong, it is sinful, you are a freak, you should not be like that and he takes therapy, it still does not work. About the genetic engineering part I do not know.

Somebody said it is a habit in childhood that they found difficult to get rid of and some argued that it was insanity and that something was definitely wrong with them mentally.

Mr. Vice-President, I think we have to try to understand that homosexuals and lesbians are human beings who may be, in part, genetically determined, but whether that was so or not there is a bottom line, they are human beings who have a right to choose their sexual mode of operation. I really do not care what people do in the privacy of their bedrooms so I think that this legislation which is based upon a sense that when you are in your bedroom you must not do that or which consolidates that feeling, which asserts that we have a right to tell people what their sexual preferences should be and we have a right to tell them how they must behave in their bedroom, this legislation is unconstitutional. A legislation which consolidates that feeling has to be wrong.

Mr. Vice-President, do you know that so permeated is the law with hostility to homosexuality that the immigration laws of Trinidad and Tobago say under section 8(1) of the Act:

“...persons, other than citizens and residents, who are ‘homosexuals or persons living on the earnings of homosexuals’ are prohibited from entering Trinidad and Tobago.”

I am quoting from an article *Equality comes with a Flaw* by a law student Nigel Pilgrim.

“Also worthy of note is the value judgment made by the section, which in its catch-all proviso says entrance can be prohibited for ‘these or any other immoral purposes.’ Thus in the eyes of the law homosexuality is an immoral purpose.”

Mr. Vice-President, this piece of legislation denies human beings rights which they have under the Constitution. The Attorney General in introducing the Bill explained that the Constitution enshrines equality of treatment but it does so in broad terms and it is necessary for the Government and for legislation to take steps to ensure that the rights are enjoyed. I understand by this, that legislation has to interpret and project the broad vision or the broad rights in the Constitution. A number of distinguished members of the legal profession have talked about the way in which the Constitution is to be interpreted by these kinds of legislation and I quote from Pilgrim again who says that we should pay attention to Hassanali J.A. in the L. J. Williams case. Hassanali stated that the Constitution should be given a generous or liberal rather than pedantic or narrow interpretation and its interpretation should certainly not be characterized by the strictures associated with construction of an ordinary statute.

He goes on:

“Hassanali J.A.’s opinion was bolstered recently in the Barbadian case of *Hobbs et al v R115* when the Court spoke about reading the Constitution in the light of ‘evolving standards of decency and new sensitivities which emerges as civilisation develops.’”

Mr. President, there are utterances by Bernard J. on this and by Kelsick J.A. on this all leading to the conclusion that the Constitution has to be interpreted in the light of changing attitudes and changing values and a piece of legislation cannot be so narrow that it denies people the breadth that the Constitution permits them.

Law should give a lead to take society out of its primitive and hysterical phobia. In its hypocrisy, society accepts and is prepared to love, honour and

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respect homosexuals in music and in literature. Society is prepared to love, honour and respect them as cultural thinkers and as heads of the highest academic institutions in the region. Society is prepared to honour and respect them with lifetime awards and yet our lawmakers are going to bring us legislation which denies them equal opportunity in employment, housing, education and so forth. What kind of upside-down, hypocritical behavior is this?

**7.00 p.m.**

If you can accept their achievements and be proud of them; and honour them; and reward them, are they the exceptions? Are they the special cases? I know in the old days there was always the exceptional slave who proved that the rest of the slaves were savages, but the exceptional slave was the different one. They are all homosexuals. If you can respect those who have achieved and can achieve, if so many of them are having an impact in our society, I am not even saying to give them licence to go and do what they like, but at least do not deny them fundamental human rights.

I suspect that the Attorney General knows what I am about to refer to. Let me say, “I assume”—for him it means the same thing—“or infer that he knows it.” The two words are the same for him. So it is not quite an assumption. I have the feeling he knows the case I am about to refer to. A case in Canada, *Vriend vs the State of Alberta, April 1998*. A man called Vriend was employed at a University. They found out that he was a homosexual. He was fired. He begged to be reinstated. He was not. He took the matter to court. The court said that he should be reinstated. The state appealed. The Appeal Court reversed the judgment of the First Court. They took the matter to the Supreme Court and the Supreme Court reversed the judgment of the Appeal Court and reinstated the judgment of the First Court. It states:

“The appellant V was employed as a laboratory coordinator by a college in Alberta, and was given a permanent, full-time position in 1988. Throughout his term of employment he received positive evaluations, salary increases and promotions for his work performance. In 1990, in response to an inquiry by the president of the college, V disclosed that he was homosexual. In early 1991, the college’s board of governors adopted a position statement on homosexuality...and his employment was terminated by the college. The sole reason given was his non-compliance with the college’s policy on homosexual practice. V appealed the termination and applied for reinstatement, but was refused. He attempted to file a complaint with the Alberta Human Rights Commission on the grounds that his employer had discriminated against him

because of his sexual orientation, but the Commission advised V that he could not make a complaint under the *Individual's Rights Protection Act (IRPA)*, because it did not include sexual orientation as a protected ground. V and the other appellants filed a motion in the Court of Queen's Bench for declaratory relief. The trial judge found that the omission of protection against discrimination on the basis of sexual orientation was an unjustified violation of s. 15 of the *Canadian Charter of Rights and Freedoms*. She ordered that the words 'sexual orientation' be read into ss. 2(1), 3, 4, 7(1), 8(1) and 10 of the *IRPA* as a prohibited ground of discrimination."

As I said, the matter was appealed.

**Mr. Vice-President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. D. Mahabir-Wyatt*]

*Question put and agreed to.*

**Sen. Prof. K. Ramchand:** Mr. Vice-President, when the Supreme Court overturned the Appeal Court Judgment—I just want to quote a bit of that and then I will close off. This is part of the judgment. It states:

“The exclusion of the ground of sexual orientation, considered in the context of the social reality of discrimination against gays and lesbians, clearly has a disproportionate impact on them as opposed to heterosexuals. The *IRPA* in its underinclusive state therefore denies substantive equality to the former group. By reason of its underinclusiveness, the *IRPA* creates a distinction which results in the denial of the equal benefit and protection of the law on the basis of sexual orientation...

The serious discriminatory effects of the exclusion of sexual orientation from the Act reinforce this conclusion. The distinction has the effect of imposing a burden of disadvantage not imposed on others and of withholding benefits or advantages which are available to others. The first and most obvious effect of the exclusion of sexual orientation is that lesbians or gay men who experience discrimination on the basis of their sexual orientation are denied recourse to the mechanisms set up by the *IRPA* to make a formal complaint of discrimination...”

For *IRPA* you could read equal opportunity or the Commission.

“ The dire and demeaning effect of denial of access to remedial procedures is exacerbated by the fact that the option of a civil remedy for discrimination is

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precluded and by the lack of success that lesbian women and gay men have had in attempting to obtain a remedy for discrimination on the ground of sexual orientation...

Furthermore, the exclusion from the IRPA's protection sends a message to all Albertans that it is permissible, and perhaps even acceptable, to discriminate against individuals on the basis of their sexual orientation. Perhaps most important is the psychological harm which may ensue from this state of affairs."

Mr. Vice-President, in the United States of America there was a survey of teen suicides. About 30 plus per cent of the teen suicides are by young homosexuals.

"Perhaps most important is the psychological harm which may ensue from this state of affairs. In excluding sexual orientation from the IRPA's protection, the government has, in effect, stated that 'all persons are equal in dignity and rights' except gay men and lesbians."

Mr. Vice-President, one of the amendments I am proposing is the deletion in clause 3 of the phrase "sex does not include sexual preference or orientation." I am appealing to the Attorney General, if he does not want to do anything else, to remove that exclusion and allow the clause to read sexual orientation and sexual preference into sex as the judges in the Canadian courts suggested. What they said was, "wherever the IRPA says 'sex', the Charter of Rights—and in our case the Constitution—may be interpreted so as to allow you to read sexual orientation or sexual preference into the word "sex". This means they would not lose any votes. All they are doing is dropping a phrase and they are allowing people to read something. They say that if you want to win an election you cannot afford to talk about abortion or homosexuality. You might win it if you talk about ganja perhaps—[*Laughter*] But those are two subjects you cannot interfere with.

**7.10 p.m.**

So I ask the Attorney General to consider the removal of, "sex does not include sexual preference or orientation", and this would be a humane measure which, without getting any backs up, would allow the country to know that people can interpret the Constitution to give their natural human rights to this class of persons in the society. Thank you, Mr. Vice-President. [*Desk thumping*]

**Sen. Rev. Daniel Teelucksingh:** Mr. Vice-President, I would like to continue where the last speaker left off. [*Desk thumping*] Personally, I would like to support the Government's position as far as sexual preference goes in the Bill. It is a good decision of the Government. [*Desk thumping*] I support the

Government's decision to exclude sexual preference from this Bill. It is not the first time the matter came up here and Government was challenged to consider, maybe it must have been two or three months ago, and we heard it simplified—I am just paraphrasing, Mr. President—that Government was not ready and willing to give approval to homosexuality.

Mr. Vice-President, we listened to the scientists and we have heard from the experiences of persons in the developed countries who influence us a lot. When we look at the television at 7.00 o'clock and 8.00 o'clock in the evening, prime time when children look at television, we are being fed—it is not only one or two references such as we can read in textbooks, but even now as I speak, homosexuality is shared by these nations that have experienced this, and possibly accepted it in their churches and at almost every level of society, and this is being fed now to our people.

There are a few of us—there is a group of us in the society, Mr. Vice-President, who believe, although we may want to respect the sexual preferences of some people, we are not to let their genetic preferences go wild in our society and community. [*Desk thumping*] Forget that! We are not ready for it! I agree with the Government and I do not agree with any amendment that will just open the door and legitimize this. I would not like to know that our sons and daughters are homosexuals and lesbians from primary school age. What nonsense is that? What stupidity is this?

If a Professor and an artist want to choose that way of living and they want to say, “This is my genetic make-up”, that is his business! [*Desk thumping*] Let him go ahead and do it! But I do not want to know if a teacher has that particular sexual preference that he or she is going to start indoctrinating and brainwashing our small children—pre-school—from pre-school it can begin. This is— [*Interruption*] Sorry. Yes, I will give way.

**Sen. Prof. Ramchand:** Mr. Vice-President, I just want my hon. colleague to know that the burden of my contribution is not that we should give permission. I was not arguing for gay rights. I was not arguing for the decriminalizing of homosexuality. I was merely saying, out of human compassion, that these are human beings who are being discriminated against and that we should try to amend the legislation so that they are not discriminated against. So I do not think there is any need for a kind of reaction which implies—I hope it is not out of my contribution this reaction is coming because I tried my very best to make it clear that I was speaking very simply, directly and restrictedly of granting these human beings their rights under the Constitution.

**Sen. Rev. D. Teelucksingh:** Thank you very much, Mr. Vice-President and hon. Senator. I was not really responding so much to the Senator's position. We know that position in the sense that we have read this and, you know, more and more, in different sections of our society, there are people who have been clamouring for that kind of—what are you saying, legislative acceptance and recognition? I agree with the Government. Once it is put here it gives acceptance and one legitimizes the thing, at least to some extent. If it is a private decision, go ahead and do it. We have had them here and we know them. In fact, they are self-confessed. We do not have to search for them any more. I do not believe that it should be on our law books as yet. This is why I support the decision of the Government not to include that kind of thinking in this legislation. I do not believe we are ready for it.

As far as religion goes, and the hon. Attorney General spent a long time talking about religion and the religious input in this Bill, I know that there are many people in Trinidad and Tobago of all religious organizations who will support the Government as far as this item is concerned. So, what I am saying is, to put it very simply, although we may want to have compassion—oh, we are very compassionate people in that we give them awards and so forth and we give them promotion and we recognize them. Very compassionate and understanding people are we in Trinidad and Tobago and in the Caribbean, but I personally believe—let me put it my way, Mr. Vice-President. I do not believe that this kind of “deviation” should be allowed to go wild to pollute our sons and daughters in this country. If, later on in life, they want to choose, that is their business, right, but as far as the making of law is concerned, and if I am a part of the process of being a lawmaker, I do not believe at present I want to support that; not at all. [*Desk thumping*] I do not want to preach now because I could talk about that. I do not want to do it. I have never done it, to bring any kind of spiritual aspect into it, but definitely we know what some of the holy books say about it.

So, Mr. Vice-President, let me move on to say that as far as the Bill is concerned, and I know it is late and many other people would like to make a contribution, I want to compliment the Government for meeting headlong the issue of discrimination. It is a problem which formed part of our history for centuries and I am very happy that at least two speakers have reminded us of this. I just want to go a little further back because we all know that discrimination was a sin of a horrible and cruel type when the Spanish conquistadors came and dehumanized, enslaved and decimated the Caribs and the Arawaks and discrimination took another form, a similar form that was perpetuated through slavery and colonialism.

Let me tell you, Mr. Vice-President, why I support most of this Bill. Let us not bury our heads in the sand. This country is a country that knew discrimination and this country knows discrimination tonight. There is no doubt about it. All those who might want to say, “Well, we have learnt and we are learning”, and with all this talk that there is no discrimination, I think we are fooling ourselves. There are many people tonight who have experienced discrimination and continue to feel discriminated against, no matter how enlightened we might be. I want to support, Sir, with certain reservations, this Bill which I consider to be of historic significance which seeks to outlaw certain kinds of discrimination and to level the social playing field.

I think, you know—and I am being realistic—this Bill is going to help people in Trinidad and Tobago and remind us that we need to formulate and devise strategies, no matter how weak they might be, to save us from 1963 Guyana, 1998 Bosnia and 2000 Fiji. Certain sections of this Bill can certainly be applauded, sections which prohibit discrimination in relation to employment, education, on the grounds of status and so forth and the question of providing goods and services, whether they may be banking, travel, accommodation, *et cetera*, and I warmly applaud these sections; but, Mr. Vice-President, I will not support clause 7 in its present form. I think it is full of grave dangers for our society and it affects the assurances of certain rights and freedoms to which we are accustomed.

I agree with Sen. Ramchand. It seems as though clause 7 should not be there. It is the only clause in the Bill which made this well-intentioned Bill of 57 clauses seem as though it really consisted of only one clause, and that is clause 7. It has proven to be the unlucky number for an otherwise very good piece of legislation. I do not know the back door through which it came. Have you noticed, Mr. Vice-President, the long weeks and months the whole society spent? One time I told a friend, you know, that this is a Bill with 57 clauses but everybody is focusing on one clause. There were 57 clauses in a precious Bill yet the whole society was looking at one clause.

There was a meeting with heads of state and others to discuss not the others—one clause. Mr. Vice-President, almost all the religious organizations, if you will remember, in Trinidad and Tobago, had a say. Some said the Bill came from heaven and others said it came from hell, especially because of clause 7, and there seemed to be some kind of settlement and the settlement is reflected in the amendment. The amendment here to clause 7 is the settlement. This is the gist of the settlement, to kind of cool down and ease up the dispute with the religious organizations, but, Mr. Vice-President, take that amendment that we have before

us to clause 7. That amendment somehow or the other interferes with the real spirit of the entire legislation.

You see, if places of worship are excluded in the definition of a public place—and this is the buy-out clause, this subclause (3). I call it the buy-out clause, the settlement clause. If places of worship are excluded in the definition of a public place, this is what it means; that in any place of worship persons are free—and I now refer to the same clause 7(a), (b) and (c)—to offend, to insult, to humiliate, or intimidate another group of persons. Also in those places of worship we are all free to continue to insult, malign, ill-speak, condemn and spread hate on the grounds of ethnicity and religious preferences, and a person can incite gender, racial and religious hatred and animosity and this is certainly against the spirit of the Bill.

Why should they give to religions in Trinidad and Tobago, any religion whatsoever, the freedom in their place of worship to go ahead and destroy this entire Bill? They should not do that. This is why I am against clause 7 and its accommodation. That is the settlement. Something is wrong with it. It has to be wrong. It damages the Bill. I do not see the reason for this. In the same breath, Mr. Vice-President, as I say, I have great difficulties with clause 7 and its proposed amendment, I will say that the concerns raised in clause 7 that spoil the Bill could be dealt with elsewhere in our legislation, and I refer to the laws on blasphemy.

Get together the Inter-Religious Organization, the Christian Council of Trinidad and Tobago, the Evangelical Council, the Hindus, the Muslims and everybody else, to look again at the blasphemy laws that are found in Chap. 11:01, the Criminal Offences Act and the Libel and Defamation Act in Chap. 11:16. The provisions are terribly inadequate to meet some of the problems with which we are wrestling in clause 7 and also the ensuing debate. Get down to the Criminal Offences Act No. 11 and the Libel and Defamation Act and let us update our blasphemy laws. We need to do this.

The blasphemy laws are based—I have been looking at our law books, Mr. Vice-President, and there is a quotation in the law books which tells me about the statute in England of 1844 on blasphemy. For the life of me I could not find this thing anywhere else, but we are governed by that. I suspect that the blasphemy law in England of 1844 must have been revised, changed and updated in England but we still have this vague thing here—only a reference to it but nothing else.

**7.25 p.m.**

Therefore, I most respectfully suggest that the answer that is really embarrassing and weakening this Bill, is the problem of blasphemy; and I have heard other non-Christian groups in Trinidad and Tobago say, very openly, that if we refer to common law in England and the blasphemy law in the 1844 period in England, we would recognize that it may be common law in Trinidad and Tobago and that is all. It is not written. You cannot find it anywhere that common law protects only Christianity. We need to bring in the blasphemy law now, if we are recognizing that this is a multi-religious—

**Mr. Maharaj:** I could save the hon. Senator some concerns. As a matter of fact, one of the matters that has been raised about which laws have been drafted and will be in the Parliament shortly, is not only to regularize the blasphemy law as it applies to all religions, that is to say, if you vilify any religion in the same way as you vilify the Christians, the law will apply to all religion. That has been drafted and will come to Parliament shortly. Also, some of the inequalities against the Baptist church, the Orisa church, the Hindu faith and the Muslim faith; those laws have been drafted; we have met with the religious community and will come to Parliament shortly.

**Sen. Rev. D. Teelucksingh:** Thank you very much, Mr. Vice-President, to the hon. Attorney General. That strengthens my argument tonight. If this is being done, then it strengthens my argument for the exclusion of clause 7, especially as it deals with religion. I am glad you spent so much time responding to the concerns of the religious organizations within the last few months on this Bill which was whittled down to one clause, that is, clause 7. If at all you have the courage and the strength to defer this until the blasphemy legislation comes through, then it might help this Bill.

As I was saying, I have no problem with the general intention of the Bill. I have no problem with all the clauses of the Bill. It is an excellent Bill and we need it. This is the Achilles heel, as I used in another debate, the weak point in your legislation here.

The question of the media, over the last few months, has been a problem. It is the same clause 7 again—the back door clause. The media, all the references to words, images and writing that will be under the kind of scrutiny as envisaged in the Bill in clause 7(2). People in the media are very concerned because they enjoy constitutional guarantee of freedom of the press and they interpret this as denying the kind of freedom and right that they have.

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The question of the place of calypso in our society—what about the libel and defamation laws? Those laws, I have looked at in Chap. 11:16, can also be updated and invoked to address such offences if we are dealing with the calypsonian and with the media. Why do you bring this in when there are other areas in the law books that could address these problems? I am raising this because I am saying that the groundwork is there and the mechanics are there in these other two areas of the law. All we have to do is update them and possibly make them relevant and appropriate.

Sen. Prof. Ramchand's suggestion was a very good one. If you want to give freedom to the calypsonian to sing in his tent, well, go ahead—unlicensed freedom—but I recognize that for a long time now, we understand that the place of this art form in our society is one that we should respect very much. The calypsonians have had the freedom and the privilege to criticize the Governor, the Inspector of Police, now the Prime Minister, the President and everyone. Personally, I feel that kind of freedom should not be taken away. I do not believe that the calypsonian, in any way, should be restricted when it comes to this free expression. I do not believe that. [*Desk thumping*]

We need to look at that again and if we have problems with calypso 2000, or modern type calypso, and these have been proven to be quite offensive, if that is the case, then let us look at the libel and defamation laws again.

**Sen. Ramnath:** That is PNM propaganda.

**Sen. Rev. D. Teelucksingh:** Mr. Vice-President, I thank you very much. It is a piece of legislation that I support. I support the Equal Opportunity Bill and my big reservation will remain so, because I have studied this for several months, clause 7, and I will support any kind of decision to withdraw that and purify the Bill.

I thank you very much.

**Sen. Dr. Anna Mahase:** Mr. Vice-President, it is a very great honour to stand here this evening, in what is supposed to be my maiden speech, to support a most progressive and long overdue Equal Opportunity Bill. [*Desk thumping*]

Mr. Vice-President, the Equal Opportunity Bill creates the Equal Opportunity Commission, which is the dream of the Prime Minister, Basdeo Panday, who has been calling for an Equal Opportunity Commission since his days in the Opposition.

On April 25, the President of the Law Association, Glenda Morean, argued, and I quote:

"If it is necessary to eliminate or avoid or minimize or contain discrimination in its wildest practices, then we must go outside the Constitution and set up appropriate machinery."

When the UNC assumed official Opposition on August 25, 1990, Mr. Panday told the *Trinidad Guardian* that one of his immediate concerns was the establishment of an Equal Opportunity Commission to receive and investigate all reports of discrimination.

In a report of the Constitution Commission which was presented to President Hassanali on June 1, 1990, Prof. John La Guerre, one of the commissioners, submitted a Minority Report, advocating the need for an Equal Opportunity Commission based on race and gender.

In the aftermath of the 1970 Black Power revolt, the commission headed by Prof. Lloyd Braithwaite recommended that a race relations board be established. So that the concept of an Equal Opportunity Commission is not unique to Trinidad and Tobago, Mr. Vice-President. [*Desk thumping*] Similar legislative infrastructure exists in Australia, in the United States, in Sweden and in Britain, where there is a Race Relations Commission.

I am not going to be very long but I have to take umbrage with my very good friend, Sen. Prof. Kenneth Ramchand, on the business of the Concordat.

**Sen. Ramnath:** Talk! Talk!

**Sen. Dr. A. Mahase:** Now, subject to any agreement or practice between the state and any educational establishment, board or other institution, the Bill goes on to say that an educational establishment shall not discriminate against a person. In the early, 60s, when I first became principal in 1961, albeit at the age of 28—

**Sen. Ramnath:** Brilliance! Sheer brilliance! [*Desk thumping*]

**Sen. Dr. A. Mahase:** I did not beg for that. At that time, I was a member of the Principals' Association and when the late hon. Dr. Eric Williams, who has done a tremendous amount for education [*Desk thumping*—and I will always maintain that because it is fact. However, when he asked that free secondary education be introduced, he had to turn to the denominational schools for help because there were very few government secondary schools in the country—Queen's Royal College; St. George's College and so forth—but the bulk of schools belonged to the denominational boards so, to be able to put 100 per cent into Form I in the particular year that he wanted to introduce the free secondary education, he had to approach the denominational school boards.

That he did and at that time a small committee was appointed which included Fr. Pedro Valdez, the then principal of St. Mary's College and Miss Sutherland, the then principal of Bishop Anstey High School—so you had the Catholic school and the Anglican school—then we had Mr. Helps. He, too, was on it from the Anglican School Board and yours truly. I represented the Presbyterian School Board, so I was on the original Concordat drafting committee.

In the draft that was submitted to the then government headed by Dr. Eric Williams, there was the objection to the fact that we had submitted something which included a request for a 20 per cent intake and did not allow the Government to have 100 per cent placed at your schools. The reason for the 20 per cent intake was that the denominational boards wished to retain the religious flavour of the schools. If you took in a class of 105, which is three classes of 35, 80 per cent of that is 84. The government placed that number in your school in order of merit. All we asked for was the 20 per cent, which was 21 and you were able to select that from a list, handed to you from the Ministry, in order of merit; 84 plus 21 which made up the 105.

Well, there is where you looked for your Presbyterians. That is where the Catholics would look for theirs and the Anglicans and so forth. When that took place, it was agreed upon that the religious denominations retain the properties, the buildings and so forth and the Government would pay teachers and give a per capita grant per student.

The point I am making here is that this has worked very well. It is a legal document and it has worked very well for the development of education in this country and we have never, ever had a problem with the Concordat. [*Desk thumping*] Now, mind you, the denominational boards did not have to agree, but they agreed in the interest of the development of education in this country. If the Concordat is tackled at all, it is going to cause a lot of disruption in the smooth running of education in the country.

The point I am making is, the point that Sen. Prof. Ramchand made that it will be opening a can of worms—no can of worms at all. This Government will see to it that the Concordat is retained and it will continue to be retained.

Mr. Vice-President, I thank you very much. [*Desk thumping*]

**Sen. Laila Sultan-Khan Valere:** Mr. Vice-President, first of all, I want to say that I think this is a very, very useful piece of legislation. We do need it. We do need to preserve equal opportunity in Trinidad and Tobago. We cannot depend on

it just evolving in any old direction and I do agree with that. We have to pass certain legislation that will ensure it moves in the right direction. For that, I agree with it and with most of the things in this Bill—almost all, except two things which I will speak about now.

The first one is that infamous clause 7. In no way, shape or form can I agree with that, because it has no place in this Bill. It has nothing to do with promoting equal opportunity and it has everything to do with stifling freedom of speech. What is it doing in this Bill? It is definitely not promoting equal opportunity, so, I feel that it has to be removed. I am beginning to believe that the Government is also seeing and beginning to realize it really has nothing to do with equal opportunity. Look at what has happened recently.

**7.40 p.m.**

Let us look at what happened recently. The religious bodies went to the Prime Minister to address clause 7. Why did they go? I commend them for going, because they were standing up for their rights. They are entitled to freedom of speech. When they went there I felt very happy about it; I said: “My gosh.” I believe in the principle: when you stand up for your own rights, you stand up for the rights of everyone else. When they went there, I was hoping that the Prime Minister and the Government would understand that this clause is not really promoting equal opportunity, and people are entitled to their freedom of speech. When they received an exemption, I said: “But what a thing: that you would exempt and exclude the religious bodies from this clause!”

If there is any merit in this clause, there should be no exemptions, none at all! If the religious bodies could be exempted from it and be allowed freedom of speech, so should every single citizen in Trinidad and Tobago. There should be no exemptions. Does the Government know what it is doing by making an exemption? The Government wants to curb the freedom of, let us say, the calypsonians. Let me just use the example of the calypsonians.

The Government is now saying that religious bodies could pitch a tent in, let us say, the savannah.

**Hon. Senator:** The paved part of the savannah.

**Sen. L. Sultan-Khan Valere:** It is now very convenient for them to do so. Sen. The Hon. Carlos John has made it very comfortable for them. Thank you, very much. If they decide to pitch a tent in the savannah—you know how they put up these huge speakers so that everybody can hear what they are saying; they are

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entitled to their freedom of speech—is the Government saying that anybody who may be walking outside and hears this thing cannot bring something to the commission and have a case? I was just wondering. It is confusing me.

Besides which, the calypsonians could easily—does the Government know what it is doing? I could see Spectakula tent being called a place of worship. There are religious programmes in the tent. All they have to say—people in Trinidad and Tobago are very creative, so the calypsonians are certainly going to find a way to use this exemption to say what they have to say. If the Government thinks it is going to curb them, once we have this exemption, they are going to find a way. Let me give you an idea of what they could do. If I could think of it, they could think of it better. They would say: “Spectakula tent is now a place of worship, and every patron must pay a tithe to come in, and that would be their contribution. We will begin with prayers, and each calypsonian would sermonize in song, and we would end with praise and worship.” Calypsonians are free to do whatever they have to do, under the guise of a religious or public place of worship. We cannot have exceptions.

Besides which, if we are going to give an exception to the churches, what are we going to do with the politicians on the platforms? Is the Government going to make exceptions for them too? This is going to be a really dull election year, if they cannot use negative labels, slander people and give “picong” to people with thin skin. I do not understand how we could have this Bill. It does not make sense. That is why I think that if the Government made this exception, the clause has no merit. Everybody is entitled to his or her freedom of speech. I feel we have to remove that clause from the Bill, if the Government is really serious about this Bill. If the Government is really serious about equal opportunity, it should take that part out. It is only then the Bill could be passed. We really cannot keep that clause. It has no value in the Bill right now, especially since the Government has made that exception.

It is not right for anybody—calypsonian to slander anybody or denigrate any individual in Trinidad and Tobago: man, woman, or child. It is not right to do so. It is not right for any politician to go on a platform and denigrate anybody either. Deal with the issues.

The point I am making here is that I do not agree, but we have to find another way to deal with blasphemy, slander and things like that. But not in here and not in this form!

If we are dealing with equal opportunity, let us really make this Bill worth its salt by looking at ways to give real equal opportunity to people in this country, so that nobody would be discriminated against.

On that tone, if the Government is really serious about this—we are not being hypocritical—and we want to give equal opportunity, I cannot see anything wrong with Sen. Prof. Ramchand's suggestion. He made it very clear: the limits and parameters of it. I cannot take a spiritual belief, religious belief, or moralistic approach to this. We all have our morals and we are all different. I believe the same way that we are looking for socially displaced persons to give them their human rights and privileges, what about people with different sexual preferences? I do not understand, I cannot agree with allowing that phrase to be there. I find that is an insult to human beings. Many people, with their different sexual preferences to ours, make as great a contribution, and sometimes a greater contribution to this community and to this county than people who are heterosexual. Why are we discriminating against them?

I want to strongly suggest that we accept Sen. Prof. Ramchand's suggestion. We cannot discriminate against people with their own sexual preference, when it is a private matter. We are not talking about them trying to induce and encourage other people. We are not going down that way at all. That is not relevant here. This is accepting them as equals. They are human beings, and they are equals. I feel we have no rights as far as human rights are concerned to deny that they are equals.

Besides which, any enlightened country will tell you—we talk about human sexuality and things like that—we cannot be bigots. We have to understand this is a very complex thing and people have different reasons for choosing certain sexual preferences. So let us not bring that into it. Let us just say this is an Equal Opportunity Bill, and let us not discriminate against individuals. This is a great Bill. Let us just clean it up, and let us move on.

Thank you very much.

**Sen. Muhummad Shabazz:** Mr. Vice-President, really and truly, I stand to make a case for Trinidad and Tobago. I have looked at the Bill, and I am taking the position too, that though this Bill would have in it certain things that may be needed, the Bill is not needed in our country at this time. Let me make the case to understand why.

Trinidad and Tobago, as we all know, is probably one of the happiest countries in the world. Trinidad and Tobago is a microcosm of what this whole

world is all about. Trinidad and Tobago is a place where we have all the races living peacefully and happily together. Trinidad and Tobago, which I consider as the model nation of the world, is a place where everybody looks for some sort of—as to how we should live. We are admired as a people of all races, and nations, coming together and living happily under the banner of Trinidad and Tobago.

It was exemplified on November 19 when we played football against the United States of America. It is the greatest example in sports in the world; to have lost on a home ground in an overcrowded stadium, where tickets were sold illegally. [*Power failure*] What happen? My microphone is not working. Mr. Attorney General, you took off my microphone? [*Laughter*]

**7.50 p.m.**

Mr. Attorney General, "doh try to jack meh up, just lemme make meh point carefully and seriously." [*Laughter*] When they saw what happened, it was amazing to the rest of the world that we could have lost a game which was so important at home and yet nothing happened as to what we see normally happens in sporting events all over the world. This is a great country, and not only that, Trinidad and Tobago is the only nation in the world that has been given a new sound in the 20<sup>th</sup> Century; a sound of peace, a sound of joy, a song of love. It is said that God must be a Trinidadian; they know that too. Trinidad and Tobago is a nice, happy, loving, peaceful place, and we have the Trinity Hills that even stop us from having disasters and hurricanes.

Mr. Vice-President, do you know what is happening here? [*Crosstalk*] Do you see what is happening on that side? That is what we are accustomed to. In Trinidad and Tobago people give "fatigue". This is a country with a lot of "mamaguy, heckling, kicksing, picong", all these things, and that is what keeps the society so nice and happy.

The problem arises in this society when people "cyar take picong", when people "cyar be heckled", when people thin-skinned, when people "cyar be mamaguyed", and more so, when these people are bigger than you and they are in a position of strength, they laugh when they "mamaguy" you, but when you "mamaguy" them they try to fight back. "Dey buss yuh head, dey shoot yuh", and bring all kinds of ridiculous Bills to the Parliament [*Laughter*] in order to stop you from giving them "picong and mamaguying" them, what they themselves like to do more than anybody else. [*Laughter*] They are the "picong masters; dey like to do you first, before you do them." [*Laughter*] [*Desk thumping*]

Mr. Vice-President, I just want to send a warning to them: Gadaffi fought a war with America, and when America threw a bomb on Gadaffi's house, they killed his child. The attacker is not coming for you alone; anybody around you could be involved in that war. Grenada fought a war with America. Grenada did America first, and when America went into Grenada, innocent people were killed. So "doh start de war" and when the calypsonians attack you or somebody close to you because "yuh in war, yuh say", "He should not do that, is only me alone attacking." It cannot be that way.

Somebody spoke about it—in England there is no written Constitution, the hon. Attorney General knows that, they live by conventions. There are certain conventions in Trinidad and Tobago that have kept us peacefully. *[Interruption]* Yes, the laws are written. It is not a written law like a constitution. Am I not correct, Mr. Attorney General? They live by this way knowing that the country will go by certain precedents. Trinidad and Tobago is like that. We have lived here so happily and so peacefully for a number of years that, really and truly, we are now asking: why is this Bill coming before us? *[Interruption]* Why?

Mr. Vice-President, before I develop the point, I heard the hon. Attorney General in presenting his case say that one of the ways you will know whether a society is working properly and efficiently is by how it takes care of the lowest class, or the people who are least able to take care of themselves. They have brought this Bill here—I want to first read how they are going to deal with the disabled. The disabled are people who are crying out for jobs, crying out for help, who have families. There are people in wheelchairs who are idle and want the opportunity to be able to do something because they have skills and talents. I know one who is working in the Telephone Services of Trinidad and Tobago.

We went to do some interviews with them. Some of them have five and six O'level passes, but nobody gives them work because they are disabled, nobody helps them. Yet this Bill comes to the Senate and does not make real provision for the disabled, so you talk one way and you do another thing another way. I do not want to seem to be going personally on the Attorney General, but that is a way that he has all the time, but I do not want to go there too much. I am asking: Why must the disabled be treated like that? Why have you treated them like that in your Bill, Mr. Attorney General?

Mr. Vice-President, I just want to find where the clause talks about the disabled and read it. I think it is on page 13; clause 14 states:

"Sections 8 to 10 shall not apply to the employment of a person with a disability if—"

They couched it nicely.

- "(a) taking into account the persons' past training, qualifications and experience relevant to the particular employment and, if the person is already employed by the employer, the person's performance as an employee, and all other relevant factors that it is reasonable to take into account, the person because of disability—
- (i) would be unable to carry out the inherent requirements of the particular employment; or
  - (ii) would, in order to carry out those requirements, require services or facilities that are not required by persons without a disability and the provision of which would impose an unjustifiable hardship on the employer;"

The employer is not disabled. You are saying—and that is discrimination to the highest—that if a disabled person is in a position where somebody else who is not disabled could do the job better than them, that you give the person the first opportunity to do that job. It is not fair.

Clause 14(b) continues:

"because of the nature of the disability and the environment in which the person works or is to work or the nature of the work performed or to be performed, there is or likely to be—

- (i) a risk that the person will injure others, and it is not reasonable in all the circumstances to take that risk..."

Normal people working in any environment could cause other people to be injured. I am aware of a situation where two good friends were working in Dunlop and "skylarking" by a machine; one lost his hand and some fingers on the other hand. I am just asking that in this Bill that must not discriminate. Let us not discriminate against the lowest in our society; they need help. I keep asking and telling you that most of the times that I stand here and speak on issues that deal with that.

You do not want to discriminate, but nowhere in your Bill did you include the HIV-positive people. Your excuse is that we are not dealing with that now. Your country, particularly Little Tobago, is rampant with people dying with AIDS daily, "walking deads", but you do not want to bring anything about that in the Bill. You do not want to include that they could be given work—because AIDS cannot be spread by people working in a department—so they could get money to buy the

high-priced drugs that they need. You turned up your nose and your face at the HIV people, yet you are saying that you do not want to discriminate. This is a bill that is supposed to be about non-discrimination. You cannot fool us.

Mr. Attorney General, through you, Mr. Vice-President, this is discrimination in a nation that you live in, making billions of dollars from your oil money, getting twice the amount of money for a barrel of oil than you ever thought you would have gotten, and you are not doing or thinking anything about the HIV situation in Trinidad and Tobago. You are not really thinking. You are also saying, "We are now in Government, we bring a Bill about discrimination; the disabled and the HIV people we are going to deal with them at another stage". Wrong! Wrong!

**Sen. Ramnath:** Is that the position of the People's National Movement?

**Sen. M. Shabazz:** Very wrong, very sad. You cannot and should not do that, and we are asking you to look at it.

You need to look at the ex-prisoners, socially displaced. You need to look at what you are doing them as far as discrimination is concerned.

**Mr. Maharaj:** Politically socially displaced. [*Laughter*]

**Sen. M. Shabazz:** Homosexuality and homosexuality have been dealt with very effectively on those Benches from all angles, so I am not going there. [*Laughter*] [*Desk thumping*] They did an excellent job of it. I am not going there, and I also cannot take going there, so I am not going there. [*Laughter*] [*Crosstalk*]

Mr. Vice-President, we have seen the question of education, and they speak about the education situation. There is something I would like to bring up here, and I need to look at it more. I was born in Baratavia and I live in Morvant/Laventille. There is a school called St. George's College. It was probably the best school, the best college in that area, and it belonged to the county in that area and we all felt proud of it. I am almost certain, I think I am correct, I have been told by teachers of the school that the college has now been moved out of that area and has been taken to another area which is central, in order to include people from that area. I have no objection to that, but it was a point of pride for St. George's College to remain there and be a part of that area. I wanted to just make that point.

As far as education is concerned, the problem with our society is the politicians. I think political education is a very vital thing as far as the education of the people of our nation is concerned. I do not know why it has stopped. I

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heard that under the NAR time it was supposed to come back, but I think it is high time it comes back, and within the next few months when we are in power we will ensure that what I am saying would come back to the nation.

We used to listen to the Seukerans, A. P. T. James and everybody on national radio bringing the debates from Parliament so the people out there were always well informed. I think it is time that national television brings the debates of the Senate and the other place on the television so that people could sit and look at them. Whether they bring them delayed from 11 o'clock in the night until 4 o'clock in the morning, so who wants to can look at them in order to bring back that type of education so people will know what is happening and how it is happening. I think that should be a major part of the education of the people.

When they only broadcast what you are saying over there, and you get captions of half an hour, 45 and 15 minutes, and what is being said over here, that is so profound at times and so well said, but the people are not getting any of it or just little snippets of it, something must be wrong. It makes it look as though you have a position and we on this side do not. It is an important part of education. As I have said, when we are back in power I will be a strong advocate to ensure that that returns to the nation. [*Laughter*]

**Mr. Maharaj:** You will be Minister of Distance Learning?

**Sen. M. Shabazz:** No, Mr. Griffith. [*Laughter*]

Everybody is saying that this Bill is a good thing, and in principle a lot of what is written in the Bill—and I will deal with clause 7 a little later—is, to some extent, necessary, but the way our country has developed it is not really necessary. What has happened though, is because this was a promise by this Government they are doing everything to ensure that before they leave office they do something or say that we have put it on the books. At this point in time, we still do not need a Bill like this.

This Bill is like a Pandora's box; somebody said that it would not open any can of worms. Before I go further, let me just compliment the hon. Sen. Dr. Anna Mahase on her maiden speech. [*Desk thumping*] I think her position on the Concordat may be a little different to what the party thinks, but she may not have known.

**8.05 p.m.**

**Sen. Dr. Mahase:** Mr. Vice-President, I do not know what I am supposed to be affected by, but I know that earlier I made a statement about Dr. Williams and

this was very pleasing to the Senator, but it seems such a pity that his values, his ideas, purposes and everything which he intended for this country got lost somewhere along the way. [*Desk thumping*]

**Sen. M. Shabazz:** I want to let the hon. Senator know that I accept that, she was close to us, she was a part of us in his time, she is aware. I am sorry that she has changed, but I want to say to her that there are people on that side who cannot even call Dr. Williams' name when they are making a contribution, they are afraid, so I congratulate her for having called his name and given him credit. They cannot call his name, it happened here more than once. When they want to say Dr. Eric Williams they say "he" and "him" and they do not pay him the respect that he should be paid as the father of the nation and one of the greatest educators this country has ever seen. So I congratulate the Senator for having called his name and having the strength and courage and the fearlessness so to do. Congratulations!

The point I was making is that we are talking about discrimination. Let us not fool ourselves, this is cosmopolitan Trinidad and Tobago where we have all the different religions, races and classes of people and when this Bill comes under the guise of religion it sounds good, but it is not really that good because the two main forms of discrimination we have in Trinidad and Tobago, if there is any discrimination, are class discrimination and ethnic discrimination. Religious discrimination does not exist to that extent, it is either class or ethnic discrimination and if we really want to fight discrimination, let us talk about it from that angle.

Let us first go into the courts; class discrimination. You know, when you look you see certain people go to the court and you know they are winning their case already. That is how we see it outside here. We are not judges, we are not trained in law, but there are certain people when they appear before the court—and if you are talking serious discrimination, let us deal with that, and I want to be free to say it. A police officer in a party is looking at a gun, a trained man, a man who understands the gun. The gun goes off and kills somebody. He says he thought it was a toy gun and before that case was tried we knew that he would have won the case, and do you know he won the case?

Some children driving somewhere in Trinidad and Tobago, the police find marijuana on them. They say they rent the car, but when we see with whom the children are associated, we know they win the case. Do you know they won the case? Nobody else could have used a defence like that and "get away". There are

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certain things—and if you want to be serious let it seem to be fair and less discriminatory as it appears to be.

**Mr. Vice-President:** Sen. Shabazz, I refer you to Standing Order 35(8). I am sure you are familiar with it. You are running very close to the wind on the question of the conduct of the Judiciary and the justice administered. I would like you to stay clear of that because you are going to infringe this Standing Order.

**Sen. M. Shabazz:** Mr. Vice-President, thank you very much, but I was just trying to show how—we may be wrong because we are convinced out there that most likely the Judiciary—

**Mr. Vice-President:** You can get on with some other point.

**Sen. M. Shabazz:** All right, I am saying, not only that. This may be a Government's position where, as far as the bottleneck and the logjam in the court are concerned, rather than have somebody in the Parliament to see about that, that person should be sent to the court to ensure that we get a faster type of administration so people would feel they are not discriminated against. There are people in jail waiting for three and five years for trial, you know, so let us try to understand that and try to clear that logjam.

I heard somebody say this morning that the truth brought forward with a negative motive—although I feel truth spoken at all times is proper and good. Truth brought forward with a bad heart to cause problems sometimes is worse than a lie. Let me explain what I mean. I am saying that where class and race and this whole thing that is happening here seems to be discrimination that we are fighting, and it will bring out certain issues in our country that would not be good for it in the future. There are some people who would believe this discrimination that we are fighting which seems to target religion, it may seem to go wider than this and that is what makes it frightening.

Since this Bill has come out, there have been so many articles written against it that tell you something is happening. There are so many religious groups. I do not understand the philosophy of the Thusians, but they went to the extent to bring out certain kinds of material that is not even good to be put into the *Hansard*, and I feel should not be put because of how it sounds but people have gotten bitter because of this Bill.

I read from an article by the Thusians from the *Newsday* of Monday, March 9, 1998. It says:

“Government is to make a bold attempt to offer more protection to non-Christian religious bodies.”

“...Attorney-General Ramesh Lawrence Maharaj, stated yesterday that protection would be offered under his proposed Equal Opportunities Commission.

...the promoting of equality amongst religious groups .

Maharaj had been invited by officials of the temple to speak to the congregation and to outline the State’s position in respect of derogatory actions or remarks made against Hindus and other established religious institutions.

...laws that do not give protection to established religions other than Christianity. Among these, he added, was the Law of Blasphemy, which has been in existence over several centuries as part of the Common Law.

It only protects attacks against the Christian faith.

This law will be amended to protect against attacks on Hinduism, Islam and other established religions."

The point has been made here that blasphemy and all these things are written into the law. Yes you need to update it, yes, you need to deal with it and to widen the parameters of who should be involved or what religion, and nobody is against that, but it seems as though it is done with a particular intent, it is done to probably bring some people who feel that they have been discriminated against up to equality and it is felt that particularly a certain religion, the Hindu religion.

We are saying that the perception out there sometimes is not a proper thing. Let us correct it in a different type of way rather than bringing it through this Bill. You have the laws and the Attorney General is very good and efficient at writing laws, so let him write proper laws that would deal with these things.

This Bill seems to be a kind of fight back to either a long historical process—it is like you are fighting back at something. It is like a shadow that is really not there. There seems to be a fighting back in Trinidad and Tobago, this unique land of ours, at something that really does not seem to be there. It seems to be a fight back against the calypsonians to muzzle them. If you do not like calypso do not use calypso as your anthem to fight your election. You do not like it. Do not use calypsonians to be part of your thing, “yuh doh” like it. This clause 7 seems to set out primarily to stop because it came after the Green Paper. When the Green Paper failed and they created a lot of other problems through the Green Paper and they did not get through with it and people stood up to it, then we had the Equal Opportunity Bill coming with clause 7.

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I have friends on that side who must understand that—as a trade union person—clause 7 is not important and should not be in this Bill at all. Everybody has made that point. What is clause 7 doing?

Mr. Vice-President, there were “Atila The Hun” inferences in a document coming out of Parliament in 1949 and from then on, calypso was something that has been fought to be kept on the books. This can of worms you are opening, it might sound like it is a joke, but people will now say this business has 10 people in it and all 10 are of one ethnic group so you need to balance it and bring it back in a way by involving other people in it. You are opening a kind of Pandora’s box that is really problematic.

Where have Equal Opportunity Bills been passed, what countries? Let us look at it. You have Malaysia, India and other places, and everywhere the Equal Opportunity Bill has been brought forward there does not seem to be any major improvement, and in America where equal opportunity is a big thing it is because there are many minority groups. I heard the hon. Attorney General speak about minority groups in this country. We do not really have minority groups here.

Trinidad and Tobago is what I consider to be the model nation of the world. Every race and people from every country who come here live happier than they would live in what they refer to as their motherland. I feel that I am happier here than if I were sent back to Africa to live at this point in time. I feel the East Indians are happier here than if they were sent back to India. The hon. Prime Minister went to India and when he saw the position and condition of his family, he came back here and they are still writing him for help and he does not want to be a part of that because Trinidad and Tobago is the only place he could have been and be a Prime Minister. He might not have been able to do that at home.

The Syrians, the whites, the Chinese, everybody live happier here and will not give up Trinidad and Tobago to go back to their motherland. I might be the only stupid person who might want to go back to Africa, but I love being a Trinidadian and I find that if we can all work happily to build a nation, we would be doing something far better than anything else we could do.

Where everybody is competing for space and everybody wants to be better than everybody else, it is a sad thing. When I pick up Anthony Milne—because these are the kind of articles this Bill seems to be generating—“Commentary & Analysis White Trinidadians belong”. This is an article in the *Daily Express* dated April 25, 1998 where Anthony Milne is trying to show that white Trinidadians belong too. Do you know why he is doing that? People are now feeling that one

particular race wants to control Trinidad and Tobago, take a few tokens from the other races to show that they are one group—but they are not really—and they want to control Trinidad and Tobago and push everybody else out. That may be a wrong perception, but it is the one that we are getting now. One group, one race.

Mr. President, we do not want to feel Trinidad and Tobago over the last five years has been doing well, wealthy, making money because of the platform carpet that has been laid by the previous administrations.*[Desk thumping]*

**8.20 p.m.**

We do not want to talk about corruption because Trinidad is a country where the “smartman” is loved. Valman Jones was a fellow this country loved and has written him into the folklore. They have called other names from the PNM that they said are part of the folklore and who were “smartmen”. I do not know and I am not getting into that.

People are admiring this administration for the seemingly smart things that they do, but they now seem to be too smart. It seems that they are even outsmarting themselves. The things seem to be in such a way that there is discrimination now. They want all for themselves and that is what will go against them more than any other thing happening in Trinidad and Tobago. They seem to be getting—I think it is a parliamentary word—greedy. That is what will go against them most.

They seem to be fighting a battle that they had been fighting—that they have been discriminated against and badly treated for a number of years and they are now trying to get even. They are doing it so quickly that they are excluding the other people of Trinidad and Tobago. Their leader does not talk about the people of Trinidad and Tobago, Mr. Vice-President, he speaks about the peoples of Trinidad and Tobago. If Trinidad and Tobago is to develop as a nation, we must be the people of Trinidad and Tobago. When he speaks of peoples we start to compare this one with that one and we seem not to get the effect we want in Trinidad and Tobago.

Mr. Vice-President, I, too, went to St. Mary’s College and I remember that we all heckled one another, but we were all one people under the banner of the blue-and-white. We stood with one another. I still have friends that I can call, like Nicholas Mouttet, Brian Kuei Tung and other guys who are of different ethnic groups, but we lived very happily in college.

The only time I noticed that there was a difference, and maybe this is where we can talk about job discrimination, was when we started looking for jobs. They

got jobs and it was difficult for others like me. Then I realized they were going into their family businesses. Now, when we talk about the job situation, why are we excluding the three domestics who may be living at the lowest rung in the society, working for people but are not really considered under this Equal Opportunity Bill? Those are the people the Attorney General should consider first. Those are the people the Attorney General's regime said they were really fighting for. However, under this Bill, if a house has two or three persons, they are really not given protection under the Equal Opportunity Bill.

The point the Attorney General made is well taken. We only know how good a society is by how well it is able to take care of the less fortunate. In this Bill there seems to be a definite attempt to discriminate against the less fortunate. We ask the Attorney General to look at that.

The Trinidad and Tobago society has evolved. There was a time when, going up to a business place or some place of entertainment, we saw a sign saying, "no prostitutes, no dogs, no calypsonians." Today the calypsonian has reached a point where people are begging them to come around. That is what someone spoke about when he spoke about how the society was evolving. This society will continue to become better.

The Attorney General is a man about law. There is something called the spirit of the law. He must look at the spirit of the law. It is not only writing and putting law into our books that will make people go a particular way. It is the spirit of the law that has embodied with it love, compassion and all the other qualities that are important to the upliftment and development of a nation—the spirit of law.

The Attorney General is only concerned with law and he can change his legal position according to where he is. If he presents one position sitting there tonight, his position would change if he were sitting here. That is what the hon. Attorney General is all about, Mr. Vice-President. It is a serious thing.

Let us look at it again. In Trinidad and Tobago they talk about the calypsonians—and people can make mistakes. Somebody spoke about Iwer George, when he sang his popular calypso, "Bum bum in the Road" man from a certain religion went to the *Mirror* and protested. He is someone whom I know well—and do well with and I can say his name, because it was in the newspapers, Ravi-Ji—while he was protesting, somebody said, "I am certain that you have not heard that song". Do you know, Mr. Vice-President, that he said that he really had not heard the song? He got up from his protest, walked away and never returned to protest. He did not listen to the song, but because that clique was saying that "Bum bum in

the Road” was affecting a certain people and it was discriminating, people protested. Many people protested though they had not heard the song.

The calypsonian is the voice of the people—an important person. Mr. Vice-President, do you remember when a calypsonian spoke about a Prime Minister who was “duncy”? That Prime Minister still went to the tent. We listened to him, we clapped and laughed because we listened to the art form and knew how important it is.

Remember when the calypsonians sang about all other issues in this country? People were not so touchy. The calypsonian has been fighting for rights for years until this day, without people being touchy. We laughed and clapped and saw the virtue in what they were saying and sometimes we changed, based on what the calypsonian was saying. It is the calypsonian who gives strength many times to people. It was the calypsonian who not only gave strength to people, but because he began doing it as a fun thing and the people took it so seriously, he became the voice of the people. Do not muzzle that voice.

I see pan, Mr. Vice-President, as a very important and sacred thing. As a matter of fact, although I love Minshall, I feel for Bertie Marshall for what has happened recently and I feel that the prize should have been shared. However, that has happened and so be it.

The dulat, an instrument that is here, is important, too, to our culture. I wish that all would be carried forward in a certain way. The Steelpan Movement, which has been here for so long, for which they have fought so long, must be important. They must not think now that they are in power that they can take another instrument and promote ever the pan. The pan must have pride of place and although I know that the dulat is a very important national instrument, it has been a part of the soca beat, let us understand that the pan is the national instrument. I give credit to the dulat.

When we are talking about national, look at what is happening in Trinidad and Tobago. I made this point here before and I would like to make it again. There are some people who feel that they have been discriminated against. When we look at what is happening in the world, really and truly—and this is not discriminating, but it is the truth about Trinidad and Tobago—some people have been here and they have been involved in business and they have done it successfully. There are other people who have been here for so long and their business acumen seem not to have shown and they have not risen in business as they should. They probably depend more on government. We understand that, and if we are to be a nation each one has to teach one.

There are a number of people here whom people say cannot do business, but when we look at the international market these are the people who make Trinidad and Tobago known to the world more than anybody else. In the Olympics, they have given Trinidad and Tobago probably all our Olympic medals.

Not only that, Mr. Vice President, look at what is happening on the world market. Look at Miss Universe; look at Mr. Universe; look at the boxing champions; look at your Olympic gold medallists; look at your panmen; look at your netballers; look at your cricketers; look at your footballers; look at the people who travel the world and give Trinidad and Tobago a name.

**8.30 p.m.**

When they come home they may not have any big businesses but at least having given so much to your country, “yuh mus” find a way to develop “yuh” sporting and “yuh” cultural activities and build the things that “yuh” supposed to build to ensure that these people could come back here and make things and do well off their things.

**Mr. Vice-President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator’s speaking time be extended by 15 minutes. [*Sen. N. Mohammed*]

*Question put and agreed to.*

**Sen. M. Shabazz:** Mr. Vice-President, these are the people who make our country known on the international market. When they come home, we need to do more. Look at the disparity at home. In Trinidad, there are about 40-something used-car plants. These people drive half the cars and do not own one. So they might say, “Well, listen, you have to form some kind of legislation for us to own car plants too”. There are 30-something shopping malls in Trinidad and Tobago. They shop in all and do not own “none”. There are 20-something insurance companies. They buy from all. They sell for all and they probably only own one.

The point that I am making is, they play all the mas’ but they are not the band leaders. They do all these other things yet they seem not to be the people who hold the purse strings. Maybe that is not what they are about, the business, but we need to have the society worked up and integrated in such a way that we will now find or have programmes to make them understand what we could do to make the society move as a society, where everybody will not be feeling that they are discriminated against. These people now, many of them could call for certain positions and say that, “We are entitled to this. We have worked hard. We have given Trinidad and Tobago so, so, so. What is coming back to us?”

They may say, “When you are giving out contracts we must get 20 per cent”, or, “We now, because we are half, are entitled to 50 per cent of the contracts, regardless”. The trend in Trinidad and Tobago is, one does not have to be able to know what to do, you know. “We could give you a contract that is worth \$30,000, give it to you for \$60,000 and you employ somebody and give them \$25,000”. I say it in thousands but they say it in millions—\$30 million—and this is the whole point. When they open this door here, they might be opening a door that later on may just cause problems in our country.

“Ah not telling yuh doh open it”, because when it is opened I have to be part of the society with my family and I have to defend it when they open it, but “watch how yuh opening it”. Think about it carefully because you see, “doh play like yuh” not living in Trinidad and Tobago. In Trinidad and Tobago, there is an uprising on the basis of nearly every 20 years—Butler, water riots, NJAC, Muslimeen—and one people seem to be fighting back because they believe they are not fairly treated and “dey dus take it, take it, take it”, until they get bitter and just burst out. Their duty is to ensure that does not happen.

The way they will ensure that does not happen—nobody is talking about giving handouts but everybody is talking about making a balanced society by taking care of the most needy in “yuh” society and showing or pointing out to the others how they must live and what we must do to make a harmonious society. “Doh play that yuh going to build yuhself and get yuhself big and take, and take, and take and grow big, and at the end of the day “yuh bigger and yuh stronger so yuh better. Yuh going to get ah type ah” rejection and retaliation that Trinidad and Tobago could well deal without. When they open this Pandora’s box—“ah not telling yuh doh open it, I not telling yuh doh go into it”, but go into it extremely carefully and open it extremely carefully.

Mr. Vice-President, all on that side may say yes, the intent of the Bill is good, and the intent of the Bill may well be good, but we question the motive behind bringing this Bill to our honourable Parliament. If the Attorney General is aware that he has brought it with a good, clean, clear and proper motive, he should take out or adjust clause 7 as they have been asking him to. Do something. Get back into the Bill the HIV and the disabled people. Take a different position on the disabled people. He should show that he cares and that his intent is really pure and noble and he could listen to the other concerns if he wishes, but I am not clear on those other concerns and cannot be a real advocate for them. I cannot be. I would listen to the other learned gentlemen.

*Equal Opportunity (No.2) Bill*  
[SEN. SHABAZZ]

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The Attorney General should make sure that he is a little more caring and this is the time to bring back his caring image you know. He “loss” it with the nine people up at the Royal Jail, but he could bring it back now. The nine he took in a week, he lost it a “lil” more, and his human rights position, it was lost. It is now the time—he seems to have discriminated against those people—[*Interruption*] I love him. He is a brother. As a matter of fact, he is a human being like everybody else and the same way everybody else is making a point, I am not going that way. [*Interruption*] May his soul rest in peace and when we reach to heaven’s gate he might be going in before you and me, you know. “We doh know”. [*Laughter*] As somebody said, we cannot judge and God has said he will judge us on the last day. “I really doh care about no judgment” before the last day. That day will determine.

The point is, now is the time for the Attorney General to clean up his image, if he could do as he did with the last Bill—move clause 7. Show the calypsonians and the—move clause 7. We do not want the Bill with clause 7. Clean up the situation with the HIV and the disabled people and deal with it that way and we on this side will really be willing to give them the support and to give the support that the Bill needs. Let us put aside our differences. [*Desk thumping*] [*Interruption*] No, that is the position we take, as long as they move the clause. This is a serious time. The society is evolving and on this note, Mr. Vice-President, in this country where every creed and race find an equal place, in this country that has been for all, where our—“we doh” discriminate, you know.

When we came into government we said, “Well look, it have too much ah Catholics on the board, bring Anglicans. It have too much Africans, bring Indians. We doh discriminate”. We want to make sure—“We not on” this discrimination thing. We not saying as Sen. Ramchand said, “Somebody will say ‘doh’ give him the job because he is an East Indian”. You see, there is “ah lil” problem in Trinidad, “eh”. We “dus talk one talk in de open”, and when we get into our small groups we “talk ah nex talk”. What we want in Trinidad and Tobago is that we all “talking de same talk”, whether we “in de open” or whether in the small groups. We want a society in Trinidad that will take care of all at all times. [*Desk thumping*]

Discrimination—there will be no society, even when they present this Bill, where, because of men’s greed, their discrimination will be completely removed. If they want to pass a Bill—I said it here speaking with one of the Senators—for discrimination, maybe if we give the Attorney General five years again, he might be looking to pass a Bill so that people would not be envious of other people and

he might be looking to pass a Bill so that people would not hate other people. Maybe this is what this is all about, but we cannot write law for every single thing [*Desk thumping*] and we have adequate law that will take care of “ah lot ah” things. [*Desk thumping*]

We must leave some room because some people are reading the Gita, some people are reading the Bible, some people are reading the Qur’an and some others are reading all these other good books, so we must leave room and assume and trust that our society will have the moral strength to move in a certain direction. [*Desk thumping*] Of course, there are people who “ain” reading any of the books, “eh”, and there are people who are praying and reading the books but still want to do other things besides what is in the books—[*Interruption*] “Ah not saying dat”—and “yuh” have to take all these people into society. “Dey” reading the book, “dey” coming, “dey” praying, “dey” saying nice “tings” but “dey” doing different “tings”. “Yuh know dat”. Yet “dey” telling you, “Well, when I lock up here, dah is mih business”, but “dey” reading “de” book; but God is all about.

So if “yuh” reading “de” book here, but when “yuh lock up down in de Cove down dey, yuh do ah nex ting whey de book say, an’ feel God en dey, yuh still have to answer. Da is mih feeling”. I may be wrong on my feeling because I could take a position too “dat” wrong, so I “doh” want to go against anybody who is taking a position that is not my position because everybody could be right as well as everybody could be wrong. What I say is, have the chance or take the risk that there are people in the society who, even though they may be different here, still have standards that we may not keep.

Someone may steal—I am not saying anybody there—but X may steal and Y may not steal, but Y may fornicate. “Who better dan who?” At the end of the day, everybody has to take his position. So that at the end of the day one must seem, Mr. Vice-President, not to be discriminating against anybody. Discrimination must be written out. This Bill, even though—and I want to take it that the Attorney General did not follow the clique with any motive that was negative to write this Bill, that his intent was proper, but there seem to be certain definite flaws in the Bill and everyone is telling him that these are flaws. He needs to just “take out” clause 7. [*Interruption*] No, he could go with the rest, but “take out” clause 7, soften up against the disabled, look at the different position with HIV and try to deal with these things. If “yuh” cannot do these things, send this Bill back and wait till the new term when he is in Opposition to argue what we will be doing to this. Thank you very much, Mr. Vice-President. [*Desk thumping*]

**Sen. Rev. Barbara Gray-Burke:** [*Desk thumping*] Mr. Vice-President, I stand here to support the Equal Opportunity (No. 2) Bill, 1999. Mr. Vice-President, I am a Shouter Baptist. This religion has suffered and suffered in this country. For years we were outlawed and banned in 1917 for practising our faith—not stealing, not selling drugs, but just worshipping God. It took us 34 years. The hon. Albert Gomes, Chanka Maharaj, honourable, brought a Bill to this honourable House to set us free. It was March 30, 1951—34 years—*[Interruption]*

**Sen. Shabazz:** Dr. Williams.

**Sen. Rev. B. Gray-Burke:** Not Dr. Williams. He did not come on the scene yet—the hon. Albert Gomes and the hon. Chanka Maharaj—for that ban to be lifted. But how was it lifted? Archbishop Griffith tried his best to see that we were not to be beaten, so I do not know how “de country so loving”? We were beaten up to 1951—beaten, licks like fire, imprisoned for a religion. Sit back, honourable Senators and listen to struggle. I want to bring—the hon. Joan Yuille-Williams was in Parliament when I read out everything because she was the lady who used the hatchet.

Mother Reyes Hypolite from Toco—“she still alive”, 82 years—Captain Daniel Hypolite, Toco, still alive. I honour, them this year, still alive—had a baptism. “Police raid de place”; beat them. “It had ah mother begging”; she had a little child. She “want to see about de child”. They “carry her down”; charged them 18 shillings. So how “we so loving” in this country? If I did not rise today to join this debate, the very walls of this Chamber “would ah cry out”. [*Desk thumping*] I have “ah hurt in mih heart”. Members of my faith would have taken me to task for not joining. “This Bill bringing” a joy to our souls. If nobody else in this country, the Shouter Baptist—this equal opportunity playing a great part.

“Yuh know what it is yuh” hearing Atilla the Hun saying, “Yuh know wha is a Catholic, buh wha’ is a Shouter Baptist”, and saying we using the “mourner room” for immoral acts? This is what the calypsonian used to do to us, Atilla the Hun. I wrote a book and “I make sure” I mentioned his name in it.

**8.45 p.m.**

Mr. Vice-President, my Archbishop, Dr. Elton George Griffith, died without seeing a respect for his faith. Getting a day of recognition was the hardest thing in this country. From 1951 until 1996, when the hon. Basdeo Panday put me in the Senate, in Opposition, to argue for recognition, we were alienated; we were discriminated and victimized!

I tell you that we were born in this country. I was born on Charlotte Street in the Hospital, grew up in Laventille and imagine we were under such “sufferation” and such pressure. You talk about pressure! When I put my case out as a humble servant in this honourable Parliament, the hon. Joan Yuille-Williams got up and said, "We all arrived and since we all arrived, the thing is no day." We had no day to feel like somebody in this country. What are you telling me? We do not need an Equal Opportunity Bill.

This is an indigenous religion. My religion was formed here. We have no parent body in Germany, Australia or anywhere. It was formed here. Sure, I will give way.

**Sen. Yuille-Williams:** Whereas I am following you and agreeing with some of the things you have said, I think you are mixing two different debates. You talked about we were here with the Indian Arrival Day and we talked about having it as Arrival Day for everybody. I do not want you to think it should confuse both, but I am agreeing with what you are saying otherwise.

**Sen. Rev. B. Gray-Burke:** All right. Thank you. I was expecting Minister Camille Robinson-Regis, but she was on holiday and when I looked, the hon. Joan Yuille-Williams spoke. She was reading from a text.

**Hon. Maharaj:** Do not blame her. It is the leader told her to say that.

**Sen. Rev. B. Gray-Burke:** Yes. The leader. Then, we are not in a happy country. Sen. Shabazz quoted here about how we are so happy. Well, I cannot say the Shouter Baptists in this country were happy. Not at all. Up to this day, we have not owned a school of our own and it is only under this Government, of which I am a part, that we received recognition. [*Desk thumping*] It took 45 years. Take your time; I am coming to the point. It took 34 years with Archbishop Griffith, then in my time, to get recognition, 45 years. If God permits March 30 next year, it will make it 84 years since we were outlawed. We always have to remember it. It will be five years since the hon. Prime Minister, Basdeo Panday, gave the Baptists some self-esteem and some dignity. [*Desk thumping*]

We are free. We were born free but we were not free. I thought when we left the colonial days that the hon. Eric Williams—you see, I cannot say "Father of the Nation" because when we were 25 years, we celebrated in Woodford Square and he promised us a day. You talk about promise! That was promise! "I will give you a day." No day. Sen. Martin Daly pleaded on our behalf. No day still. Sen. Diana Mahabir-Wyatt pleaded for us. No day! I am not lying. She is in the honourable Senate.

**Mr. Maharaj:** No day but Panday.

**Sen. Rev. B. Gray-Burke:** This Equal Opportunity Bill is a great Bill. I can say it is a great Bill. The Indians and Hindus would chant; the Muslims would chant, but when a Shouter Baptist says "uumph umph", they say you are grunting like a hog. It is discrimination.

I tell this honourable Senate that when I sit here, I ponder many things in my heart. You shout, you are discriminated against. You are grunting like a hog. Many people do not want this Bill. Do you know why they do not want it? They would get up in the edifice and speak about Shouter Baptists as an obeah woman and an obeah man. They would say a Shouter Baptist is a killer. Kill "dem" people and they would say all kinds of derogatory things about you. That is why many of the churches do not want to accept this Bill.

I was invited to a church one day and when I heard the pastor speak, tears came to my eyes. I got up and walked out because I wanted to know: Why were all those derogatory remarks used about a Shouter Baptist? That used to happen right there in Caura. If today a Bill is being laid on the table to free us from that, did you observe the Baptist who argued on this Bill? Not a Shouter, you know. There were those who, since 1949, had the Bill, so they were never banned. That was the group because they always say the Shouter Baptist is Shango. There is nothing named Shango. There are Shouter Baptists and there are Orisa worshippers, another group that is struggling in the land, but I will come to that.

I tell you as I stand here, under this Government, today the Shouter Baptists have three teachers at the University of the West Indies at Government expense. The Government is paying for them. [*Desk thumping*] I tell you that this was the agreement.

**Hon. Maharaj:** Which government?

**Sen. Rev. B. Gray-Burke:** This Government, the Panday Government. Do you know why? Because next month the Hon. Kamla Persad-Bissessar is starting the early child care learning centre for us right on the land that this Government gave to us. All the surveys and all the drawings have been completed. It is going to be started under the 2000/2001 agreement. Only now. Next year is 84 years, then you are going to see a little light. Could you tell me how we are so happy and joyful when a group is under pressure, real pressure? Up to today, the Inter-Religious Organization has not accepted us but we are so happy. I heard many lovely pictures painted. The Inter-Religious Organization promised and the hon. Basdeo Panday was going to accept us. Up to this day, we are not accepted. We

are discriminated against. How can you tell me this Bill is not necessary? How can this Bill not be necessary when a group in this society is not accepted into the Inter-Religious Organization? We are so happy. Is this Bill not needed? Come on; let us not fool ourselves; let us live in the real world. I am bringing you all to the real world! Search your conscience! Examine yourselves!

Mr. Vice-President, we are thinking for a moment about how things went in this country. Many Baptists were PNM, yet, they saw nothing good to do for us. Not to love us; not to give us recognition; they did nothing for us. All right?

I go now to the Orisas. The Orisas is another big group in this land. Up to today, they do not have a day. This Government promised them a day but, because of a particular "Mother" saying that she did not think they were ready for the day—she made a choice. She wanted the marriage licence. They applied for marriage licence for years under the PNM. Promises, promises, promises! Not one marriage licence was given to them. It took this Government to debate a Bill in this Parliament and have it passed so they could now have their marriage licence. [*Desk thumping*] Two groups—"sufferation". We were deprived of everything.

Hear what the PNM did. They gave the Orisa some land in Lopinot, Arouca. Not a letter of comfort; no deed. Mamaguy! Do not buy; pass by. Lopinot. You know, it was when we were around the round table seeing about our deed, Eintou Springer whispered in my ear, "You know, we 'ain't have no deed." Then the matter was brought up and the hon. John Humphrey is seeing about giving them a deed.

**Sen. Mohammed:** Thirty years or 199?

**Sen. Rev. B. Gray-Burke:** Why did they give them the land? For what did they give them the land? Because they had it. They gave Archbishop Griffith a piece of land, too, but told him—listen to the disrespect—"Help all yuh self nah! Get the tenants out the house!" Do you give somebody something so? No deed. A big massive building is on that property.

I truly commend this particular Bill because this Bill is doing a lot for those two major groups. Independent Benches, the Government Senators and the Opposition, is that not a total shame? Let us come to the realization. Is that not a shame? You are telling us about happiness and glorious country. When I talk here, I remember Sen. Daly when he got up here and said: Look here. He did not know so much "sufferation" was on a particular group. Hear what the PNM did. They cried us down and they chased us. They cried us down because a gentleman, one of the Senators, put a big table in front of him—I forget his name, Indar or

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something like that—and when he read and read, he said, “Nothing for you. Go your way!” Shame and disgrace!

**Sen. Gangar:** Oh my God! You discriminated.

**Sen. Rev. B. Gray-Burke:** Today, the shoe is on the other foot. Hear what they are saying. Government does not want to listen. Did you all listen in 1995? I say, no. But, many times you all come here, you are saying, "The Government does not want to listen." But, when the shoe is on the other foot, you say, "We do not want to listen."

I say that I want to go forward. There must be no turning back under any circumstances. [*Desk thumping*] You see, this Bill, it is like when Moses was leading the children of Israel and he went to Pharaoh and told him, "Let my people go." Today, we are free and we want to stay free. No turning back.

I am happy about this Bill. I support the intention of this Bill. I support the principle of the Bill, especially Parts II and III of the Bill, wholeheartedly. Do you know why I support Parts II and III? I hear some people quarrelling about Part III, but I have no quarrel with Part III. Part III fits me and suits me well and it suits every Shouter Baptist in this country well.

**9.00 p.m.**

Mr. Vice-President, if there is a place in heaven for people, I know the hon. Basdeo Panday, regardless of what anybody says, will have a place there. [*Desk thumping*] Absolutely!

**Sen. Yuille-Williams:** Mr. Vice-President, before the Senator ends her contribution, which I was following very closely—I am very serious about it because she has gone a step beyond the Bill—as far as I am concerned some of the problems that she, and all other religions seem to have had, the Bill itself will not solve them. The ignorance, or lack of education, concerning the religion would still be there. I sat with the Senator in Washington or New York where she wrote a book on the Shouter Baptist to educate the people.

**Sen. Rev. B. Gray-Burke:** Yes.

**Sen. Yuille-Williams:** Therefore, when she talks here now, I am wondering whether she still thinks that this Bill, at the end of it all, would do what she thinks is needed to get people to appreciate the religion and to work with them. Do you know what I mean? I think she has seen clearly, even before the Bill came, what was necessary. I am being very honest about it. We cannot divorce one from the

other. We can put all this legislation here, but the kinds of discrimination she is talking about, or how she felt she was treated, would still be there if something else is not put in place, which is what I thought she had done.

**Sen. Rev. B. Gray-Burke:** Mr. Vice-President, what I mean to say is that when the PNM lost the election it was a sacred intervention by God. [*Desk thumping*] Do you know why I say it was a sacred intervention by God? It was not man who did this, it was God. If one has a school one can now teach one's religion in that school. My children remained in the faith because I have a church, and I am the president of an umbrella body, so they had to. If you are just an ordinary member, when the children reach secondary school their religion seems to be lost somewhere. Without a school one cannot "doctrinate" one's people properly. By building schools for this particular faith—these particular people—one would be able to educate them.

Mr. Vice-President, I say thank you. Thank God for this Government and I wish it stays intact without any interference.

Thank you.

**Mr. Vice-President:** At this point we would take a break for our supper. We will resume at 9.45 p.m.

**9.05 p.m.:** *Sitting suspended.*

**9.46 p.m.:** *Sitting resumed.*

**Sen. Prof. Julian Kenny:** Mr. Vice-President, I will keep my contribution to, perhaps, 10 minutes. I was taking a lead from Sen. Carlos John who has suggested publicly that we bore each other and that we really ought to be restricted to 15 minutes, so I would try for 10 minutes.

I would like to just raise a few points. I will speak briefly on the subject of age discrimination and then I would like to extend the commentary introduced by Sen. Prof. Ramchand. There is no collusion between us at all; I did not know he was going to be taking a certain lead, and I had already decided my lead.

I would like to take, first of all, age discrimination followed by the general subject of human sexuality or sexuality generally. Before going to this, and looking at the time, there is something rather interesting about our democracy, in that, legislation can be brought to Parliament in spite of what is apparent dissent from many, many parts of the population, and I do not mind this at all. I think that sometimes we lose sight of the fact that in our political life, perhaps, sometimes

our personal problems are confused with public issues, and I think we have to be very, very careful about it.

I, personally, for example, in spite of what anyone in Trinidad and Tobago would say, am totally and completely opposed to capital punishment on moral grounds. It does not matter whether everybody in the population says that they want to hang people, that is little, my view is different. Similarly, you go to a country like the United Kingdom and there is the issue of capital punishment. Every time there is a brutal murder people say, "Let us bring back hanging." Sometimes a Parliament has to examine morality and then take a stand on morality in the interest of the development of the nation, regardless of what or considering what people may want outside, but look at it purely on moral grounds.

Let me just leave that and go on to the subject of age discrimination. In this country where people are discriminated against, in terms of the retirement age—and I have no problem with fixing retirement ages in many professions and so forth—but, for example, a citizen of this country who pays health insurance for 40 years and turns 65 is dumped. You may not have made a claim. I have carried health insurance in this country for some 32 years, and when I turned 65, out the window. I have never made a claim, and that is when you need it. How can we not look at the question of discrimination with age? I think that the matter really has to be looked at, because many people who become aged are just simply dumped. So I would leave the subject of age discrimination and move to the subject of a bit of basic biology to lead up to what Sen. Prof. Ramchand was talking about.

I was frankly rather disturbed and distressed that when he introduced the subject there was a lot of laughing and twittering, the sort of thing that is like little children in primary schools, they talk about you and so forth, and then they start snickering. This is a very, very serious issue, the question of human sexuality and the relationship of the individual with the society.

In basic biology the essence of the species, the essence of life is variability. The environment changes and things are selected out; that is how evolution has worked for some 4,000,000,000 years, and in any species you will find variability. Men are taller than women; some men are taller than other men; some women are taller than other women, but, generally, if you take the means you have differences. So it is not only in things like height that you can see differences, you can see differences in brain development. You can see differences between someone who has had some sort of a trauma, birth defect or developmental defect resulting in smaller brain capacity or what have you. You have all sorts of

variability in the human species. We talk about race, which has no meaning in biology, as far as the human species is concerned, but there are so many variables that make up the human species, and one of them is human sexuality, which I would address in a minute.

Generally, sexuality is something that is fairly well understood. In terms of groups of animals, in the higher mammals, birds and so forth, sexuality is understood. In fact, it might surprise you that there are some vertebrae animals, fishes, that start out as one sex and then they develop, they feed and breed and so forth, and then they convert to another sex. Do you know the big grouper that you eat, Mr. Vice-President, that lovely grouper? All the groupers go through a change of sex, and they are reproductive at both stages. So there is a bewildering variety of sexuality.

Now, it is largely genetic, but you will find that in many mammals and in birds the sexuality is conditioned or qualified by the immediate environment. I do not want to get into the wide range of mammals, but to point out that it can be conditioned by environment. I would like to turn to the question of human sexuality that seemed to cause these snickers; it is a very, very serious business.

Everyone is familiar with the term hermaphrodite, and there are some human beings who are hermaphrodites, and the attitude is that they are freaks. They are nevertheless human beings that are way out on the edge of the norms. It is not only what appears to be a normal human being who happens to be—I do not like the word "gay"—a lesbian or homosexual. You have a wide range of anatomical, physiological and genetic differences. On top of this you have human individuality. You take what is called a bell curve, the variation, a great big sweep like that, and you fit characteristics into this bell curve. We, unfortunately, take a particular point and say, "That is normal, and everything else is abnormal.

When we talk about human sexuality, there is a genetic component that is so well demonstrated. It does not necessarily mean that someone who is genetically inclined this way is going to end up in an unfortunate situation. The immediate human environment, the way in which a family is brought up, experiences with children—*[Interruption]*

#### PROCEDURAL MOTION

**The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar):** Mr. Vice-President, on a procedural matter, in accordance with Standing Order 9(8) of the Senate, I beg to move that the Senate continue to sit until the conclusion of the debate on the Equal Opportunity (No. 2) Bill, 1999,

*Procedural Motion*  
[SEN. THE HON. F. GANGAR]

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and the Private Bill entitled the Association of Professional Psychologists (Inc.) Bill, 1999.

*Question put and agreed to.*

#### **EQUAL OPPORTUNITY (NO. 2) BILL**

**Sen. Prof. J. Kenny:** Mr. Vice-President, I was just pointing out that in the case of human sexuality there is a genetic element, there is the immediate environmental element and then there is the cultural. There are societies in which homosexuality is no big deal, and there are others in which you want to suppress it, you want to criminalize it, so you have a very, very complex problem, and it must not be dealt with in this way. I think we must have, as Sen. Prof. Ramchand said, some compassion.

Homosexuality is known in the chimpanzees, just as domestic violence, bullying and promiscuity. We are basically a little more intelligent than the chimpanzees, and I think the one thing that we have is reason that permits us to behave in such a way that it serves society well. So I am very, very disturbed that an honest, simple, straightforward appeal for compassion for other citizens of this country who happen, through no direct decision on their part, to develop a lifestyle of a certain kind.

Let us face reality: homosexuality in the human species goes back to the dawn of time; it is a reality. Sweeping it under the carpet and criminalizing it does not do anything. It is wellknown in many societies where studies have been done that you can estimate proportions of the particular sample that you are dealing with that is either homosexual or lesbian, practising or non-practising, and the figures that you can pull off the Internet or from academic studies would indicate in some instances, in some societies, one in 10 or one in 20.

If you take a Chamber of this size and the number of people in here, the probability is extremely high that there may be people in this Chamber, they may not be here now, or in the public gallery who are homosexual.

#### **10.00 p.m**

Mr. Vice-President, when we are talking about days for this religion and that religion, I am very sympathetic and I am not prepared to ask for a day of this country for my own particular convictions. The only faith that I really have is the faith in human reason, and reason to see compassion for one's fellow man or woman and I think that the issue is one that everybody faces. The churches themselves abroad, the Presbyterian Church of Canada, the Church of England, Archbishop Tutu, even our own revered Archbishop Pantin have spoken out. We

must not deny a group of citizens their basic fundamental rights to some dignity in their life.

Mr. Vice-President, I promised to keep it to 10 minutes and I am only going to suggest to the hon. Attorney General that I agree with Sen. Prof. Ramchand that under clause 3 the word “sex” which does not include sexual preference orientation ought to be deleted, but I would go further than him and suggest that under “status”, when you say the word “sex” I would say “including sexual orientation.”

Thank you.

**Sen. Vincent Cabrera:** Mr. Vice-President, I rise to support, at this late hour, the passage of the Equal Opportunity Bill, 1999 and let me say how pleased I am with the draftsmanship and the intention and philosophy of the Bill and I wish to heartily compliment the hon. Attorney General. [*Desk thumping*] I record my sincerest appreciation and congratulations to Sen. Dr. Mahase for her maiden speech which was very enlightening.

I begin by sharing with this Senate an experience which I had at about age 17 or 18 either at first year or second year A'level. There was an Irish teacher, I cannot remember what subject he taught—yes, biology, interestingly enough, but he began a prayer group in the school. I am a practising Roman Catholic and it is the religion I was brought up in, and you know the Irish have a strong Catholic background. When he began this prayer group, one of the things he told the students was that they must be very aware of the Hindu religion and keep away from it because Hindus are pagans. I was always a leader, and at school I formed what was called the students union, we took over from what was the Student's Guild at the time, and we called a strike at school. I did all of those things. You see there are people who figure I am a Johnny-come-lately in this thing, but I would not go there as yet. They reported it to me and I confronted that teacher and I also went to the principal.

Mr. Vice-President, if there was an Equal Opportunity Bill then we would have had a case to carry that would have been of national concern because I cannot see how someone could leave their country, come into our country and disrespect the cultural reality of our state. When the first draft was put, I was one who gave it wholehearted support and I want to pay homage to this society because I am certain when the colonists were setting up this society, they expected us maybe in 2050 or up to that time to be fighting and killing one another, so it is homage to our society that, despite the historical imperatives, we

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have been able to go forward and keep the society together. We are not a perfect society, and those who very hypocritically are saying now that you could put aside clause 7, we know what they have been telling the people out there.

They have been telling the people that the Equal Opportunity Bill is a Bill to take away your rights. That is what they have been doing.

**Sen. Sultan-Khan Valere:** I just want to bring to your attention that it is my understanding that clause 7 as it stands now does not apply to any religious organization. So they would be free to continue to slander each other's religion right now. It does not apply to them anymore. I just wanted to correct you.

**Sen. V. Cabrera:** Thank you very much. The Attorney General will reply to you. My thought processes were really beyond that. *[Interruption]*

I was making the point that the Opposition has been on a campaign in this society to discredit the Government and, in particular, the leader of the Government, the hon. Basdeo Panday, for his wishes to have this Bill passed. I am very surprised that on the one hand, politically on the platform they are telling people they want to have nothing to do with the Equal Opportunity Bill, yet they say once you put aside clause 7 they will support the Bill. That is left to be seen.

Mr. Vice-President, there is discrimination in the society of Trinidad and Tobago and no amount of "mamaguy" talk could lead me to believe otherwise. In fact, coming out of the trade union movement we know about discrimination, and the trade union movement has had to be a kind of equal opportunity commission before now and it has been aware for years, we have been part of the social movement in this society which has been attacking discrimination and injustice at every level.

When the UNC was in Opposition and the last election was called, there was a party that was telling the people out there that the country was not ready for an Indian Prime Minister, and I think that party should be the first people to be carried to that Equal Opportunity Commission. Sometimes I wonder why there are people of East Indian descent still aligned to the PNM, because that is what they have been saying throughout this country.

I want to go further, Mr. Vice-President. I have noticed in the Lower House a certain Opposition spokesman is regarded as the Rottweiler, and every time I get up to say something, there seems to be a pit bull on the other side, but I want to make reference to that Senator by letting him know that we have already—

**Sen. Shabazz:** Mr. Vice-President, on a point of order, the Senator is calling people names like pit bull—*[cross talk]*

**Mr. Vice-President:** I will allow you to continue your contribution, Senator.

**Sen. V. Cabrera:** I advise the Senator that this same Senate has already passed legislation virtually outlawing pit bulls, so he better either behave himself, or get a very big insurance. *[Laughter]*

The truth offends and that is why, when I rise in this Parliament, there are people who grumble on that side. The truth offends, but I have not been involved in politics now, you know. In the 1970s, a movement called the Black Power Movement arose in this country where black people, or what is referred to as African Trinidadians, saw discrimination in the country and all over Trinidad and Tobago in the country houses, the beaches and hotels, so they began to march against discrimination against African people in this country and in fact that party used to be going around telling people do not call themselves Africans. Do you remember those days, Mr. Vice-President?

The truth offends. The leaders of that Black Power Movement were incarcerated at Nelson Island. Instead of the PNM reacting to discrimination in a sensible manner, what it did was clean up Nelson Island and put the real leader of the Oilfield Workers Trade Union, George Weekes, in jail and a number of people, including the founder/president of my union, Michael Als. So when I get up here to talk I speak with a heavy heart because that PNM government has discriminated against black people in Trinidad and Tobago, it discriminated against African people.

I take great umbrage with Sen. Shabazz standing and referring to some of us on this side as tokens. He can give but he cannot take; but he gave and he will take now. In fact, the term “token” coming out of the American society is a racist term but he is not politically aware enough to know that.

I want him to know that in our deliberations on the Equal Opportunity Bill it was not my intention to stray as he had, but he strayed right through Trinidad and Tobago so I have to respond and I am happy to hear that I have them dishevelled on that side, they are like parrots without a nest—or maybe “douens”—they can only make noise. So that this token is here to tell him that I have never been and I have never supported the PNM.

In fact, when Eric Williams came to Point Fortin as part of the meet-the-people tour, I was there with the young power movement protesting against him and, so heavy was that protest, he had to run from Mahaica to another part of Point Fortin. So this token has always been against the People's National Movement.

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Mr. Vice-President, Sen. Shabazz defended HIV people, disabled people, he looked all about, scraping the barrel, to defend people. I expected him to defend discrimination against Rastafarians, but he never mentioned Rastafarians and we know if we are serious in this society because of people's colonial attitude, they discriminate against people in terms of how they keep their hair, and the Senator failed to talk about that. *[Desk thumping]*

**10.15 p.m.**

Mr. Vice-President, this Government, to which I belong, defends all and we do not discriminate. We realize that certain people are opportunists. They simply play for the camera. Worse again, if a certain television station is represented here, you see all kinds of gallery and “ramajay”. They are not serious.

The hon. Senator also made a bold statement, that the Government does not like calypso. That is political hogwash of the highest level! Just last night a calypsonian called Gypsy, one of the leading calypsonians, to whom I had the honour of giving out an award just last year at the Town Hall, organized by an arm of the NJC—because they invited me to do that—that calypsonian is now a candidate for the United National Congress; *[Desk thumping]* and it is now recorded that the first calypsonian to be at that level in a political party, is under the leadership of hon. Basdeo Panday. Manning would have never allowed a calypsonian, no matter who he was, to come up on a platform and be a representative. Never!

**Hon. Senator:** And Manning turn down Sparrow?

**Sen. V. Cabrera:** Yes.

**Sen. Shabazz:** Mr. Vice-President, I would like the Senator to put a handle to Mr. Manning's name. I really would like you to rule on that.

**Mr. Vice-President:** Please put the right title to the Member.

**Sen. V. Cabrera:** The Honourable Patrick Augustus Manning. *[Desk thumping]* the man who wanted to be like Eric Williams but cannot fill his boots up to now.

So in the debate on this Equal Opportunity Bill, Sen. Shabazz attempted to mislead this House and also the entire country. That is why I have chosen to rise at this late hour to let this honourable Senate know that he has not fooled anyone on this side. Calypsonians in this country have always stood up against the PNM. Even the late Lord Kitchener, you remember in 1970 singing a song, “No Freedom”, when he was attacking the fact that they incarcerated over 25 citizens of this country, young men, down at Nelson Island:

“Oh what an awful place,

The vengeance of moko will come down on them.”

That is what Lord Kitchener said. So that when I saw they were making a political gimmickry with his funeral and pappyshowing him, I said to myself, “Some day the truth will come out”.

I am very mindful of the time and I say again, in conclusion, that I am proud to support the Equal Opportunity (No. 2) Bill, and regardless of the opposition to it, I think that God will smile upon us and cause this country to have an Equal Opportunity Bill so that no discrimination will be able to take place in this country again.

I thank you, Mr .Vice-President.

**Sen. Dr. Eastlyn McKenzie:** Mr. Vice-President, I would like to begin by congratulating Sen. Dr. Anna Mahase on her maiden contribution and to let her know how I admired her brevity and clarity and the wonderful contribution she has made. I want to wish that we would see her more often in the Senate.

When I looked at the title of this Bill, the Equal Opportunity Bill, I felt very heartened indeed, because I thought that the Bill will really deal with equal opportunity. But as I read further, I thought that somewhere along the line we got blurred and concentrated too much on discrimination. You see, too many of our people blame the reluctance, or missing the chance to grasp at opportunities, on discrimination. We have to be very careful not to give people an excuse not to use opportunities that are there for all of us, on being discriminated against. We have to also remember that not every time we are not given an opportunity that it is an act of discrimination.

We could find discrimination in everything. Many of the speakers before me have spoken about discrimination in some form or other, and probably not every time it was because of somebody actually discriminating as much as it was not grasping an opportunity that was there. We can talk about the boys versus girls common entrance discrimination, where girls score higher and boys score lower and the boys are given an opportunity that they did not work for, because we want to make a social balance in the society. We could talk about that.

We can talk of women not being in Parliament and we can say that enough of them are not here because of discrimination, when it may very well be not grasping the opportunities, not wanting to present ourselves—so many reasons. We can even say from the Tobagonian point of view that we feel, as Tobagonians,

that we are discriminated against. We could say that. So I think that we should try to guard against blaming every type of lack of opportunity or, whatever it is, on being discriminated against.

It also gives some people a reason not to perform; a reason not to try; a reason not to make efforts, because they could always blame somebody or blame a condition. So I want us to be very careful.

You see, there is where I thought that we were concentrating on discrimination as against giving equal opportunity, and there is a profound difference between both situations. I remember a saying which a supervisor I worked with said: many times we have to say to ourselves, the only person to keep you back is you, yourself. It makes you feel that you have to overcome hurdles to really move on. But that was just what I wanted to bring to the fore.

As I went through the Bill, on page 7, I want to just rush through some of the points I made on my very own, even before I saw the proposed amendments. I thought that we should not have any definition of sex at all. So I think that the sentence, which reads, “ ‘Sex’ does not include sexual preference or orientation”, should be completely deleted, because here is where I think we are now building in a discrimination. This is how it comes over to me. We are building in a discrimination. I think that under “status” we should take out “sex” and use “gender”, and we are not discriminating against whoever, whatever their sexual orientation, whatever their preference. We have absolutely nothing do to with that because there is a law which says what type of relations between men and men, women and women, is not right and so on, so I think we have enough there. I am saying that we should leave out that sentence totally because I think we could be accused of building in a discrimination. We should also change “sex” in the status to “gender”, because we have used gender in the same clause 7(1) (b). So this is one of my recommendations, my suggestions.

**10.25 p.m.**

In the same clause 7 I would change, “is reasonably likely” to, “intended to” and, “any act which is intended to”, and I will tell you why I am saying that, Sir. If we say, “any act which is reasonably likely to”, it is making it very subjective and the person who feels that another person is offending them, insulting them, humiliating them, intimidating them, feels that he is the one calling the shots, whereas the intention could be totally different. I remember when this Bill was introduced in the other place, the honourable Speaker of the House referred to the Opposition Members as little boys and look at how they behaved and how they reacted to it. They felt very offended. I am sure if one was to ask the Speaker, he

would say probably, “I did not mean to offend them. I just wanted them to behave in a different way. So we see that how one interprets could be totally different.

I can give a little example of a teacher in the infant class, teaching the children the story of Adam and Eve. She told the story and when she was finished she said to the little five-year olds, “Now, you go and draw the story on your slate”. The children went and they drew the story and they came up with their slates and everybody had a God with a big stick and you should see God, man, and everybody was frowning and the little children—you should see. But there came a little boy at the back with his slate and he was smiling very, very broadly. He had his slate and there was God “in he motor car” driving and Adam and Eve were in the back seat. [*Laughter*] His interpretation of the story was totally different. They all heard the same story. Language made a difference. His perception made a difference. His preconceived ideas made a difference. You see, so if we say, “is reasonably likely to”, I could feel like that.

There is the other story told of the family who went to church. The father listened to the preacher and the little boy was there and the father said to them, “He is a poor preacher, he is a poor preacher”. When the little boy threw his collection in, he kept back a 25 cents and when the priest came up shaking hands he pressed the 25 cents into the preacher’s hands. He said, “What is this?” The little boy said, “My Daddy said you are a poor preacher”. He interpreted poor to mean not rich whereas the father meant something else. So I am just using that, Sir, to tell you how we could interpret things from our own standpoint so I think that we should look at that from the point of “intended to”.

Mr. Vice-President, I go very quickly over to page 22 where I see clause 39(1)(c) and I wonder, Sir, why would the commission publish the report? I do not understand. Why should the commission publish the report? Where would they publish the report, and why? I do not understand. I would ask the hon. Attorney General to look at it again, 39(1)(c) “Where the commission is of the opinion”, *et cetera*, they prepare the report, they send a copy to the parties, they make the report available for inspection, but why are they publishing the report? I would like to know, where they are going to publish the report, whether it is in the newspaper or whatever, and why they are publishing the report.

Next, Mr. Vice-President, my real thrust, and where I think the Bill, for me, is really sound and contains the greatest clause in the whole Bill, is clause 27. If the commission takes its functions seriously, working towards the elimination of discrimination, promoting equality and all of this, especially (e), to develop, conduct and foster research and educational programmes and all the other things, I want to congratulate the hon. Attorney General for clause 27. In fact, I think this

is where the Bill came back on track. I thought we lost our way when we included so much of discrimination as against more of equal opportunity and making provisions for equal opportunity. I look at it on this positive aspect rather than on that negative discrimination and guarding—let us provide equal opportunities and then put in the safeguards of, if one did not do that what will happen.

So you see, Mr. Vice-President, I think the crux of this Bill is clause 27 in all its facets. I think that if we should make this the theme, the real core around which this Bill will function, all the suggestions we have heard of comparative religion and education about it, this is what I think will help us, because I will tell you, Mr. Vice-President, our social, cultural and historical background will explain away many of the causes or many of the acts we would think of as discrimination. [*Desk thumping*]

We felt, you know, at times, we coming from Tobago, coming for everything in Trinidad—training college, nursing school, technical education, we thought, what is it? It is really not discrimination. It is a lack of opportunity in Tobago. The more we think of it as discrimination, the more a kind of anger and everything else one found the Tobagonian developing for the Trinidadian and we have to make sure—it is the same thing that happened in things like nursing. I remember long ago, parents who did not want their young girls to live away from home, to be in residence elsewhere, never allowed them to go into nursing and, as a consequence, we found that a certain group of people went into nursing, not because there was a discrimination against those who did not want to go in, but because there was a cultural thing of allowing one's "gyul chile" to sleep out.

So I say, Mr. Vice-President, let us make clause 27 the beginning of the implementation of this Equal Opportunity Bill. Let us educate. Why is it we have so many people in one ethnic group in this job or that job or this or what? Why is it we have—we always say it. We say, "Black people doh like business; dey cannot do business". "Bank doh lend black people money". But when we look at it, "Black people doh like risk". In some instances, "We fraid debt". "Tobagonian doh like dis and dey doh like that". We "fraid jail". "We doh want to trust". "We dis, we dat, we the other". "Is a cultural thing". We like to work hard. One hears people say, "Trinidadian always like to live in rent house; Tobago people like to build their own". "Is a cultural thing".

So when we have something like that, we have to be sure that we do not confuse a lack of opportunity with discrimination otherwise, Mr. Vice-President, if we make people feel that every time something goes wrong we can blame somebody else and call it discrimination, we will have chaos, confusion and violence in this country. Let us stop it. Let us stick with the name of the Bill. It is

not a discrimination Bill. It is not an anti-discrimination Bill. It is an Equal Opportunity Bill. I think we need to stick to that theme and stick to that concept and sort of promote that concept and say, “Here I am giving you an opportunity, use it. Here I am giving you an opportunity, use it. What are the barriers towards it? Do we need for you to change your attitude? Well then, let us do that. Do we need to educate you as to what the opportunities are of how you can get to there? Well let us do that”.

This is why I say, Mr. Attorney General, clause 27 is the theme of this Bill for me and I would like to congratulate you and to hope, Sir, that the little things we have seen going contrary we can fix them up, because, you know, as I was telling my friends when I looked at clause 7—I am winding up now—when I looked at clause 7 and saw “is reasonably likely to”, I turned and told my friends, “Any one of you call me ‘bag of bones’ again, I bringing you up”, [*Laughter*] because, you see, that was a part of our culture. Someone would be thin and so we would say, “bag of bones” and they would call back “big eye”. Someone would meet a fellow in Tobago and say, “Ey, fowl t’ief, wha happening?” “Fowl t’ief” says, ‘Boy, I good’’. He is not offended. Now they are telling him “dat dah is bad to call he fowl t’ief and you calling he fowl t’ief for 20 years. He never t’ief no fowl but he must be make some joke and so on”.

In school I remember I had a very good friend. He mispronounced the word “cavalli” and called it “cocoli” and we have been calling him “cocoli” since then, and he is 60 years old now. So he must come now and say, “I ain’t name cocoli”. But it is a nickname “the fella get” to which he never objected. In fact, if “yuh call him by he right name now he doh know it”. [*Laughter*] So, Mr. Vice-President, let me say to the hon. Attorney General I am sure that everybody will support anything that comes to make us all have an equal opportunity in this land; regardless of gender, class, status, colour, creed, religion, ability, disability, health, whatever have you, I am sure. But, as I said, I would have preferred to see us go with the strength towards equal opportunity rather than towards discrimination. Thank you very much, Mr. Vice-President. [*Desk thumping*]

**The Minister in the Ministry of the Prime Minister (Sen. The Hon. Lindsay Gillette:** Mr. Vice-President, I rise to support the Equal Opportunity Bill. First of all let me congratulate Sen. Dr. Anna Mahase on her maiden speech [*Desk thumping*] and also for that little education on the Concordat. Tonight I would talk very briefly from the perspective of the experience of equal opportunity.

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In 1994 I remember going to the United States. It was a company in a hick town in High Bridge, New Jersey. It was December 5 when I arrived and I remember walking into this company. I was then the chairman and the CEO of this company. As soon as I arrived there were four lawyers to greet me there and one of them said, “Listen, first of all let me tell you something. You are in a foreign country and when you are interviewing people there are certain things that you cannot ask and certain things that you can and cannot do. First of all you cannot ask somebody where they live, you cannot ask people how old they are and you cannot ask people about their religious backgrounds”.

I also recognized that I had a huge task on my hands because I was then the chairman and CEO of that particular company, and it was a public company so I had about 1,000 shareholders to answer to. At that point in time I also realized that there were about 350 employees and that we had to do a certain level of retrenching, so it was a very difficult task. So I went home that night and I thought to myself, “I do not know how I am going to get around all of this”.

The following day I went back to the office and I walked through the factory. I saw some faces and they were looking at me—strange faces—and they kept looking—some vicious, some happy. My Vice-President walked into my office and he said, “Let me tell you something. Just one mile down the road there is the KKK”. Now, we all know who the KKK is—the Ku Klux Klan. I said, “I wonder what I got myself into?” He said, “So just be very careful what you do here tonight, especially as a minority”. That night I left the office and I went out to the car park. Do you know what I saw there on my car? The head of a fish. So I knew I was in for a real ride.

Out of that came a lesson and I realized something. Here I was in a very powerful position in which I could do anything to these people. I could do anything I wanted. I could retrench them, I could do anything. At that point in time also I realized that there was somebody down the road of whom I was very fearful and I realized there needed to be some kind of a balance and it was legislation like this, equal opportunity, that put everything back into perspective. I called one of the lawyers and he said, “Well, you are okay. Just keep on the right track and you are well protected within the law of the United States and everything, and you will be all right”. I also realized how lucky we are as a country in Trinidad and Tobago in terms of the attitudes and the freedoms we have.

**10.40 p.m.**

We also have to realize that sometimes as we advance in technologies and we advance in prosperity and economics, we have to bring a certain balance and

human values back into society. It is really Bills like these that balance and level the playing field.

I am also a believer and one who advocates very strongly that I believe in the next 10 or 15 years women will one day rule this world. In my travels around the world, as a matter of fact, I find some of the sharpest managers and best strategists are really women. [*Desk thumping*] I do not know why, but I do believe that. I have seen it. I have held discussions. I have had a tremendous amount of meetings all over the world and I have found that women seem to be very focussed; they seem to be good at everything all around. I think that we live in a society today that is still very much chauvinistic, unfortunately, and we could have all of the women's rights but, at the end of the day, it is Bills like this one, the Equal Opportunity Bill, that will allow our women in society to progress and to really develop.

When you look at our large and even medium-sized companies in Trinidad and Tobago, many of them are still very much run by men. I really do hope that some day, again, through using legislation like this, that women will be allowed to progress, will probably advance and we will see them one day running this country and our private sector.

On a little note, I think we have to be careful sometimes when we talk about discrimination. It is like a little child whom you keep telling, "I think you are dumb. I do not think you are doing your homework properly." One day, the prophecy comes true. You talked too much about it. We have to be responsible when we talk about discrimination. I recognize that there are certain things that go with it. In terms of equal opportunity, legislation like this, again, brings a certain balance back to society.

Mr. Vice-President, sexual preference is something I really did not want to say much about, but I feel compelled by some of the discussion on that side and some of the arguments on that side. What I want to say, really, is that we have to be careful, as a society, that we do not impose some other value systems upon our value systems. We have to be very careful that we do not become very eccentric in our thinking in that our society must be ready to accept that there is a place and time for everything and, at this point in time, I do not know that we are ready to accept sexual preference. It is something that we have to be very careful of, because our young children of today are looking at us as examples for the future.

I congratulate the Attorney General for bringing this Bill because I think, as I said, it levels the playing field and it brings society back into balance in terms of

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what we are here for. We are all created equally in the eyes of God and regardless of what religion we come from, regardless of how tall we are, how short we are, what colour we are, how we look, as we progress as a nation in prosperity, economic wealth and socially, we also need to balance it to bring it back into perspective. This Bill does that.

Thank you very much, Mr. Vice-President. [*Desk thumping*]

**Sen. Philip Marshall:** Mr. Vice-President, I would just offer a very brief response. Let me also start by congratulating Sen. Dr. Anna Mahase on her contribution.

This is a very important document, in the sense that it codifies principles and values that are important in our nation. However, I do wonder whether, in terms of legislation, it would be as effective as is being proposed. I am saying it is a worthwhile document to be published and shared and I believe that a writer in one of the daily newspapers said that this document should be in the hands of every citizen of Trinidad and Tobago.

I do not think that clause 7—offensive behaviour—really should be in this Bill. I totally agree with some of the sentiments of offensive behaviour in a public place, where somebody takes the licence under the guise of possibly artistic licence to denigrate the position of high office in this country. I am totally against any situation where the holder of high office in this country is in any way embarrassed in a public setting and situation. But, despite that fact, clause 7 does not belong in this Bill.

My focus, as Sen. Dr. McKenzie's was, is on clause 27. Mine would be on the whole issue of employment—clauses 8, 9 and 10. I just want to put a different view to it from this perspective.

The largest employer in Trinidad and Tobago is the Government of Trinidad and Tobago, its public sector agencies and its commercial state enterprises. I would be grateful to hear from the Attorney General, in his response, about whether the principles laid down here also refer to state enterprises. In that context, Mr. Vice-President, I think it is very important for the Government of the day to ensure that all their public agencies live by the principles set down in this Bill.

Mr. Vice-President, we know—and this applies especially in the United States—that on a change in government, you would find that many agencies have a change in leadership. We do have, in our society, when there is a change in

government, that leadership change in terms of boards in government's state enterprises change and sometimes this also translates down to executives within state companies. I pose the question about whether we are going to ensure that in any government if there was a person who had aspirations of becoming or undertaking the leadership role as one of his or her expectations, a change in government of the day would not prevent that person, because of political affiliation, from being robbed of that equal opportunity. In terms of the whole question of our budget, transfers and subsidies, *et cetera*—

**Sen. Rammath:** Will you give way? Are you suggesting that that principle extend to the public service, the army, the police and other departments of state?

**Sen. P. Marshall:** Yes. I am suggesting we must ensure that the principles of equal opportunity and meritocracy extend to all public sector agencies.

In fact, a couple months ago in this honourable Chamber, we were talking about the role of public service commissions and some of the weaknesses of public service commissions. I remember the Attorney General explaining to us the whole principle of the ouster clause, where the removal of that ouster clause removed from public service commissions their ability to then prevent any inquiry into their decision, even if such decision making was invalid and not properly founded and may have resulted in the best candidate for a position for promotion not realizing that goal or dream because of possibly lack of principles being pervasively applied and consistently applied through our public sector agencies.

It is just that we cannot take this Bill and feel that all is well within agencies in which the governments of the day may run or participate as opposed to private sector agencies. In fact, I am, therefore, in a sense, making a case that the governments of the day may have to be very careful that the real challenge in applying this Bill assiduously may lie on their own doorsteps.

Let me give you another example. Again, the Attorney General had piloted the Dishonoured Cheques Act sometime ago and I am talking here now about equal opportunity from an economic point of view. I know of a client in my firm who went bankrupt because he rented a service, validly received and agreed under contract to a government agency but was not paid for 18 months. He went bankrupt. The government agency finally paid him the cheque 18 months or two years after the job was done. He went bankrupt. As far as I am concerned, under the principles of this Bill, the employees of that company were, in fact, discriminated against because that same government agency, in fact, had paid other suppliers and had selected against this specific supplier because "they did not like his head."

We have to be very careful that we apply this Bill without political discrimination and without economic discrimination. Coming back to that issue of the Dishonoured Cheques Act very briefly, you could have a situation where a person wrote a cheque in the belief, based on a contract, that he was going to receive the payment from a government agency which, then, did not pay him. His cheque has bounced and he now faces incarceration because of lack of a promise. That is discrimination under this Bill.

I know the Government of the day is trying assiduously to review the whole issue of appointments and performance management under the Public Service Commission where it is felt we really have to look at the whole issue of performance management and appointments on the basis of meritocracy. Just before making this comment, I turned to Sen. Dr. St. Cyr and I said to him, "Right now, where you have appointment on the basis of seniority, could that be classed as discrimination?" He advised me, "Possibly, but maybe not." Because the rules—as is presently known to everyone—are on the basis of seniority. If those are the rules and those rules are consistently applied, even though the best candidate may not get the job, that is not discrimination. All I am saying is I think we have to move to the next level where the whole underlying objective of a Bill like this is that we have the best talent available to take our country forward in whatever field.

I say that I support the overall importance, tenor and value systems of this Bill. It must be applied in public sector agencies. The problem does not only appear to lie in private sector agencies.

On the comment made by Sen. Cabrera, I must admit that I could see where labour unions have complained about discrimination, but I must also point out an inconsistency in a document put out by the venerable Attorney General. This document is by the Ministry of the Attorney General and Legal Affairs, the Second and Third Periodic Report on International Convention on Economic, Social and Cultural Rights, September 2000, and at page 17, paragraph 65:

"No cases have been reported to the Ministry of Labour and Co-operatives with respect to discrimination on the basis of race, colour, sex, religion and national origin. To the knowledge of this Ministry, there have been no cases where discrimination on the basis of these characteristics is not considered discrimination."

**Sen. Cabrera:** I thank you for giving way, but before you wind up, I just wanted to make reference to the fact that the law, the Industrial Relations Act

which the PNM passed, is very restrictive and oppressive and it is difficult to define a grievance in terms of that point. I just wanted to make that point. This is the reason none has been reported and you are told that this does not form the basis of a trade issue.

**10.55 p.m.**

**Sen. P. Marshall:** Thank you for that, Senator. I was really surprised, myself, to read here that our industrial climate was so brilliant that we did not have one case of reported discrimination. Again, here it was pointed out that to make this effective, we must go after a lot of other supporting legislation for improvement.

Mr. Vice-President, I really want to end with these comments. I wish I could prevail upon the hon. Attorney General to remove clause 7 and change the culture, behaviour and thinking of the people of Trinidad and Tobago, to respect our leaders. We in this Chamber must earn their respect by the way we debate and put forward fundamental issues. Let us not attempt to legislate respect, because one cannot.

**Sen. Dr. George Dhanny:** Mr. Vice-President, I rise to speak in support of this Bill cited as the Equal Opportunity (No. 2) Bill, 1999. Firstly, let me say that we must pay tribute and congratulate the hon. Attorney General for bringing forth, after quite a considerable time, a piece of legislation which is a reflection of the vision of this Government. I want to raise the debate to another level.

I know we have been discussing various clauses and sections of the Bill. The motivation, in my view, for bringing legislation of this nature before this honourable Senate, consists of two factors: ethnic differences and religious differences. I know there appears to be incongruence when one looks at clause 7 of the Bill, which has created quite a bit of problems.

Mr. Vice-President, from 1945 to the present, over 50 years, there has been tremendous conflict in local national wars in the world. In fact, the figures will show that more people died during those internal conflicts than those who died during the two world wars. The reason for that, of course, is not wars between states, but wars within states. The fundamental causes are ethnic and religious differences.

As you know, the hon. Prime Minister has a passion to introduce into the society—which is a plural and multi-cultural society—some sort of legislative framework which will ensure that kind of thing does not happen in this part of the world. If one notices, in all the countries that have been mentioned: Australia,

Canada, United States of America, India and so forth, particularly the developed countries, there is some kind of reduction in the level of this kind of conflict. What do you see when you look at Kosovo, Burundi, Sierra Leone and the Philippines? There are religious and ethnic conflicts. The question is: what does a responsible government, being aware of a threat of that nature, do?

Mr. Vice-President, clearly the Government must act responsibly. What you see here is legislation to try to see how we can minimize the incidence of something of this kind happening in Trinidad and Tobago. We all accept that we try to live well but I do not think that anybody would deny that there is discrimination and grievances on all kinds of bases. We were born here and we know that. What is wrong with an attempt, by a responsible government, to try to provide a framework which would allow you if, in fact, you have a grievance, to take it somewhere? As the Attorney General pointed out, you do not have to retain an expensive lawyer. In fact, you could write a letter and the process would be triggered.

I cannot think of any institution or machinery which would prove to be so convenient to harness whatever grievance any citizen of Trinidad and Tobago may have. The problem within all these developing countries, and we happen to be part of that world, is how diversity is managed. We have had discussions about how it has arisen. People are talking about state power, but how do you achieve power? When that is the goal—it is the biggest goal that one can think of—there must be contest, rivalry and so forth.

What would a rational government do? It would try to rationalize the approach to managing that diversity. There is no other way. What this Bill is trying to, and promises to do, is to bring a rational approach to the management of the diversity that we have in the society. It is not that we are importing something from another country. It is something that we are deciding on our own, and the Government must be commended for trying to instill and establish some kind of stability. There is no point saying—when one recalls 1970 and 1990—that it cannot happen in Trinidad and Tobago. The society and the Government have to be very vigilant to protect the rights of citizens. This would be a way to provide a forum for the ventilation of whatever grievances one may have.

It reminds me of the creation of the office of the Ombudsman, which is something I instigated when I was secretary of the Bar Association. I was able to persuade the PNM government, Sen. Montano was there then, to establish that; the reason was that there was too much fault in the administration. I felt, rather than going to the courthouse every time to get judicial review, constitutional motion

and so forth, that would have been an easy way to do it. One only had to write a letter to trigger it and the Ombudsman would investigate. That was set up, and as far as I can recall, it is for you to pass a judgement as to whether it is effective. I get an annual report from the Ombudsman, whether that report is discussed at any level, I do not know.

Mr. Vice-President, I can compare that with the machinery that is being set up here to deal with this. I believe that all hon. Senators who are thinking in terms of maintaining the peace and stability of this country, and to maintain that in a rational way, would give support. I am sure that we all have some reservations but I am sure that it is not beyond us, together with our very capable Attorney General, to overcome that. But for heaven's sake, let us give our blessings to this legislation, in the interest of national security, peace and harmony.

Thank you, Mr. Vice-President. [*Desk thumping*]

**11.05 p.m.**

**Sen. Dr. Eric St. Cyr:** Mr. Vice-President, I join my colleague in congratulating Sen. Dr. Anna Mahase on her maiden speech. [*Desk thumping*] The hour is late and some of us have been on the go for very many hours before we came here.

I really want to speak to three points; the first is this: I sat on the Joint Select Committee studying this matter, and we had before us many documents. We also interviewed several experts in this area, experts in the political system of this country, experts in gender affairs, and a goodly colleague, who I consider to be a world expert on bi-ethnic societies, Professor Ralph Premdass. We really had the benefit of detailed objective study on this problem.

I fully support the idea of an equal opportunity commission, and in the work we did we realized that we could not cover every possible area, and so the methodology we used was that we chose four areas and they are listed here: employment, education, sale of goods and services and accommodation. We picked a number of variables which we could apply to them, seven in all, we know them, and there were arguments for and against including others, but we

thought that we had pinned a very objective approach to an important piece of social legislation.

I think the coverage of the Bill before us was expanded to include an area which was far less objective than the areas I have mentioned, namely, discrimination on the basis of offensive behaviour, and I think that it is flowing from that piece that we have the contentious clause 7. I am in the quandary that while in principle I support and agree with the noble intentions of the Bill as it stands, I wonder whether the legislation could not cause difficulty where what we are trying to do is to forestall the likelihood of difficulty. I do have a genuine problem there.

I know that there is widespread support, and I think the Government has to be congratulated for very extensive public consultation with a variety of groups, but quite often we find that when we compromise here and there, and patch and cut and contrive, we end up with something that is good for nothing almost. I say again, that is one of my difficulties.

The second area I would like to speak on is that the Bill as a whole is premised on an assumed sociological theory. I am sorry the very distinguished sociologist who sits on the other side is not here, so I could, at least, see whether she would nod up and down or across, as I speak. This Bill is based on the assumption that this is a pluralist society. This is a big unsettled question in sociology. One man called M.G. Smith of California in the United States of America looks at a situation and he says, "Plural society." In other words, a number of quite distinct social groups which share norms and which abut each other, and the way to manage in that situation is to keep them apart.

Another man, R.T. Smith of Jamaica, looks at the same situation and says, "Well, this is a reticulated society; there is variety all about, and what is happening here is that assimilation is taking place, so let us just hold it together and in the course of time there would evolve the cultural integration that we think would settle all the problems."

Somewhere in the middle a man called Lichvart recognizes a consociational model where you have few groups, and in this society, by and large, a large group of African background, a large group of East Indian background and small pockets here and there. In the consociational model, whoever is the majority would be wise to ensure the comfort, security and welfare of the other's group. I think we have a very classic example of that taking place in Lancaster House in London, sometime in early 1962 where one distinguished doctor spoke to another very distinguished doctor and we came out with a happy compromise.

This, in my view, is what I see in our country, a bi-ethnic society such as Fiji, Mauritius, Guyana and Trinidad and Tobago. I think these are the classic examples. They are managed rather differently from the way you approach a plural society. I must say that the plural society model bothers me, in that, where there is competition for resources which cannot be easily resolved, they tend to end in violence.

I am aware that we have been very mature in our society here, and one approach is to say, well, let well alone; if something is not broken do not mend it, you may spoil it. At the same time, if you see a danger up ahead you are wise to make provision before you come there, so that you obviate the likelihood of problems. But I am putting this to the honorable Senate because to me these are all considerations which we must grapple with as we take a decision on this most important piece of social legislation. I do not think that you can fix social situations in the same way as you mend a bridge, but I do not think time enables me to give a good example of how you address that problem.

The third and final point I want to speak to is the issue where the honourable Attorney General so expertly took us through the entrenched provision in the Constitution, clauses 4 and 5. If I may tease him a little, I mean tease the debate out of him a little, I notice that he concentrated on the equality subclauses there and not on the freedoms. We come here as a Parliament to speak to each other, and in a society if we could debate and grapple with the issues, difficult and delicate as they are sometimes, we would come to a better understanding.

I want to suggest that, by and large, the people of African descent coming out of a background of slavery are most concerned about the issue of liberty and would tend to rank liberty far above equality or fraternity. On the other hand, the people coming from the East Indian background, relatively small in numbers in this part of the Diaspora, would be concerned about the issue of cultural assimilation, and so to me their concern would be to guard cultural identity. I did say we have come here to speak professionally and to speak so that we can come to a better understanding of what we are doing. The thing that bothers me about clause 7 is that some of the rights and freedoms which we have, I see them being constrained.

**Mr. Maharaj:** I wonder if the hon. Senator, since this is so important, can tell us whether there is freedom under the Constitution or any law in Trinidad and Tobago to incite racial or religious hatred?

**Sen. Dr. E. St. Cyr:** I do not know, but if there were, I would object very strongly to it.

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Mr. Vice-President, to pick up the argument, the origin of a bill of rights in a constitution has a very long and tortuous history, and to understand clause 7 in our own Constitution we need to recognize first of all that we are living in a Republic. I hope that the Attorney General is not too aggressive tonight, because I notice that he referred both to the 1976 Constitution and to the 1962 Constitution. Well, as far as I am aware, we are no longer under the 1962 Constitution, we are fully now under the 1976 Constitution, which gives us Republican status.

**11.20 p.m**

In a monarchy, there is a king who has subjects to whom privileges are granted. One King James 1 puts it this way. When his subjects approached him he said: "Bring stools for the ambassadors" and Louis XIV is celebrated to have put it this way: "*L'état c'est moi*—I am the State." Under a monarchical system, rights are conceded by the king. Under a republican constitution, rights belong to the people and the people concede to those in authority and what is not given over remain vested in the people. I am of the view that our Republican Constitution has enshrined rights to the people. In other words, we have the right to hold opinions, including religious opinions, and to express them. We have the right to speak freely, to assemble, to enjoy property and so forth and these rights are enshrined and they could be restricted or changed only in a certain way and so, I coming to the place where I think this applies.

While I fully agree that offensive behaviour is not desirable, such as, for example, the burning of the flag—but I understand that only recently when a flag was burnt and you went to the land of the free and the home of the brave, yes, he says you have a right to do that. I also understand that quite recently when a piece of art, very offensive to other people's sensitivities, was put up someplace in New York and it went to the Supreme Court, it again said no, you have that right.

In other words a right, a liberty in a republican situation, is not easily relinquished. They say that the price of freedom is eternal vigilance and so, if I may make this short and quick. I have great difficulty with clause 7 and it is my view that it tampers with the rights. We in Trinidad and Tobago did not fight physically for them ourselves, but I think we could trace them back to the *Magna Carta* and through the American struggles and even the coming of the Federal Constitution. It took the Constituents Assembly probably another 20 years before the wise old man Benjamin Franklin and James Madison got the first 10 amendments put in, which is what constitutes the Bill of Rights in the American system.

The first amendment tells us that Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or bridging the freedom of speech, or of the press or the right of the people peaceably to assemble and to petition the Government for a redress of grievances. That is the first amendment. The bottom line of my argument is, while I am fully in support of the noble intentions of this piece of social legislation—and hon. Attorney General, I concede that if my hands are pressed, I will support the Bill including clause 7—I am saying that I have a great difficulty with it and the whole nation and we, as a Parliament of matured and experienced people, should consider this. I would certainly prefer to see the objective areas that we could really deal with which apply to the social context. The long and the short is, if as I hear so many people say, we might be wise to take out clause 7, that would really be my preference.

Thank you.

**Sen. Diana Mahabir-Wyatt:** Mr. Vice-President, it is very late and I started work this morning at 7 clock, which is 16 or 17 hours ago, but I am the last speaker for the Independents and this is what we get paid for. There are a few things which I would comment on starting, of course, with my congratulations to Sen. Mahase for her maiden address. I hope she will be with us many times in the future. Thank you very much.

I would just like to say how proud I am to be a Member of the Senate and a Member of the Independent Benches. Some of the contributions that had been made tonight on what is perhaps one of the most important pieces of legislation to come before this House have been absolutely awesome, if I could use a phrase from the younger generation. I am very grateful to my fellow Senators for the work and the real care and passion they have put into their contribution, as did Sen. Rev. Gray-Burke for example.

I thank Sen. Dr. St. Cyr for that message which just woke me up completely, because I think it was so important and would live with me for a very long time. I intend to ask *Hansard* for a copy of tonight's debate so that I can use it to talk to other people about the worth of the Senate. I am sorry that we do not have the press and cameras because I think all these contributions should have been recorded for history.

I am not going to repeat everything everybody said. My stand on clause 7, without having heard the Attorney General when he introduced the Bill—because unfortunately, I was not here, is very much the same as that of my fellow Independent Senators—is totally without collusion I assure you. If at all, we have

to move from the stand that was taken which says basically, it does not fit into this Bill, I would opt for Sen. Daly's amendment because at least it makes it more acceptable in terms of expression and freedom of expression and redeeming social content or whatever it is the term is.

I very strongly support the points that were made by Sen. Marshall. I thought that was a unique perspective and one which is very important. The other points which I would like to mention are the support for what Sen. Prof. Kenny said about age. I know we cannot put everything into this particular piece of legislation but I accept this is a very important first step, but I would certainly like to see the whole question of age considered as a second step. This business of retiring at age 65 was set by Bismarck. For goodness sake, why should we have to be governed by some German general from 200 years ago when it comes to determining the age at which people like Sen. Dr. St. Cyr has to retire—because he is 65—with a brain like that? I mean really, but these are things for the future.

The particular clause which I would like to see out is the one supporting the statement made by Sen. Prof. Ramchand, that ridiculously discriminatory clause which states that sex does not include sexual preference or orientation. It is obviously discriminating rather than enabling and people have taken this from different points of view. I would like to look at it from a slightly different point of view to begin with.

As it now stands, it discriminates against women, particularly against heterosexual women, because everybody I know has a sexual preference or orientation. You are either heterosexual, autosexual or homosexual, you are one of the three and whichever you are, it discriminates against you. I will give you an example which has actually come to my attention.

We recently passed a Bill for maternity protection in the Parliament. There are a number of employers who are very annoyed at the fact that they now have to pay female heterosexual employees of child-bearing age during the time when they were absent because of maternity, and there is a law spoken about screening which is going on to make sure that, if at all possible, they do not employ heterosexual female employees of child-bearing age because of the possibility that they might very well have to undergo the expense regarding maternity leave, and possibly other provisions which are coming via the Ministry of Labour and Co-operatives for employees with family responsibilities, which may include different kinds of provisions for leave which are all expensive to employers and because this provision allows you or exempts from discrimination in employment on the grounds of sex which includes sexual preference or orientation.

We should also change “sex” in the status to “gender”, because we have used gender in the same clause 7(1)(b). So this is one of my recommendations, my suggestions.

**11.35 p.m.**

It works several ways. The interpretation of words as Sen. McKenzie pointed out, I like the image of God driving Adam and Eve in a Limousine out of the Garden of Eden, and I am going to think about that, but this particular exemption allows that kind of discrimination to continue. It also allows an accommodation—homeowners to exclude heterosexual couples of child-bearing age from long-term leases and long-term rentals where they do not want children in the house; but they are not going to say so because you come and you do not have children to begin with. This allows that kind of discrimination as well.

I think this has to be taken into consideration. You can interpret—what is it? “The devil quotes scripture for his own purposes.” Well, the devil also quotes laws and can use this kind of law to discriminate against anybody of any kind of sexual preference or orientation. I am not going to do a thesis on this, which is going to take me the rest of the evening. But it discriminates against people who are homosexual, not on the basis of homosexual acts or practices. Please note; because those remain criminalized under the Sexual Offences Act. But on the basis of their preference or orientation, they have not done anything. They have preferred or oriented in one way, and I think that is contrary to individual human and civic rights.

You may consider homosexuality a sin if that is your particular religious persuasion and we have freedom of religion in this country. You can consider it a social or physical disability if you are of that kind of persuasion. But to allow people to be discriminated against, on the basis of their orientation, disability, or sin, if you want, not on the basis of their acts, has to be contrary to the concept of the fundamental rights of a human being. This is not a Government, I think, which is contrary to human rights. It is not a provision about deeds or acts. It is not about stealing, it is not about taking drugs. It is a provision about built-in characteristics; like the colour of your skin or the shape of your eyes, which Sen. Prof. Kenny tells us is something genetic. Something genetic starts at the moment of conception or the genome projectiles has to do with your antecedents, as was referred to by Sen. Prof. Ramchand. If you have a genetic predisposition towards diabetes or you are diabetically oriented, it can be dangerous for you to act in a certain way by eating sugar, but you cannot discriminate against somebody because they are oriented towards diabetes or they have a preference for sugar.

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They may not. You may make sugar outlawed. I think it is a rather strange metaphor myself, but that should not be enough to warrant an exclusionary clause like this one.

It we are going to follow along what Sen. Prof. Kenny said, we also have to consider that there are primary sexual characteristics and secondary sexual characteristics which, if your sexual orientation has to do with secondary sexual characteristics, we are all in trouble in this room. We can take this to ludicrous extent, but I just do not think that this clause belongs in this Bill at this time and I think that legislators in other countries would make mincemeat out of us if we really let this be known.

I, very much, join my fellow Independent Senators, Sen. Prof. Ramchand, Sen. Valere, Sen. Prof. Kenny and Sen. Dr. McKenzie on this and really do wish that we could exclude this discriminatory clause. I would also like to support Sen. Dr. McKenzie on her desire to use the term “gender” rather than “sex”. We have gender neutral policies in this country. We have Minister of Gender Affairs and this is the proper term for what we should be dealing with and not sex, which would take care of the whole thing. There are some statements which have been made this evening in reference to this particular topic which I do take exception to and want to correct because I do not want these to remain on the record.

I have to take issue with my friend, Sen. Rev. Teelucksingh, who spoke of homosexual teachers preying on pre-school and primary-school children. I have been dealing with pre-school and primary-school children for many years and I have never known of an instance where teachers of either heterosexual or homosexual orientation teach about sex in pre-school or in primary school. Where we do have sexual abuse—and believe me I know what I am talking about when I talk about child sexual abuse. The vast predominance of child sexual abuse does not come from homosexual attacks in churches, in schools or in families, it comes from heterosexual attacks.

If we are going to warn children about people doing things to them, I think we had better warn them about heterosexuals and pass laws against the majority of us. You cannot change somebody’s genetic make-up: Genetic make-up is determined by your ancestors. However, be that as it may, I do not want to carry this debate any further. I realize this is the first step. I thank the Attorney General for the work that he has done, for his patience and for the extensive consultations which I know he has undertaken on this, and for getting us this far in terms of trying to deal with opportunities for everybody in the country.

I have strong support for clause 27. I hope that the Commission will move forward and will consider other people like AIDS victims, the elderly people, and there are all kinds of other areas which I think should be looked at. I very much hope this is just the beginning.

Mr. Vice-President, thank you also for your patience. I realize that it is very late and we are all tired and I really hope we can all go to bed soon.

**Sen. Kelvin Ramnath:** Mr. Vice-President, this is the first time for the year that I have been in these Chambers. I am delighted to be seated next to the most distinguished citizen who has made her maiden contribution today and I join with the rest of the Senate in congratulating her for a very, as usual, brilliant contribution. I think Sen. Dr. Mahase is so wellknown for her contribution to the society that our congratulations are in order. I hope, when I return next, I shall be seated next to her.

Mr. Vice-President, I want to be charitable and not take up my full hour. I am used to speaking for very long periods and this is an opportunity to practise for the coming season. I would be failing if I do not enter this debate because I think it is such a very important debate because of the issue being debated here today. I congratulate the Attorney General for the courage he has displayed in standing firmly and steadfastly behind this piece of legislation. He happens also to be my parliamentary representative in Couva South, where I can attest to the fact that he has been doing a great job. [*Desk thumping*] I, therefore, have no problem in being a retired politician.

I want to say, first of all, that I enjoyed the contribution of Sen. Dr. McKenzie and I have learnt from her lessons and I think that the society has a lot to benefit from listening to her contribution with respect to creating opportunities for ourselves and not hiding behind claims of discrimination. There is a direct correlation between opportunity and deprivation of opportunity where such opportunities are afforded to one by the state, for example.

**11.45.p.m.**

I think we—not us, but the PNM representatives in the Senate—will continue to bury our heads in the sand and pretend that because the society was generally a peaceful society under its rule and domination, political domination, that we should continue to ignore the fact that people feel and have felt aggrieved by actions of the state in terms of the dispensation of state power and resources. However, speaker after speaker on the opposite benches has not argued against the Bill in terms of what it intends to do, but have sought to counsel the

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Government against introducing a Bill of this nature because we live in a very harmonious, peaceful society.

There could be harmony and peace and tranquillity if groups in the society are prepared to play a subservient role, politically and otherwise, and allow the dominant political group to do what it wants, how it wants, and pretend that everything is okay. What we are seeking to do with this legislation is to ensure that we put in place processes and systems that will guarantee the rights of our citizens, that will ensure that we do not experience, as other countries have experienced, outbursts of tempers and violence when people feel that they could not take it any more.

This is not only about ethnicity; it is not only about race. In Bosnia, the Muslims and the Christians, the non-Muslims, are of the same ethnicity. In India, there have been difficulties between people of the same ethnicity but there were certain differences in religious beliefs. In Africa we have had people of the same ethnicity but belonging to different tribes. I want to counsel the Opposition and those who are seeking to give the impression that this Bill is designed to create divisiveness in the society, that, on the contrary, if people, citizens, feel aggrieved by the acts of others, they now have an opportunity to express those grievances in a very serious way.

The reason I asked Sen. Marshall, when he asked whether state enterprises will be included, whether he is suggesting that we should also look at the civil service and the police service and other service commissions, is that I am aware that citizens in Trinidad and Tobago believe that there have been and there is discrimination in the selection of persons who work for the state. If one was to look at the public service, the police service, the military and so forth, and other government institutions, one will see a predominance of one ethnic group and there could be many reasons for that.

I have stopped believing that East Indians do not want to be in the police force as the reason for not having a large percentage. It could very well be that they do not want to be in the police force, but we must make sure that citizens have equality of opportunity so that no one can say that they are discriminated against on the basis of race. It does not matter whether it is an Indian Prime Minister in government or a non-Indian Prime Minister. It is a system that exists and we must have faith in that system.

There is much controversy today about the selection of judges to the appeal court and so forth. There is much controversy about all sorts of appointments

because citizens are becoming more conscious of their rights in this society. I cannot understand the furor over this clause 7 because one does not want to encourage people of certain religious persuasions who genuinely believe, in the name of God, that they are acting properly. We experienced 10 years ago a very unfortunate situation during which people actually believed that they were doing the proper thing. I do not like to talk about this issue because I spent six days in this Chamber at the pleasure of a religious group that felt, according to Sen. Dr. St. Cyr, that they had freedom to express their religious views. Some people carry this freedom so far that there is no responsibility associated with that freedom.

If we were to look at this clause 7, there is objectivity and it is written in such a way, that:

- “A person shall not otherwise than in private, do any act which—  
 (a) is reasonably likely...”

That gives the Commission a lot of space, a lot of interpretation—wide interpretation:

“...in all the circumstances...”

It is not a simple matter. The Commission has to look at what is reasonable:

“...all the circumstances, to offend and...”

We add the word “and” to that. It is not taken separately and it:

- “(b) is done because of the gender, race, ethnicity, origin or religion of the other person—and  
 (c) which is done with the intention of inciting gender, racial or religious hatred.”

First of all, Mr. Vice-President, let us not underestimate the ability of the President of the Republic to choose commissioners. This is not the Cabinet. It is not the Attorney General. It is not the UNC. It is the President of the Republic who makes the choice after consultation with the Prime Minister and the Leader of the Opposition. This is not a kangaroo court. This is a group of persons who have distinguished themselves in this society as determined by His Excellency the President, who must determine what is reasonably likely in all the circumstances.

This frenzy about calypsonians, I do not think any commissioner will be bothered about what Gypsy sings in whatever tent he is singing, or whether he does it on a UNC platform. I understand last night in St. Augustine he was in high

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praise of the UNC because it was the UNC who gave him a chance. I do not think the Commissioners will say that because of what goes on in the tent in Port of Spain during carnival time they will not take into account the realities of the society. This is not a criminal offence and I want to insist that if the commissioners were to find that in their opinion the people were inciting racial hatred, such persons are not liable to any criminal action. In fact, it is only a civil action.

One should also look at what the Bill says about what the Commission shall do. They shall focus on conciliating. This is not about putting people on trial, it is first of all about conciliation. So if there is a report about the behaviour of a particular group or individuals or an individual, the Commission first of all will seek to conciliate. Only when that process has been exhausted will it refer a matter to the tribunal. One should observe in the Bill that the head of the tribunal, the chairman, is appointed by the President on the advice of the Judicial and Legal Service Commission. So that person is, in fact, appointed by the Judicial and Legal Service Commission. So we are dealing here with provisions that ensure that one, or the Commission, or the tribunal, will not act unilaterally.

One must take into account the cultural realities of the society. All this emphasis about depriving calypsonians of their right to express themselves should not be a concern, in my view, because steps have been put in place to ensure that there is reasonableness. What it does is to prevent these fanatics, people who feel they have a right in the name of religion to go to every corner of this society and preach hatred. I do not think that there should be any fear from Sen. Nafeesa Mohammed who is aspiring in San Juan/Barataria.

She should have no fear of me. I will be there during that campaign and she could be assured that there will be no hostility against her. She could be assured that there will be no hatred preached against her. All I will do is speak the truth. All I will do is tell the constituency what Sen. Shabazz said today in his contribution and all the innuendoes and insinuations made in this debate. That is all I shall do. I am sure if the late Member for St. Joseph was to have heard the contribution this afternoon and to have known that Sen. Nafeesa Mohammed is associated with people like that, he will be rolling in his grave. He will be turning in his grave, Mr. Vice-President.

This is because what we witnessed here tonight is prevarication, innuendoes, insinuation and threats—if the UNC was to introduce this legislation, these are the likely consequences. Those are threats. That is what we are seeking to guard against by the introduction of this Bill, to prevent people from going out there and

creating a situation that will promote hatred in the society. I am not worried. I want to assure Sen. Valere that one must take into account the realities of the society during an election campaign. I think the Commissioners understand that there will be a lot of “picong” in the campaign, that people will be making accusations, but they also know that there are laws of libel in the country. As a politician one is not supposed to libel or slander people.

**12.00 midnight**

If we were to look at this thing very narrowly, we might say we are going to infringe on the rights of people with respect to their freedom of worship or their ability to gather and speak their words, their piece and so forth. I want to assure you, that is not the intention. In fact, on the contrary, for a government to seek to introduce legislation that seeks to control the Government is a noble act.

This legislation gives us an opportunity to find out why those people who claimed they were not getting contracts in the airport in preference to other people—you see, all those accusations that are made across the country of corruption; accusations against the Government for discriminating against certain contractors can not only be made, but you can use this piece of legislation. Those who have been making the accusations will now have an opportunity and if they do not, then we will know that it was an attempt by certain people to incite political and other forms of hatred in the society.

**Sen. Mohammed:** What did you do in the, 80s?

**Sen. K. Ramnath:** If the accusations they are making about the ferry service between Trinidad and Tobago is one of discrimination, the people of Tobago will have an opportunity to go before the Commission and claim that they are being discriminated on the basis of region.

**Sen. McKenzie:** They will lock up Sen. Baksh.

**Sen. K. Ramnath:** The Government is opening itself to scrutiny. The Government is giving the public a chance and an opportunity to say, “Do not just do like you can do in some places and take me to court”. How many people can afford to take the Government to court if they feel that their constitutional rights have been infringed? Court is an expensive process. But if you feel aggrieved by any act which constitutes discrimination on the basis of all that has been stated here—gender, race, disability, region and so forth—here is an opportunity for us to put into practice a system that will prevent what people are concerned about, that is, people are bursting at the seams because they feel they do not have an opportunity to express themselves.

The violence that has taken place in societies has taken place in those societies because people do not like each other because of differences in ethnicity. Many of these people have lived together for a very long time but when one group can take it no longer, there is the tendency for society to implode. If we assure our citizens in Trinidad and Tobago that here is an opportunity, if state enterprises, when governments change, go about changing their executives and so forth because of political interference; at this time, there is no opportunity unless you perhaps go to the High Court. There is no opportunity for you to complain about any act of discrimination.

I was involved recently in a discussion on gender equality in the oil industry and we had in Trinidad a woman by the name of Miss Otahega who came to talk about the problems that women were experiencing in the industry generally. She was not asking us to train as many welders, petroleum engineers or the other professions dominated by men, but we were talking about the industry creating opportunities in other areas that could benefit women, so if we were running a pipeline and we did not have jobs for women to do welding and fabricating, there could be other jobs created in order to benefit them.

We know in Trinidad and Tobago, as we know elsewhere, that there are legitimate claims by women and by disabled people with respect to discrimination. This is an opportunity.

I see all the time at the Blind Welfare Association in San Fernando, our ministers having to go to speak to them. They have had to take some action because they feel they are not properly treated. This is not the first time blind people, or people who are challenged, have had to take certain actions. But if you notice what blind people are made to do in our society, it is basket-weaving, handicraft and so forth. In other societies, many of these people who are challenged, blind people and other physically challenged people, are doing work similar to any other person. They are involved in computer technology and so forth and we must ask the question whether, as a society: have we really given enough thought to the concerns of the less fortunate members of the society? Where would they go? Where would Minister Gangar, as my Minister, who instructed us to do something—in fact, he was assisting them with the building in San Fernando when we had protests about the poor physical conditions of the building. We got contractors to assist them. They can go before the Commission. They now have a place. They do not have to placard and lock themselves in rooms and hope that the society feels ashamed and the Government feels ashamed. There is an opportunity for them.

There is an opportunity for women who are discriminated against on the basis of gender, who are afraid to go to management in industry and complain about harassment. Although there is a sexual harassment policy in industry, many of those things are written to satisfy a quality management criterion. Do they really have an opportunity to be heard? This Government is giving a wide cross-section of the population the opportunity to be heard. I am quite sure that even the calypsonians, about whom so many things have been said, could also go before the Commission if they feel that they are discriminated against.

I assure hon. Senators that this legislation is not designed to oppress anybody. In fact, it is a most progressive piece of legislation. We cannot continue the practice of a government in a bygone era of dinosaur vintage in a modern technological society. We cannot continue to practise and pretend that people in this society do not have genuine concerns. From time to time, we were listening to what that round table did, until Sen. Rev. Gray-Burke said that the round table was of no value to her group.

The truth is that the Opposition is afraid to deal with these issues. Not only are they afraid to deal with these issues, they do not have the moral authority to deal with these issues. They have set up discriminatory practices while they were in power to stay in power. Those discriminatory practices are not necessarily against any ethnic groups. They discriminated against their own supporters. They kept them in a state of dependency so that they had to depend on handouts from the state. That is why their major objection to any progressive legislation today is that the Government is not handing out one more and more. They are against facilitation by the Government. They want to continue with the practices of the dark, old ages.

I am not surprised about what we have heard tonight. I am not surprised at all, because I was in this Parliament for 15 years, since Dr. Williams was the Prime Minister, and when I hear the undiluted piffle— [*Laughter*] I withdraw that, Mr. Vice-President. When I hear about all the noble things that the Government did and said, it was a leader of the PNM who stood up in Woodford Square and talked about a hostile, recalcitrant minority.

**Sen. Shabazz:** You have gone there.

**Sen. K. Ramnath:** Yes. What was that intended to do? We all make mistakes. I am not saying people do not make mistakes but I have never heard an apology. We cannot run a society and a country if it is the opinion of the leader of that country, who remained in power for 25 years, that a large number of our citizens

constitute a hostile, recalcitrant minority. We do not want to have a reversal of that attitude ever in this country. If another party is elected into power, you decide to avenge what has happened and, as someone mentioned, I think it was Sen. Prof. Ramchand, he feels that in another election, race will play a very important factor.

**Sen. Shabazz:** When did he tell you that?

**Sen. K. Ramnath:** Race will play a very important factor as time is playing a very important factor with people's bedtime. *[Laughter]* Why is that so? Do people really vote in an election because of what their candidates look like? There has to be some perception that the party for which they are voting will represent their interests. But if we are to change that perception in a society which we all know belongs to all of us and in which we are all interested in developing, then we must put institutions in place so that people will feel they are treated fairly and equally.

**Sen. Shabazz:** Thank you.

**Sen. K. Ramnath:** It will not help the argument, Mr. Vice-President, for us to claim that we are trying to avenge the situation, that we are seeking to divide the society, that we must leave the society as it is and everything is going well. I think that we are simply misleading ourselves.

I want to wind up at this stage and to assure you that the decision to bring this piece of legislation was not taken a few days ago, or a few weeks ago, because it was close to an election period. This, as we know, was tabled a long time ago and was the subject of consideration by a select committee. Therefore, I feel that it would be the right thing at this stage in the life of this Parliament to give its support to a progressive piece of legislation designed to ensure that we are taking the steps to build a truly harmonious and united country.

Thank you very much.

**12.15 a.m.**

**Sen. Nafeesa Mohammed:** Mr. Vice-President, it is now 12.15 a.m. and we are here debating a piece of legislation which certainly raises some very serious issues that affect us as a nation. It is rather unfortunate that we have to be here in the wee hours of the morning, to talk about such a significant piece of legislation, especially as it is coming on the eve of a general election in our country.

We know that throughout the world, in the history of mankind, people have given up their lives in the struggles for liberty, equality and justice. As we sit here

through last night into today, participating in this debate, I confess that, to a great extent, it was, indeed, very edifying.

I take this opportunity to congratulate Sen. Dr. Anna Mahase on her maiden contribution in the Senate on this very important debate. *[Desk thumping]* Indeed, it was very interesting, and rather unfortunate, that she was so brief in her recollection of those very important historic facts pertaining to the education system in our country. When I listened to her speaking about their vision with respect to our education system, and what was being pursued at the time, and the manner in which our education system was evolving, I was reminded of that statement one often hears—at least I have heard it so often—"Once a PNM always a PNM".

**Sen. Shabazz:** Always!

**Sen. N. Mohammed:** Always. With all due respect, and I do not mean this in any derogatory way, she sounded like a true PNM person, endowed with the ideology of the People's National Movement. *[Desk thumping]* I will go so far as to say, even the Prime Minister of Trinidad and Tobago, today, seems to be a PNM person, because the UNC certainly appears to have gone PNM. They are all going PNM.

Mr. Vice-President, we are dealing with a piece of legislation that talks about discrimination. I remember over the years, Sen. Kelvin Ramnath spoke about speaking the truth. I am glad he made that statement, because when we come here day after day, and week after week, and the prayer is said, that is what we are about. We are supposed to be here to speak the truth and stand for what we believe in. That should be our right.

Mr. Vice-President, the words used in this Bill before us are so loaded. If one attempts to define "equality of opportunity" and "discrimination" and so forth, it takes into account a whole set of emotions and realities. Sometimes, when I listen to Senators on the other side, they have a tendency that anything that is happening that seems to be going wrong, it is always a case of blaming the PNM—I want to know if the PNM exists in so many other countries in the world where people experience racial discrimination in all forms and fashion. They are always quick to blame it on the PNM.

When Sen. Ramnath talked about speaking the truth, and he made references to dinosaurs, particular eras and so forth, I think he was probably looking in a mirror, because this is what we have had in the past: where this message of inciting racial hatred was being promoted over the years, and we know by whom. It is there. It is all recorded.

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[SEN. MOHAMMED]

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Mr. Vice-President, I do not wish to be misquoted or to be interpreted in the wrong way in terms of what I am saying, because in terms of the intent, or the purpose of the legislation that is before us, I certainly, as an individual, would be very interested in finding an appropriate mechanism to achieve equality in our society and to eradicate discrimination in whatever form it may exist. I think much of the debate that has taken place here on this particular Bill—a lot of what was said on the issues, with respect to this Bill, particularly on our side—is in terms of whether an equal opportunity commission is, in fact, the right mechanism at this point in time, in the evolution of our country. It is not as though we are against the idea of some appropriate mechanism to deal with inequalities and discrimination. We know in all societies these problems exist. We certainly would like to achieve the appropriate mechanism.

Mr. Vice-President, in terms of whether this Bill will, in fact, deal with these problems, we have expressed many concerns on what is coming across in the way this Bill has been handled. The hon. Attorney General, in his presentation, made mention of the fact that this was one of their election promises in 1995: to establish an equal opportunity commission. So, five years later—now that we are on the eve of a general election—he is trying to get it passed so that next week, next month or whatever is to come, he is going to boast on the hustings about the equal opportunity legislation that they brought to which the Opposition objected and so forth, in typical fashion. We know that is what he is going to do.

The fact of the matter is that, if even we were to agree that an equal opportunity commission is the right formula or an appropriate mechanism for dealing with these problems; if even we were to agree with that, then what we are saying is that we have reservations about the Bill in its present form, particularly as it relates to clause 7.

Mr. Vice-President, I would just touch a bit on clause 7 because Sen. Kelvin Ramnath took some time off to refer to this clause and to emphasize the wording used

"(1) A person shall not otherwise than in private, do any act which—

(a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;"

That is just the concern we have. This question of "reasonably likely" is a very subjective matter. It is very subjective. *[Interruption]* It is!

Mr. Vice-President, I would just make reference to a certain chronology of events that unfolded with respect to this particular piece of legislation that is before us here at this hour.

**12.25 a.m.**

Mr. Vice-President, from what I gather, in 1996 a Working Paper was produced with respect to equal opportunity legislation; the date here is January 17, 1996. From the records it is an established fact that a Joint Select Committee was established. I think the precise date was somewhere in February 1997 that the House of Representatives agreed to a particular resolution. When you look at the Terms of Reference of this Joint Select Committee, you would see that they were specifically asked to consider the Working Paper and to submit recommendations to Parliament thereon with respect to equal opportunity legislation. I have just browsed through some of the proceedings, and from my observation the committee was actually focussing on this Working Paper, but to say that it was specifically mandated to focus on the Bill that is before us, I am not too sure that that was, in fact, the mandate of this committee.

In any event, in typical fashion, a Bill would have been produced, and it would have been taken for granted that this Bill is what the Law Commission and the committee would have wanted in these terms. This is the impression that would have been conveyed. They talked about all the consultations and so forth. The document here has a listing of all the various groups or individuals who submitted comments, but their comments were in respect of the Working Paper. When it comes to this particular Bill that we are debating here this morning, it is a very different story altogether.

When I look back at some of the newspaper clippings, what I can see and what I recall is that it was some time in June of this year that very hurriedly—well, there had been some public outbursts or furore with respect to the Bill that was actually produced, particularly with respect to clause 7. The furore came from not just the calypsonians, but certainly from the religious bodies and various groups in the society who were concerned about certain basic fundamental rights and freedoms. The concern was that this question of offensive behaviour was going to restrict certain rights that we have always enjoyed over the years.

What I noted was that, I think, somewhere around June 16—the hon. Attorney General would be very familiar with the sequence of events—the objections that came about caused certain very rushed meetings to take place with the Attorney General, the Prime Minister and certain religious bodies. On one occasion I think

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there was a meeting even with the Inter-Religious Organization. The impression that was given through the media on the day of that meeting was as though there was general consensus about the particular Bill in its form; only to realize days afterwards that there were, in fact, some concerns still being expressed with respect to that Bill, particularly as it related to clause 7, because it has an impact particularly with regard to our religious bodies and organizations, especially with respect to clause 7(1)(a).

I know that in the Bill that we have before us, the hon. Attorney General included some amendments, and there is an amendment to clause 7 where the subclauses would be renumbered and a new subclause (3) is inserted which says that this section does not apply to acts committed in a place of worship, and that was intended to be some kind of compromise position to appease these religious bodies. Has it really alleviated the problem or addressed the concerns that are being expressed?

I am submitting here at 12.30 in the morning that this particular amendment certainly does not address the problem and the concern that has been expressed with respect to clause 7 and the fact that it will take away the right to preach, and it will affect that freedom of worship right that we have enshrined in our Constitution. Whilst it is that these discussions took place, I have had discussion with some persons who were actually involved in those discussions, and some of them had not even studied the Bill properly. They went to the meeting and "bam, bam, bam" whoever had their various points and what was taken on board it was a *fait accompli*. There are still some very legitimate concerns.

I would just like to put on the record, as late as it is, I do not wish to be deprived of my equal opportunity to participate in this debate here this morning, because it is a very significant one, and it is not my fault if we are sitting here at 12.30 in the morning. If they want to railroad things through and do it because the election is coming up, and five years ago they could not do it—now they want to do it because they want to go on the hustings—Mr. Vice-President, so be it.

I would like, just for the record, to say certain things, because I stand here—yes, I am a Senator, I a member of the People's National Movement, but I am also a Muslim. The world view of Islam is such that Muslims believe in the unity of mankind and, as such, acts intended to incite racial, gender or religious hatred are unacceptable. In addition to the oneness of mankind, world view Islam seeks to establish peace by setting righteousness as the goal of every Muslim. I am sure this is applicable to people of all religious persuasions. Offensive behaviour is certainly not concomitant with righteousness. Furthermore, Muslims are

cautioned about their behaviour, especially when inviting others to Islam. Muslims, therefore, feel very secure that they cannot be accused of offensive behaviour especially in their inviting to Islam.

I have read this in a certain context, because I have a document before me which is a statement that was made by one of the Muslim bodies in this country with respect to the Equal Opportunity (No. 2) Bill. It is dated August 5, 2000. In this document the view expressed is that through clause 7 people may claim that they feel offended, insulted or humiliated by verses of the Qur'an recited or quoted in public via broadcast of sermons, speeches, debates, handbills, tracts and stickers *et cetera*, and this concern does not only come from the Muslim community.

I am hearing the Attorney General mentioning a particular grouping within the Muslim community, I think it is the ASJA group. Even if he wants to go that far to talk about the ASJA supporting the group, I have here in my hand a newspaper clipping from the *Trinidad Guardian* of June 16, page 5. It says here: "ASJA wants clause 7 adjusted." The adjustment does not go far enough, that is the point I am making. I would like to put this newspaper article on record:

"'Muslims are also concerned about the controversial clause 7 of the Equal Opportunity (No. 2) Bill 1999,' Dr. Mansoor Ibrahim, President General of the ASJA said.

The ASJA leader said Muslims would like some adjustment to the clause. 'Clause 7 we feel needs to be adjusted and looked at,' he said. He said the legislation must be adjusted to ensure that everybody has the right to preach their religion to their people. He insisted that this must be done as long as no attempt is made to incite in the community racial or religious hatred. Ibrahim said Muslims must retain the right to speak out against these things that were wrong in the society. He stressed however that the criticisms must be done with wisdom and beautiful preaching."

**Hon. Senator:** What is the date of that article?

**Sen. N. Mohammed:** This article is dated June 16, 2000, in the *Trinidad Guardian*. [Interruption] I will go further to say that the document that I am reading from now is dated August 5, 2000, and this is not by ASJA but by another Muslim organization. This is the organization that continues in terms of its concerns for clause 7.

**Mr. Maharaj:** What is the name of that organization?

**Sen. N. Mohammed:** The United Islamic Organization; and this organization feels that—

“Clause 7, if legislated, could place unnecessary hardship on the part of Muslims and can be used by non-Muslims as the means of deterring Muslims from practicing their religion and from inviting others to Islam. Furthermore, the UIO believes that clause 7 would also deny non-Muslims their right to be invited to Islam, a right they already enjoy.

The UIO is also of the view that clause 7 could produce a climate of excessive litigation where intolerance could prevail instead of racial and religious tolerance that the Bill seeks to create. The view of the UIO, therefore, is that it is not in the interest of Muslims nor the spread of the message of Islam that clause 7 should become law in Trinidad and Tobago.

Additionally, the UIO sees clause 7 which deals with offensive behaviour as a non-essential of the proposed legislation which aims at equal opportunity and, therefore, believes that its removal from the Bill would not impact negatively on the Bill as a whole.

**Mr. Maharaj:** Who heads that group?

**Sen. N. Mohammed:** Regardless of who heads the group—and I think at this point in time you have the hon. Sadiq Baksh sitting next to you, I am sure he can enlighten you on that. As far as I am aware, Mr. Faiz Amin has been the head of the United Islamic Organization. Mr. Vice-President, it goes further than putting on record the sequence of events, because they feel they could mamaguy this nation. They had a rushed meeting, and had the Inter-Religious Organization there as though it was a rubber-stamping event. Everybody went in there and "bam, bam, bam" whatever was said by the Prime Minister and whoever else was present—not the priest—the impression that was given was as though there was this general consensus that the Bill in its present form is so good and whatnot.

I have no doubt but to believe there was consensus that the intent, in terms of doing something to deal with inequality and discrimination, there was support for the idea. But in terms of the legislation, *per se*, there were reservations, and as far as I am aware, I remember that it was on the newspaper that Father Christian Perreira had expressed some concerns, and there were other religious groups that still have reservations. It is not just the Muslims, there are other religious groups that still have reservations. I am sure the Pentecostals and other groups still have reservations.

I have in my possession here a letter dated August 7, 2000. This letter was written to the hon. Prime Minister of the country, the hon. Basdeo Panday, Office of the Prime Minister, White Hall, Maraval Road.

“Dear Mr. Prime Minister,

Greetings of peace.

The United Islamic Organizations of Trinidad Incorporated kindly request a brief meeting with you at your earliest convenience to express our concerns about the Equal Opportunity Bill with specific reference to clause 7.”

Mr. Vice-President, a request was made to meet again with the Prime Minister, and I am reliably informed that to this date this audience has not been granted. Unless the hon. Attorney General was elsewhere in another part of the world, I am not aware that the meeting took place. I said it, this letter is signed by Bro. Imtiaz Ali on behalf of the United Islamic Organization. The fact is that concerns are still being expressed about clause 7. Is it that you are going to disregard the concerns? *[Interruption]* This is not misleading, these are statements of fact. The hon. Sen. Kelvin Ramnath would recall his days in the Parliament when he would get up and talk and really incite hatred and other strong sentiments, not just in the Parliament but in the country.

When you want to talk about discrimination, Mr. Vice-President—I know it is late in the morning—*[Interruption]*—

**Sen. Ramnath:** I will meet you on the hustings in San Juan/Barataria.

**Sen. N. Mohammed:** I would welcome the opportunity to meet with the hon. Sen. Kelvin Ramnath in San Juan/Barataria, because when he comes I would remind him of the days when he was discriminated against in his own party that he formed from Club 88 into the UNC. We have to speak the truth. I want to know how the Equal Opportunity Commission is going to help him to get redress. Even recently, in terms of the selection of candidates, he did not get the Couva South seat—*[Interruption]*—a man who founded the United National Congress.

Mr. Vice-President, with all due respect, Mr. Kelvin Ramnath reflects just one individual, but I am sure as he looks around the country he would see how many thousands and thousands of their own supporters are today more alienated, marginalized and discriminated against by those persons who are today controlling the reins of power under the banner of the UNC. These are facts. This is the truth. *[Crosstalk]* I am not inventing stories, and those who wish to dwell in the past and show absolutely no respect for the dead, far less for the living, let

them do so. As my brother and colleague, Sen. Shabazz said, there is a God above and he sees and knows everything.

**12.40 a.m**

Mr. Vice-President, it is said that the voice of the people is the voice of God. It is only a matter of time. I am not making up stories. I am just simply talking in relation to this Bill about strong, glaring evidence about alienation, discrimination and marginalization that exist in our country today.

When I listened to Sen. Dr. Dhanny, it was really very interesting because he had a very persuasive argument for an equal opportunity commission except, the big difference—and this is where his whole argument fell down when he talked about governments must act responsibly. He knows that he is sitting on the side of the Government which is today controlled by the United National Congress that does not have any moral authority to talk about acting responsibly because the records are there in our country from the very top of that organization. When you read the utterances that are made on an almost daily basis, you would see how much hatred and malice—I do not want to use much stronger words but these are the kinds of things that are being festered and being perpetuated in our country. Our country is being insulted today by those who are today in power and acting very irresponsibly.

I would like to know as a citizen of this country what redress would an ordinary citizen have who may have spoken a few words somewhere and only to realize that the words that may have been expressed were deliberately falsified, misquoted and twisted around on a political platform for cheap, political purposes, and they know what I am talking about. Those of you who may have been at St. Augustine would know what I am talking about. Would this Equal Opportunity Commission give me any kind of redress or give another citizen redress for being attacked and whatever one may have said is being twisted around and distorted?

Mr. Vice-President, when I talk about the lack of moral authority by this UNC administration to talk about equal opportunity and to talk about an Equal Opportunity Commission, I feel very strongly about what I am saying. We heard the hon. Attorney General make mention of the fact that since in the days when his leader, who is today the Prime Minister of this country, was sitting as Leader of the Opposition, that he did in fact set up an office or commission of some sort in the office of the Leader of the Opposition to deal with equal opportunity matters. I do not know in what year this may have been set up. In 1991 I am told. I am curious to know for the record.

I know the hon. Attorney General's blood pressure would go up when I say this, but I would like to know. This Bill is very significant. This Bill talks about gender issues too, and it deals with the treatment of women and discrimination against women, and when a woman involved in politics or is involved in the affairs of this country is dubbed a Trojan mare, what is that and what redress does that person have? Therefore they are telling me, do not go down that road but that is the road they have come from and they know the road and it is filled with potholes, and not even Senators Sadiq Baksh and Carlos John combined could fill those holes. Those holes are so gaping, they are in the annals of our history and I know that blood pressures will go up with it. But when they want to talk about discrimination, the records are there for all to see.*[Interruption]* May his soul rest in peace and I can go on but it is 12.45 a.m.

Mr. Vice-President, the particular piece of legislation we have before us, it is an established fact—Sen. Kelvin Ramnath gives the impression that this Bill is going to solve the problems that exist in our society—feelings of discrimination or whatever inequalities that are being expressed. I wish to remind the hon. Senator that in Trinidad and Tobago we still have a Judiciary and we will strike at all attempts to preserve the independence of our Judiciary because that is one of our roles as an Opposition in this country. It is an important arm of state and I say this because we know without this Bill that in Trinidad and Tobago for all these years we have always enjoyed certain rights and freedoms which are well enshrined under Chap. 4 of our Constitution. They are well established and well entrenched and the hon. Attorney General has been a champion in his earlier days for the protection of those rights.

If it is that you feel aggrieved as a citizen and that one of your rights is being infringed, you have that opportunity to go to the courts and seek redress as it has been done so many times. You may argue that the cost of going to court is very high but the hon. Attorney General has boasted about changes to the legal aid system and making the legal aid system more accessible and affordable so the ordinary citizen can get redress in the event that his or her rights are being infringed. Quite apart from the mechanism of constitutional motions we know, when you read our Constitution there are specific words that deal with our rights.  
*[Interruption]*

**Sen. Ramnath:** Are you in agreement or disagreement with the several statements made by the President of the Law Association, of which you are a member, with respect to the manner in which the Judiciary is operating?

**Sen. N. Mohammed:** Mr. Vice-President, I am not going to be side-tracked into any discussion or debate on the Judiciary, especially with the hon. Attorney General around, especially after we heard the Chief Justice's speech two weeks ago. We would not go into that at this late hour. We would hope that the MacKay Commission, whatever the report is, would deal with that. The administration of justice is a matter of great concern and the independence of our Judiciary are two very important matters that our nation is very concerned about because we know, never before in the history of our country and with all past governments that have governed this country, have you ever had—imagine the Chief Justice of this country and even the Presidents and former Presidents coming out in defence of the independence of our Judiciary. That is the legacy that this UNC administration would have left for us in this country. That is what would be recorded in the annals of our history—the attack on the independence of our Judiciary.

I would not want to go there. That is going to be the core of our democratic existence. With all due respect, I know Sen. Ramnath was recently promoted on the Environmental Management Authority Board and we congratulate him. The Environmental Management Authority, of all institutions, is supposed to be an independent body, so when he wants to talk about the Judiciary he must know about the independence of these institutions.

The point is that for all these years there have been provisions and there are mechanisms, you do have recourse to the courts when your rights are being infringed. In terms of awarding contracts, I simply remind the hon. Senator of the recent decision of the High Court of this country in the case of *Jusamco Ltd. vs Central Tenders Board* that dealt with the interference with the Central Tenders Board operations in terms of the awarding of contracts. I will give the judgment number to the hon. Senator whenever he so wishes.

The fact of the matter is there are mechanisms in place and we are saying, in terms of this particular commission set up, we do have reservations about how this commission will actually deal with these problems and we will see it just as an election ploy they are using to go on the hustings and boast about equal opportunity. Really, there are genuine concerns that, if anything, it may amount to institutionalizing some of these concerns that have been expressed with respect to discrimination and so forth.

This is not to incite fear in the minds of people, but this is a reality. It is felt that this is not perhaps the right way to go. We have pieces of legislation, we have institutions in place, let us try and make them work and, at the end of the day, whatever it is, this whole thing is about managing our diversity. We know we are

a mixed society of many races, classes, colour, creed. Let us truly live up to the words of our national anthem and, regardless of election or no election, as a nation let us try to bring together some unity, peace and harmony in our country rather than this continuous kind of dogfight.

Mr. Vice-President, I am hearing Senators yawning. I do apologize, I am sorry, but I am entitled to speak for an hour and I can go on but, fortunately, at this point I will take my seat and wish everybody a very pleasant morning and I look forward to seeing Sen. Kelvin Ramnath on the hustings in San Juan/Barataria.

Thank you.

**The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj):** Mr. Vice-President, I think I must record, on behalf of the Government, the thanks that the Government has for the contributions which have been made. Speaking for myself, I think this is one of the best debates I have witnessed and participated in. I have enjoyed the debate tremendously and there have been great contributions made in this debate. There has been fun, there have been criticisms, but criticisms which obviously one would have to take into account. It is a most important piece of legislation and I think that we should all be complimented for being here at 12.50 a.m dealing with this matter.

This is not a Bill which came, as you know, which. Sen. Mohammed is trying to give the impression that the Government has come now to pass it. It is a Bill which came very early in the administration. It has gone through a long, consultative process and in order not to waste the time which has been done, the Parliament's view is being got in order to ensure that all the work was not frustrated and used in vain.

Mr. Vice-President, I would also put on record the congratulations to the maiden contributions made by Sen. Dr. Anna Mahase, and I join in saying that she is one of our distinguished ladies who has distinguished herself in the field of education and also in the field of social work, and she is obviously a shining light to the people of Trinidad and Tobago and to the region.*[Desk thumping]*

Mr Vice-President, in responding to this measure I would not be very long but I would have to deal with some of the matters. If I may say so, there is a lot of misunderstanding about clause 7. This is a Bill that I have spent a lot of time with and it has given me a lot of anxious moments. I have been able to consider some of the matters which have been said, and I think it is in the book of Proverbs which says: "Righteousness exalteth a nation but sin is a reproach to any people."

Discrimination and inequality are sins and if we have a Bill where there is a good clause but the truth is not told about it, or we have a misunderstanding of what the truth about it is, I think that we should really look at it and see whether we would not be doing an injustice by not supporting it.

Mr. Vice-President, the Constitution of Trinidad and Tobago does not give the right to anyone to incite racial or religious hatred, or to engender disharmony at all. As a matter of fact, the criminal law of this country prohibits that and in freedom of speech nowhere will we find that that freedom of speech is a right to incite racial hatred.

Clause 7 sets out basically three ingredients which must be proven and, not proven to a police officer but proven to a commission and, if a commission consisting of persons appointed in the way that is mentioned finds that those things are proven, that is not the end of the matter.

**12.55 a.m.**

It goes to a tribunal consisting of a chairman who is like a judge, and a body consisting of two lay assessors. Even if that tribunal is wrong, it goes to the Court of Appeal, judges of our country who are the guardians of the Constitution.

When a person acts in reasonable self-defence, it is not a subjective test; it is a test which, on an objective basis, whether a person who is attacked, if he kills someone in self-defence—when the court and the jury have to decide that, they do not decide it on the basis of a subjective test. It is what a reasonable person in the circumstances would do. That is what is called in England on the Clapham omnibus, a man on the priority bus route; how you would look at it.

So that where you see in clause 7 that:

“ A person shall not otherwise than in private do, any act which—

- (a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or group of persons;”

But it does not stop there. Even if the person does that, that is not the offence. It goes further:

“is done because of the gender, race, ethnicity, origin or religion of the other person or of some...”

So it is not because somebody says anything about anybody it is a civil offence. It goes further. It must be done also—three ingredients:

“(c) which is done with the intention of inciting gender, racial or religious hatred.”

What has happened here is that the Opposition, when they saw this Bill, realized they did not want it and therefore they said it was taking away liberties. Then sections of the media went with it and there was a lot of misleading. As a matter of fact, in Australia, under the Human Rights and Equal Opportunity Commission, there is a similar clause, that a person can go to the Human Rights Commission.

Why would a party which is an alternative to the Government of Trinidad and Tobago oppose machinery in which poor people would have access to justice if they are treated unequally? The Opposition does not want this because they knew that for 36 years there was need for this. Do you believe that they do not know that this country needed this? Why would a Joint Select Committee consisting of Members of this House and Members of the other House, people of all political suasion, decide that this is necessary? Do you think it is because these people were Einsteins? No! It is because the Opposition does not want this because it believes that if it gets into office it would want to continue some of the same policies that it has done. [*Desk thumping*] That is why.

It came out when Sen. Nafeesa Mohammed was speaking about the contribution made by Sen. Ramnath. What they believe in is to bury these things under the sand. He has made statements which are facts. But what does she say? She said that is inciting racial hatred.

**Sen. Mohammed:** On a point of order, Mr. Vice-President. The Member for Couva South is certainly misrepresenting what I have said, because what I have said was in relation to Sen. Ramnath’s contributions in the past in the Chamber, in terms of inciting those feelings of hatred and racial divisiveness.

**Sen. Ramnath:** That is a serious attack on me! You would not allow her to impute improper motives. Where is the evidence, Mr. Vice-President? She was not here when I was here!

**Sen. Mohammed:** *Hansard!*

**Sen. Ramnath:** You cannot speak like that. You must bring the evidence!

**Hon. R. L. Maharaj:** That is what has happened. She has attacked the motive. He has spoken the truth and the facts, that what has happened is that the PNM administration over the years, when people spoke about the facts, they discriminated against them and they did not want any avenues for redress. They knew that for people to go to court, it costs money.

Mr. Vice-President, do you think Sen. Nafeesa Mohammed does not know that this Bill does not take away the rights under the Constitution for people to go for constitutional review against the state? What this Bill does is provide another redress, not only against the state, but against private sector enterprises, statutory authorities and state-owned corporations. That is what this Bill does.

So how can an Opposition come here today and say that they do not want a Commission? I do not know what is the position of the Opposition, because I would have thought Sen. Shabazz would have recognized that this is a Bill which would protect minority rights, rastafarians. I would have thought that he would have got up and clamoured to support in order to be able to protect the rights of rastafarians! I would have thought that he would have got up and supported the people of Laventille, who, if they feel they are discriminated against, that they are not getting their regional corporations to act in their interest, that they could go before the Equal Opportunity Commission.

It is astonishing that an Opposition party is so politically barren that they could consider that a measure to give equality is against the public interest. It is unbelievable! I think I would like to put on record that all this talk about calypsonians; and this Bill is for calypsonians to prevent them from singing, Sen. Nafeesa Mohammed knows that is not correct. Sen. Mohammed knows that under the Sedition Act of Trinidad and Tobago—I want to read what is the law in Trinidad and Tobago. The law says that if anybody engenders racial hatred or religious hatred to divide the population, it is a criminal offence. This is a criminal matter. This is a criminal matter; this is people going to jail!

What we are putting in this law is to make it a civil offence if a person does that. Why was there no movement to abolish the Sedition Act? If the argument is correct, then I want to read to you how this Act could also be against calypsonians. Mr. Vice-President, this debate has been very important and it is important for the records to reflect, so that when the future generation reads this matter, it would see what an injustice the PNM did to it.

Chapter 11: 04 says:

- “ 4. (1) A person is guilty of an offence who—
- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention;
  - (b) communicates any statement having a seditious intention...;
  - (c) with a view to its being published, prints, writes, composes, makes, reproduces, imports or has in his possession, custody, power or control any seditious publication.”

**1.05 a.m.**

Let us see what “seditious intention” is.

“A seditious intention is an intention—

- (a) to bring into hatred or contempt, or to excite disaffection against Government or the Constitution as by law...or the administration of justice;”

That is one heading.

- “(b) to excite any person to attempt, otherwise than by lawful means, to procure the alteration of any matter in the State by law established;”

That is one. That is not applicable.

- “(c) to raise discontent or disaffection amongst inhabitants of Trinidad and Tobago;
- (d) to engender or promote—
  - (i) feelings of ill-will or hostility between one or more sections of the community on the one hand and any other section or sections of the community on the other hand;
  - (ii) or feelings of ill-will towards, hostility to or contempt for any class of inhabitants of Trinidad and Tobago distinguished by race, colour, religion, profession, calling or employment; or”

Anybody who does this with that intention is liable on summary conviction to a fine of \$3,000 and to imprisonment for two years or on conviction and indictment to a fine of \$20,000 dollars and to imprisonment for five years.

So, Mr. Vice-President, where—

**Sen. Mohammed:** Read 3(2).

**Hon. R. L. Maharaj:** 3(2) has to do with the trial by jury, *et cetera*. Mr. Vice-President where a person in Trinidad and Tobago engenders or promotes feelings of ill-will or hostility and does it on the basis of race, colour, religion, profession, calling or employment by words spoken or by action, it is sedition in criminal law. How is it that if one is introducing a law and in that law one is saying that if

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someone commits some of these same matters, not even as extended as this, but if someone else commits some of these same matters, that one has committed a civil wrong and one may have to pay damages or one may get an injunction to prevent one from saying these things?

They are saying that this is for calypsonians, but this is not for calypsonians. This is for anybody in Trinidad and Tobago who decides to publish matters, not just publish matters, but publish matters with the intention of inciting racial hatred *et cetera*. Who determines that? Who determines now if, for example, as many of the sections in the law that says, one acts reasonably? It is a judge or a magistrate or a jury and that is what is being done. It is not a policeman who is going to decide this. It is not a minister who is going to decide this. It is a court—a tribunal and a court.

So, Mr. Vice-President, are they saying that for the 35 years they had been in government, they supported this sedition law, they supported the fact that it is a criminal offence for anybody to publish matters with intention to inciting racial or religious hatred, but if they have a law in which it is going to be a civil wrong for a person to do similar actions, that they are against it? Mr. Vice-President, Sen. Nafeesa Mohammed knows that there was no basis, but it is typical of the PNM in order to try to incite people to get the wrong impression. All that I can say, Mr. Vice-President, with respect to the matter of the religious leaders, is that I would read part of what Fr. Christian Perreira said about the need for this Bill.

I would like to read what is our position on the Bill.

We recognize the responsibility of this or any government to propose legislation for the good of the nation. We are in support of the Bill's general purpose to outlaw all forms of discrimination and to protect persons who are being discriminated against. Fostering and deepening respect for persons who differ from us is necessary in our society which is being plagued by an increasing lack of tolerance. We insist, especially as a church, we must continue to preach the gospel with clarity and love and at the same time to maintain our respect for other religions. This is the constant teaching of our church and in particular of our Holy Father, Pope John Paul II. He repeated it recently in his Pentecost 2000 sermon, quoted in the Catholic News of the 9th of July. We must avoid some of the mistakes we have made in previous times. We accept that there is need for some form of legislation to deal with discrimination. We need to set boundaries that must not be transgressed

especially in the light of our history. Discrimination has been part of the fabric of our society from the beginning of the colonial period. As a member of the international community, Trinidad and Tobago is a signatory to certain international and regional instruments in defence of human rights, all of which contain a clause of non-discrimination. These require that legislation passed locally should conform to international standards. We have no option on the matter. What about the argument that legislation in place is sufficient? This is not really true. Though Trinidad and Tobago is already committed to an equal society through our Constitution, some of our legislation clearly needs to be amended. We cannot ignore the historical context in which the laws were first made, the laws against blasphemy...”

He continued and he continued.

Mr. Vice-President, in respect of blasphemy, I take the point. I think one of the hon. Senators, I think it was Sen. Rev. Teelucksingh, had mentioned it and I also mention it. That was in the Green Paper but the same thing happened. In the Green Paper it was stated that the Government wanted, in effect, to produce equality by removing blasphemy and making it applicable to all religion. If we check the Green Paper, which has been painted by the Opposition as bad, most of the reforms which have been done with openness and transparency had been in that Green Paper. But if blasphemy was to be corrected, we have drafted laws.

We are coming to Parliament before the session ends, before the Parliament is dissolved, to debate those proposed laws. We are also coming to Parliament, the laws are drafted—they are there—to remove the inequalities that the Baptists and the Orisa faith suffered. [*Desk thumping*] By their worshipping and beating of drums they were liable to be arrested and prosecuted and we are coming to remove those inequalities from the laws of Trinidad and Tobago. So, Mr. Vice-President, when the churches met with us—[*Interruption*]

**Sen. Mohammed:** Would you say that clause 7 also still has that restriction against the Baptist and Orisa movement because of the sounds—clause 7(2) I think it is?

**Hon. R. L. Maharaj:** Mr. Vice-President, I do not think I need to answer that question. Clause 7 has nothing to do with sound.

**Sen. Mohammed:** But it does. 7(2).

**Hon. R. L. Maharaj:** Mr. Vice-President, I do not know. A law student came to me the other day and said, “I do not understand how some of these lawyers do

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not understand this”. In law school they learned that clause 7 has three ingredients of the offence. Mr. Vice-President, I explained it already. It has nothing to do with what we are talking about. We want to remove the inequality that the PNM perpetrated against the Baptist community and the Orisa faith and we are going to remove that. So I do not understand what is the objection.

I would just say that when the churches met us—because many comments have been made about this. The different faiths met us, the different faiths talked about there should be recognition that, in the pursuit of religion and in preaching people’s sermons and doctrines, people should be free to do it at places of worship and the Government accepted that, and I cannot put the church on the same footing as I would put other members of the society. I must say that the church must be on a different level. When I say the church I mean all of the religious bodies must be on a different level, and the Government has taken that position, and if it is wrong then we are wrong.

As I understand it, we would not have any Constitution in Trinidad and Tobago unless the Constitution is founded upon respect for moral and spiritual values and the supremacy of God. The constitution says that. So when we also talk about homosexuality and other matters like this, we cannot at this stage, in light of our Constitution, in light of our laws, take steps in order to give protection to matters which are offences against the criminal law and may be offences against the divine law. So, Mr. Vice-President, the commission’s report itself recognized that there are certain matters which we have to take at this stage and other matters we have to take at a later stage.

I want to give the assurance to Sen. Mahabir-Wyatt that we are going to take these things on board and, as time progresses, we would be able to come to the Parliament. I know she feels very strongly about these matters but this Bill does not discriminate against anybody. What it does say is—just try and picture it. If there is an employer and the employer, for example, is a restaurant owner and there is a situation where somebody, who is a known homosexual, applies for a job and there are five other persons, the employer would be entitled to say, “Well listen, I do not want this person to work in this restaurant”.

The person would not be able to say that he or she was discriminated against because, at this stage in Trinidad and Tobago, the employer would not want to employ the person because one must have consideration for customers and for other members of the staff. It does not mean to say that if the homosexual believes that he has been discriminated against by the state at this time he cannot file a constitutional motion. But certainly this legislation cannot command the private

sector to employ persons who may be offending the law and we just cannot do it at this time, and the Joint Select Committee report said that this thing would need more discussion.

It is very late and I do not want to go any further, Mr. Vice-President. All I would like to say is that perhaps we can remember the words of Apostle Paul when he said:

“Finally, brethren, whatsoever things are true...whatsoever things are just, whatsoever things are pure, whatsoever things are lovely, whatsoever things are of good report, if there be any virtue, and if there be any praise...”

Speak these things. [*Desk thumping*] So, Mr. Vice-President, I say that this Bill is really about truth and, “The truth shall set you free”. Mr. Vice-President, I beg to move. [*Desk thumping*]

*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

*Senate in committee.*

**1.20 a.m.**

**Mr. Chairman:** Hon. Senators, we have some amendments being circulated. What you should have in your possession, other than the Bill itself, are four sets of circulated amendments, two by the hon. Attorney General—one that is presently being circulated—one by Sen. Prof. Kenneth Ramchand and one by Sen. Martin Daly.

We will attempt to deal with the Bill in parts wherever possible, however, with the circulated amendments, we will have to segregate the parts to the extent that amendments apply to those parts.

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

*Question proposed, That clause 2 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 2 be amended in terms of the circulated draft. This is to make clear that state—

**Sen. Dr. McKenzie:** Attorney General, should that be clause 3?

**Mr. Maharaj:** I am sorry. Thank you very much.

*Clause 2 ordered to stand part of the Bill.*

*Clause 3.*

*Question proposed, That clause 3 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 3 be amended in terms of the circulated draft as follows:

A. Insert the following new definitions:

“family” means parents, brothers, sisters and other lineal antecedents and descendants, uncles, aunts and cousins;

“family business” means an enterprise owned or controlled by the members of a family;

“place of public worship” means a church, mandir, temple, mosque or other similar building or temporary structure in which religious activities are conducted whether permanently, intermittently or temporarily.

I have explained clause 3 on the floor of the Senate already; just to make it clear that "state" includes these bodies.

**Mr. Chairman:** We have three different amendments to clause 3, so we will take them one at a time. We could take the last one that was circulated first, the definition of "state". Any comments on that? Then, we have the other one by the Attorney General, which includes the definition of “family”, “family business”, a “place of public worship” and an amendment made to the definition of "Minister".

**Sen. Dr. McKenzie:** Mr. Chairman, in clause 3, the last one we got, does the Tobago House of Assembly come in at all?

**Mr. Maharaj:** That is a very good point, to be absolutely certain. We should specifically include:

(f) the Tobago House of Assembly

The hour of the morning has not in any way dulled the sharpness of your brain.

**Mr. Chairman:** Okay. We have the second amendment on family; family business; place of worship and Minister. Are there any comments on those? Then, we have the one circulated by Sen. Prof. Kenneth Ramchand. Attorney General, do you have any comments on that?

**Mr. Maharaj:** Well, having regard to what I said, I am sure Sen. Prof. Ramchand knows that I cannot go with that at this stage.

**Sen. Prof. Ramchand:** The first amendment is:

Add definition of "discriminate". "Discriminate means to discriminate on the grounds of 'status'.

**Mr. Maharaj:** Discriminate. It says in clause 5 of the Bill how discrimination is looked at on the status of a person or characteristic of a person:

"...the discriminator treats the aggrieved person, in circumstances that are the same or are not materially different, less favourably than the discriminator treats another person of a different status."

That is the text. If I may say, that is the text many countries are using.

**Sen. Prof. Ramchand:** Okay. I withdraw it.

**Mr. Chairman:** Are you withdrawing the amendment to clause 3?

**Sen. Prof. Ramchand:** The one about seeking a definition for "discriminate".

**Mr. Chairman:** Okay. Fine.

**Sen. Prof. Ramchand:** Before I withdraw the one about:

"Delete sex does not include sexual preference or orientation"

I am not really withdrawing it. I am saying it is beaten down, but before it is beaten down, I would just like to say why I proposed it, that it was not being proposed to give licence to homosexual acts. I made this proposal to delete this phrase because I think that this phrase discriminates against persons. During my contribution, I did not have a chance to read something from the Canadian House of Bishops of the Anglican Church, which I believe will put my position very clearly.

We believe as Christians that homosexual persons, as children of God, have a full and equal claim with all other persons upon the love, acceptance, concern and pastoral care of the Church. The Gospel of Jesus Christ compels Christians to guard against all forms of human injustice and so to affirm that all persons are brothers and sisters for whom Christ died. We affirm that homosexual persons are entitled to equal protection under the law with all other Canadian citizens.

I am saying that this phrase discriminates against these persons. Nowhere am I asking that it be written into the law that we are protecting them or giving them licence. I merely want this offensive phrase to be removed.

**Sen. Mahabir-Wyatt:** Mr. Chairman, I would like to just add my comments on this. I do not believe that sexual preference or orientation, which is not an act, which is an intention or a preference, can be included or excluded from discrimination. It is not an act; it is not something overt; it is something innate and I do not see how we can remove something innate from an anti-discrimination provision in the law.

**Mr. Maharaj:** Mr. Chairman, we have considered this for years. This is going on now for three years and we have looked at it from all directions and this Bill, really, is not taking away the rights under section 14 against the state. This Bill also deals with the private sector and I do not think, at this stage, it would be right for us to impose this on employers. I mean, we cannot do it because it would mean that we can be protecting people who are contravening the law.

**Sen. Mahabir-Wyatt:** No. They are not contravening the law. A “preference or an orientation” is not an act. You have to commit an act to contravene the law. With the greatest of respect, Mr. Chairman, this is being used against women because you have a heterosexual orientation and you might produce children at a certain age, we are not going to employ you because you are a heterosexual and, therefore, we are going to have to give you maternity leave. Nobody is going to say it but that is what happens. I mean, obviously, the Attorney General is not able to give in on this. I ask for a division, Mr. Chairman.

**Sen. Shabazz:** Mr. Chairman, before we call for a division, I just want to know what we would use to determine who is a homosexual?

**Mr. Maharaj:** But that is what the judges and the tribunal will determine. There is law on this. For example, when you put self-defence in a law, no government can tell you all the factors that would be considered.

**Sen. Shabazz:** But, what are the criteria being given to the employer or the tribunal to say who is, if the man says he is not?

**Mr. Maharaj:** There are guidelines at the court which have evolved over the years.

**Sen. Prof. Ramchand:** Mr. Chairman, if I say I prefer brandy and I am only drinking rum, can he charge me for drinking brandy?

**Mr. Maharaj:** Well, it is not that.

**Sen. Prof. Ramchand:** Mr. Chairman, I want to offer the Attorney General a compromise. Why do we not, under “status”, remove “sex” and put “gender”, and, when we do that, delete “sex does not include sexual preference”? It would not be necessary.

**Mr. Maharaj:** But, you are on the basis of sex. The Constitution talks about sex and that is the basis of the wording.

**Sen. Prof. Ramchand:** The Constitution—but down below here, you speak about gender in 7(1)(b).

**Mr. Maharaj:** Section 4 of the Constitution talks about:

"...race, origin, colour, religion or sex..."

So that in respect of "status", we have to go with "sex".

**Sen. Shabazz:** Mr. Chairman, I am still not clear. The Attorney General tried to answer me but I would like him to tell me again. How will they determine? Because there are people who look just like you, Attorney General, and they are homosexual. You cannot know. How will you know?

**Mr. Maharaj:** Mr. Chairman, I think that even Sen. Shabazz will know that these things will have to be determined on reasonable basis. Therefore, if you have a tribunal, there will have to be basis for these things, and I cannot remember exactly all of the guidelines, but in all the legislation on this, tribunals and courts have to determine them, but they have to determine them on the basis of some evidence.

**Sen. Prof. Ramchand:** Mr. Chairman, 26 years ago or whatever, when the Constitution was being written, the word "gender" was not in common use; they used the word "sex", but today, 25 years later, the word we use is "gender" so when the Constitution says "sex", "gender" is interchangeable.

**Mr. Maharaj:** I think Sen. Prof. Ramchand was a Member of the Committee and he agreed to having "sex". [*Laughter*]

**Sen. Prof. Ramchand:** Yes, of course. If you are offering me a personal choice between "sex" and "gender", I will agree on "sex".

**Mr. Maharaj:** I was only saying that you agreed to having "sex" put in and not "gender". [*Laughter*]

**Sen. Prof. Ramchand:** Attorney General, it really would not spoil your case to put "gender" here and then delete the other thing.

**Mr. Maharaj:** I really do not want to do that.

**Sen. Shabazz:** Okay. If it is that for homosexuals, how would you determine if it is a bi-sexual or a tri-sexual?

**Mr. Maharaj:** Mr. Chairman, at this time of the morning, I do not know why Sen. Shabazz wants—[*Laughter*]

**Sen. Shabazz:** A tri-sexual is a "fella" who will try anything in sex. [*Laughter*]

**Mr. Chairman:** Could I get a little order into the system, please? We are dealing here with Sen. Prof. Ramchand's amendments. The first one has been withdrawn. The second one, we are going to vote on. His amendment involved the deletion of the definition of "sex".

*Question put.*

*The committee divided: Ayes 6, Noes 17*

**AYES**

Mahabir-Wyatt, D.

Mc Kenzie, Dr. E.

Kenny, Prof. J.

Ramchand, Prof. K.

Marshall, P.

Sultan-Khan Valere, Mrs. L.

**NOES**

Gangar, Hon. F.

Baksh, Hon. S.

Phillips, Dr. The Hon. D.

Gillette, Hon. L.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, Ms J.

John, W.

Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

Ramnath, K.

Teelucksingh, Rev. D.

St. Cyr, Dr. E.

*The following Senators abstained:* N. Mohammed, D. Montano, M. Jagmohan, M. Shabazz, J. Yuille-Williams, E. Job.

*Question, on amendment, negatived.*

**Mr. Chairman:** Sen. Prof. Ramchand, you have two other amendments, are you pursuing them?

**1.35 a.m.**

**Sen. Prof. Ramchand:** With respect to (d):

“Under ‘status’ after (c) insert new (d) ‘social origin’

new (e) ‘ancestry’”

The origin, including geographical origin. I could see that is struggling to suggest—I do not know what it means by "geographical origin". Does it mean geographical origin within Trinidad and Tobago, or geographical origin in Africa or India? I thought it would be neater to say "social origin" and then "ancestry".

**Mr. Maharaj:** Mr. Chairman, we know geographical origin meant Trinidad and Tobago, because Prof. Ramchand, in the report that was signed, talked about that. We operated on that. To make changes like this at this time, I do not know the consequence. Therefore, I would undertake to look at it. This would be a continuing review. I really cannot consider amending it at this time.

**Mr. Chairman:** Sen. Prof. Ramchand, are you pursuing it? Should we vote on it?

**Sen. Prof. Ramchand:** No. I am not.

**Mr. Chairman:** Sen. Prof. Ramchand has another amendment:

"After 'of that person', delete semi-colon and add ' or a relative or associate"

Would you be pursuing that Senator?

**Sen. Prof. Ramchand:** It is just that sometimes, to use a very crude example, people say: "Doh talk tuh she, she marrid ah African" or "doh talk tuh him, he marrid ah Indian." Therefore, the discrimination is practised against—

**Mr. Maharaj:** Mr. Chairman, it has to be "of that person". If the other person is affected, the other person could be the aggrieved party. But it has to be "of that person" otherwise it would be too vague. These are very technical matters, and I really would not want to make a change like this.

**Sen. Prof. Ramchand:** It is too late to fight. If the Attorney General is happy with this, I would withdraw.

**Mr. Chairman:** Much appreciated.

**Mr. Maharaj:** I did not say that I am happy with it. I am not too sure that I could go with it at this time. I really need to study it, but I cannot do it now.

**Mr. Chairman:** That exhausts Sen. Prof. Ramchand's list. We will take a vote on the other two.

*Amendment [Sen. Prof. Ramchand] withdrawn.*

*Question put and agreed to.*

*Clause 3, as amended, ordered to stand part of the Bill.*

*Clause 4.*

*Question proposed, That clause 4 stand part of the Bill.*

**Mr. Chairman:** Sen. Prof. Ramchand, do you have an amendment?

**Sen. Prof. Ramchand:** I do not know if others think it is necessary to put it. I do not know if it is covered by goods and services.

"After 'services' insert, 'the enjoyment of public amenities'".

**Mr. Maharaj:** Yes, amenities would be included. If we change this now, the whole thing would have to be changed.

**Sen. Prof. Ramchand:** Okay, I would withdraw it.

*Amendment withdrawn.*

*Clause 4 ordered to stand part of the Bill.*

*Clauses 5 and 6 ordered to stand part of the Bill.*

*Clause 7.*

*Question proposed*, That clause 7 stand part of the Bill.

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 7 be amended.

**Mr. Chairman:** We have two amendments. We will deal with the amendment circulated by the Attorney General first, which is the inclusion of a new subclause 3. Are there any discussions on that?

7 "Renumber subclause (3) as (4) and insert the following new subclause (3):

'(3) This section does not apply to acts committed in a place of worship'".

**Sen. Yuille-Williams:** I asked the Attorney General—when he talked about a "place of worship"—if the same practice was done in an open-air meeting, whether that made a difference.

**Mr. Maharaj:** If you look at what we just said in clause 3:

"'place of public worship' means a church, mandir, temple, mosque or other similar building or temporary structure in which religious activities are conducted whether permanently, intermittently or temporarily"

It is a place of worship.

**Sen. Yuille-Williams:** If you had a Sunday evening open-air service at the library corner in San Fernando—the same thing I have done inside the church, I am doing outside there.

**Mr. Maharaj:** It has to have a temporary structure.

**Sen. Shabazz:** Or in the Botanical Gardens.

**Mr. Chairman:** If it is a temporary structure.

**Mr. Maharaj:** If one puts up a tent and people have crusades *et cetera*.

**Sen. Yuille-Williams:** That is what I am saying, the same thing I was doing inside the church, if I did it outside—

**Mr. Maharaj:** If you do it in a place that is not a place of worship. This is to cover places where there is a structure; whether it is a tent or a building. If you go on the street and you are doing in on the street, and you are inciting racial hatred, that is another thing.

**Sen. Yuille-Williams:** So the structure is making the difference and not the message?

**Mr. Maharaj:** It is the fact that if it is a place of worship, there is the sanctity of a place of worship. It is to protect what is said at a place of worship.

**Sen. Prof. Ramchand:** Supposing it is done in a tent with a loudspeaker, and people are passing on the pavement?

**Mr. Maharaj:** That is all right. It is a place of worship. Whatever is said at a place of worship is protected. The reason for that is that we have taken the position, rightly or wrongly—if we are wrong God will punish us and we will face the electorate. We have taken the position that what is said in a place of worship must be totally different to what is said in any other place. If a preacher, Pundit or Imam says it in a place of worship, because he is practising and preaching his religion. That is a different situation.

**Sen. Yuille-Williams:** My last question is on the same thing. Something there does not gel. It is the same message, if one has a tent with a microphone and everybody is hearing it outside. If that tent was not there and I am right there with the same message, are you going to tell me it is different? Is it just the shed that made the difference?

**Mr. Maharaj:** Sen. Yuille-Williams, we could talk about this for the entire morning. The fact of the matter is that we have taken the policy decision that, in a place of worship, it is different to if one is outside in the public with a microphone but not in a place of worship. We have taken the position that if it is in a structure, temporary or otherwise, it is a place of worship.

**Sen. Mohammed:** What if as a preacher, Priest, Imam or Pundit, a message was placed in a pamphlet and is being disseminated to the congregation or to people in the community, how does clause 7—

**Mr. Maharaj:** If it is published in a place of worship, there is no problem with that.

**Sen. Mohammed:** What if it is handed out.

**Mr. Maharaj:** But it is protected. It is a place of worship.

**Sen. Mohammed:** No, that means it is not protected then if it is disseminated.

**1.45 a.m.**

**Sen. Shabazz:** Mr. Attorney General, for instance, like the Baptist people who preach on the sidewalk and the wayside preachers, they would not be able to do that now unless they put up a tent? They have to put up a tent?

**Sen. Dr. McKenzie:** Mr. Chairman, I think that we are missing the point of the fact that it becomes quarrelsome or an offence if the people preach and say, "Allyuh go out and kill everybody!" So it depends on the content of what you are saying in the public meetings. The Baptists in Tobago preach on the wayside and they talk Jesus and read the Bible and ring their bell, nothing is wrong with that as far as I am interpreting this, except you start to "cuss" the other people's religion and say, "Go out and kick up everybody and fight," and so forth.

**Mr. Chairman:** We want to get on with the committee stage; one last question.

**Sen. Rev. Teelucksingh:** In what category will you place a televangelist for radio and television? That could also come live from a place of worship. The problem here is offending, insulting, humiliating and so forth. I have heard preachers from radio and television really criticizing and lambasting other people's religion. I just want to ask, because we have not touched on the electronic media. How do you respond to that? [*Crosstalk*]

**Mr. Maharaj:** It would not be in a place of worship. If you look at clause 7(2), if it "causes words, sounds, images or writing to be communicated to the public" it becomes a place of worship if you are televising it. You can preach and talk, but if you are inciting hatred you cannot televise it. If you are saying it and it is at a place of public worship, you can say it.

**Sen. Rev. Teelucksingh:** How will all these explanations reach out, all that you are saying now?

**Mr. Maharaj:** This is why the Tribunal would be there.

**Sen. Rev. Teelucksingh:** Would there be regulations including these things like radio and television? They are not here. Are you making something to help your Tribunal?

**Sen. Mahabir-Wyatt:** The Commission has to be there.

**Sen. Rev. Teelucksingh:** Some of the findings today that are not included in the Bill ought to be recorded for their guidance, some of these questions.

**Mr. Maharaj:** Mr. Chairman, law is not a very exact science. The most you can do is draft it as exactly as you possibly can. [*Interruption*] It may be oppressive to you; it was very oppressive when your government took no steps to deal with the situation, and it was oppressive to you. What the court would have to do, in any matter, is look at the spirit of the legislation.

The spirit of the legislation, this protection, is that whatever is said in a place of worship, even if it can be considered to be inciting religious hatred, is protected. The reason for that is a special situation has gone for places of worship. If, on the other hand, people go outside and have their religious meetings—they can have it, but if they say things which can amount to inciting racial or religious hatred, that is another matter, because it is not in a place of worship.

If from the place of worship things are being disseminated to the public through the television, then it is no longer confined to the place of worship.

**Sen. Shabazz:** Let us say it is not in a church, but you have two preachers on a talk show and they are discussing religion and God, could the same theory apply there?

**Mr. Chairman:** I am afraid we cannot continue fabricating situations and seeking answers. We have to get on with the committee stage.

We have another amendment that was circulated by Sen. Daly. He is not here to comment on it himself, therefore, I think we need to vote on it.

*Sen. Daly's amendments read as follows:*

7(1) Delete and replace with the following:

A person shall not otherwise than in private do any act directed at the gender, race, ethnicity, origin or religion of any group of persons which is done with the intention of inciting gender, racial or religious hatred of the group or intimidating the group.

7. Add a new subsection (5)

It shall be a defence to a complaint under this section to establish that the act complained of has redeeming artistic or social merit.

**Sen. Mahabir-Wyatt:** There are two parts to this; depending on what comes out of the first two parts, then the third part would have to be voted on. Could we just do a vote on the first one separate from the second one, because I think that the new subsection (5):

“It shall be a defence to a complaint under this section to establish that the act complained of has redeeming artistic or social merit.”

This should be considered on its own, because this would take care of the many complaints from the cultural community, writers, calypsonians, whatnot, you still have to decide whether there was any redeeming, artistic or social merit, but I think that it is important that we consider that provision very seriously.

**Mr. Chairman:** Let us vote on all three, one at a time.

**Sen. Mahabir-Wyatt:** Can we take clause 7(1) first and vote on that?

**Mr. Maharaj:** Which one are we doing? Sen. Daly's amendment?

**Sen. Mahabir-Wyatt:** Yes, we are doing Sen. Daly's amendment, clause 7(1).

**Mr. Chairman:** Do you all have Sen. Daly's circulated amendments? There were three amendments circulated. We are going to deal with them as I have them listed, except that we are dealing with clause 7 right now. We will deal with the third one when we reach to clause 30. We are going to deal with the first one under clause 7 now, followed by the second one.

*Question put. [Crosstalk]*

**Sen. Dr. Eastlyn McKenzie:** Mr. Chairman, before you go to a division, when I made my contribution I asked that the hon. Attorney General to substitute the words, "is reasonably likely" for "intended to", but when I looked at (c) I saw where the intention was covered and so I think that that sort of covers what I intended in (a), so I withdraw the suggestion I made.

*Amendment withdrawn.*

**Mr. Chairman:** Okay. We are going with the division.

*Question put.*

*The committee divided:*           Ayes 12,    Noes 16

**AYES**

Mohammed, Ms. N.

Montano, D.

Jagmohan, M.

Shabazz, M.

Yuille-Williams, Mrs. J.

Job, Ms. E.

Mahabir-Wyatt, D.

St. Cyr, Dr. E.

Kenny, Prof. J.

Ramchand, Prof. K.

Marshall, P.

Sultan-Khan Valere, Mrs. L.

**NOES**

Gangar, Hon. F.

Baksh, Hon. S.

Phillips, Hon. Dr. D.

Gillette, Hon. L.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, Ms J.

John, W.

Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

Ramnath, K.

McKenzie, Dr. E.

*Rev. D. Teelucksingh abstained.**Question, on amendment, negatived.*

**Mr. Chairman:** The results of the division reveal a defeat for the amendment. We then move on to the second amendment which is to add a new subsection (5).

*Question put.**The committee divided:       Ayes 14, Noes 15***AYES**

Mohammed, Ms. N.

Montano, D.

Jagmohan, M.

Shabazz, M.

*Equal Opportunity (No.2) Bill*

*Friday, September 29, 2000*

Yuille-Williams, J.

Job, Ms. E.

Mahabir-Wyatt, D.

Teelucksingh, Rev. D.

St. Cyr, Dr. E.

McKenzie, Dr. E.

Kenny, Prof. J.

Ramchand, Prof. K.

Marshall, P.

Sultan Khan-Valere, Mrs. L.

**NOES**

Gangar, Hon. F.

Baksh, Hon. S.

Phillips, Hon. Dr. D.

Gillette, Hon. L.

John, Hon. C.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

John, J.

John, W.

Cabrera, V.

Dhanny, Dr. G.

Teemul, E.

Mahase, Dr. A.

Ramnath, K.

*Question, on amendment, negatived.*

**Mr. Chairman:** We then go to the amendment circulated by the hon. Attorney General, which was for the inclusion of subclause (3) also under clause 7.

*Question put and agreed to.*

*Clause 7, as amended, ordered to stand part of the Bill.*

*Clauses 8 to 12 ordered to stand part of the Bill.*

*Clause 13.*

*Question proposed, That clause 13 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 13 be amended as follows:

“Delete subclause (2) and substitute the following new subclause:

‘(2)Notwithstanding sections 8 to 10, a family business may employ relatives in favour of non-relatives.’”

*Question put and agreed to.*

*Clause 13, as amended, ordered to stand part of the Bill.*

*Clause 14 ordered to stand part of the Bill.*

*Clause 15.*

*Question proposed, That clause 15 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 15 be amended as follows:

“Insert before the words ‘An educational establishment’ in subclause (1), the words:

‘Subject to any agreement or practice between the State and any educational establishment, Board or other institution’.”

I also explained this amendment on the floor of the House.

**Mr. Chairman:** We also have an amendment circulated by Sen. Prof. Ramchand as follows:

“Clause 15(1) After ‘person’ delete ‘-’ and add ‘on the ground of status’

(2) After ‘student’ insert ‘on the ground of status’.

I do not know if Sen. Prof. Ramchand would like to make a comment.

**Sen. Prof. Ramchand:** I was just putting that in to make it absolutely clear on the ground of status, but if the Attorney General feels that it is clear without that, I would withdraw it.

*Amendment withdrawn.*

**Mr. Chairman:** So we go back to the Attorney General's amendment.

*Question put and agreed to.*

*Clause 15, as amended, ordered to stand part of the Bill.*

*Clauses 16 to 25 ordered to stand part of the Bill.*

*Clause 26.*

*Question proposed, That clause 26 stand part of the Bill.*

**Sen. Sultan-Khan Valere:** Mr. Chairman, may I make a comment please. Concerning clause 26(2), in view of the fact that one of the functions of the Commission is a conciliatory role, I want to suggest that where it says "criteria for Commissioner" it be expanded so you can have someone who has mediation skills, conflict resolution skills or who can deal with the issues, rather than limit it to those four fields. I thought you should have something like an educator or people more in the field of—not so much sociology, which is more theory, but culture, race relations or law. I do not know if that could be expanded so that one of the persons could be someone who deals more with human issues, since it is in a conciliatory role that they function.

**2.00 a.m.**

It is rather limited, there are just four and I am sure there are people in other fields who would be able to make a good contribution.

I have a suggestion on clause 42(3) where you have a criterion for lay-assessors and you had there "by virtue of their knowledge of or experience in law, religion, race relation, gender affairs, employment issues, education, culture, economics, social welfare or human rights..." That would be more appropriate. Something that broadens the criterion since the role is a conciliatory one, you need to have people with those skills.

**Mr. Maharaj:** Mr. Chairman, under clause 26, the Equal Opportunity Commission consists of five commissioners and they would have to be appointed from the field mentioned there. Some of the matters mentioned by the hon.

Senator might be taken up in respect of persons in industrial relations or administration. But in an area in which you have people going to a commission, I would think that sociology is very important and it was thought that was very important after all the consultation that was had and, therefore, persons with mediation experience and skills can come under industrial relations or administration.

If the Senator does not mind, I would prefer not to touch it and leave it like that. These things are not cast in stone and the Bill will be looked at from time to time and we can always come back again. Much time has been spent on working out who are the people and I would not want to change this. As you know, ministers rely a lot on the technical people and it is not all the time the technical people are around you and, therefore, I would not like to change this at all.

**Sen. Dr. McKenzie:** Mr. Chairman, I think we have a little mistake in clause 26 B. It should be “re-number subclause (3) as (4) and subclause (4) as (5)” otherwise we would end up with two subclauses (4). There is also a typographical error in clause 18(3) where it says: “Sections 17 and 18 does not render it.”

**Sen. Dr. St. Cyr:** Mr. Chairman, the amendment to 26(C)(3) talks about “established religion.” I take it that is not used in the legal sense, it is used in the principal religions. You see, we used to speak of the established church.

**Mr. Maharaj:** That would not cause a difficulty. Mr. Chairman, I beg to move that clause 26 be amended as follows:

- |    |  |
|----|--|
| 26 | <ul style="list-style-type: none"> <li>A. Insert after the word ‘Commissioners’ occurring in subclause (1), the words ‘including a Chairman and a Vice-Chairman.’</li> <li>B. re-number subclause (3) as (4).</li> <li>C. re-number subclause (4) as (5).</li> <li>D. Insert the following new subclause (3):<br/>“(3) There shall be a panel of advisers to the Commission comprising representatives of every established religion in Trinidad and Tobago.”</li> </ul> |
|----|--|

*Question put and agreed to.*



*Equal Opportunity (No.2) Bill*  
[HON. R. L. MAHARAJ]

*Friday, September 29, 2000*

“A person who alleges that some other person has discriminated against him or has contravened section 6 or 7...”

**Mr. Chairman:** It is correct.

**Mr. Maharaj:** I hope it is not the early hours of the morning, but is it not correct?

**Sen. Dr. Mc Kenzie:** Yes. It is all right.

**Mr. Chairman:** There is also an amendment circulated by Sen. Daly, should we vote on that? He wanted to add a new subsection.

“A complaint under subsection (1) shall not be accepted by the commission unless it is made by a group comprising of not less than ten persons.”

It is officially in front of us so we need to vote on it so I will ask the question.

*Question, on amendment, put and negatived.*

*Amendment negatived.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 30 be amended as follows:

- |    |   |
|----|---|
| 30 | A. In subsection (1) insert after the word ‘section’ the words ‘6 or’.”                                   |
|    | B. Delete the word ‘twelve’ occurring in subclauses (2) and (3) and substitute the word ‘six’.”           |
|    | C. Delete the words ‘on good cause being shown’ and substitute the words ‘in exceptional circumstances.’” |

*Question put and agreed to.*

*Clause 30, as amended, ordered to stand part of the Bill.*

*Clauses 31 to 43 ordered to stand part of the Bill.*

*Clause 44.*

*Question proposed, That clause 44 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 44 be amended as follows:

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44

“Delete subclause (5) and renumber subclauses (6) to (10) as (5) to (9) respectively.”

*Question put and agreed to.*

*Clause 44, as amended, ordered to stand part of the Bill.*

*Clause 45.*

*Question proposed, That clause 45 stand part of the Bill.*

**Mr. Maharaj:** Mr. Chairman, I beg to move that clause 45 be amended as follows:

45(1)

“Insert after the words ‘its orders’ the words, ‘the entry on and inspection of property.’”

*Question put and agreed to.*

*Clause 45, as amended, ordered to stand part of the Bill.*

*Clauses 46 to 57 ordered to stand part of the Bill.*

*New Clause 18A.*

**Mr. Maharaj:** Mr. Chairman, I propose a new clause 18A which reads as follows:

“Insert after clause 18 the following new clause:

Unjustifiable

18A(1) For the purposes of this Act, in

Hardship

determining what constitutes unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) the nature of the benefit or detriment likely to accrue or be suffered by any person concerned;
- (b) the effect of the disability of a person concerned; and
- (c) the financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.

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[HON. R. L. MAHARAJ]

*Friday, September 29, 2000*

- (2) Section 15 does not render it unlawful to refuse or fail to accept a person's application for admission as a student at an educational establishment where the person, if admissible as a student, would require services or facilities that are not required by students who do not have a disability and the provision of which would impose unjustifiable hardship on the educational establishment.
- (3) Sections 17 and 18 does not render it unlawful to discriminate against a person on the ground of the person's disability if the provision of the goods or services, or making facilities available, would impose unjustifiable hardship on the person who provides the goods and services or makes the facilities available."

*New clause 18A read the first time.*

*Question proposed, That the new clause be read a second time.*

*Question put and agreed to.*

*Question proposed, That the new clause be added to the Bill.*

*Question put and agreed to.*

*New clause 18A added to the Bill.*

*Schedules 1 and 2 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the Senate.*

**Sen. Yuille-Williams:** Mr. Chairman, I want to make an observation. I noted in the panel of advisers when I looked at the different fields we have here, the panel of advisers are only represented from different religions to the Commission and yet with the Commission, we are looking at things like employment and several different things. I wonder why only religious leaders were chosen for the panel of advisers for the Commission.

**Mr. Maharaj:** In respect of religion, you would not have all the religious bodies represented on the Commission and in respect of religious matters, we are creating a panel of advisers on religious matters. We are of the belief that religion is a different category, and in respect of matters involving race and other matters, the Commission of the tribunal would be adequately—

**Sen. Yuille-Williams:** Were there enough persons to satisfy those areas?

**Mr. Maharaj:** Yes.

*Senate resumed.*

*Bill reported, with amendment, read the third time and passed.*

**2.15 a.m.**

**SPECIAL SELECT COMMITTEE**

**Trinidad And Tobago Association of Professional  
Psychologists (Inc'n) Bill  
Adoption**

**Mr. Nizam Baksh:** Mr. Vice President, I beg to move the following Motion standing in my name:

*Be it Resolved* that the Senate adopt the report of the Special Select Committee appointed to consider and report on a Private Bill entitled, An Act for the incorporation of the Trinidad and Tobago Association of Professional Psychologists and for related matters.

Mr. Vice-President, permit me to give a short history on this. This matter was first referred to the Senate at a sitting held on Tuesday, April 27, 1999. We received comments on the Bill as a result of the notices published in the Trinidad and Tobago *Gazette* and the *Trinidad Guardian* newspaper. Dr. Derek Chadee, Manager of the Ansa McAl Psychological Research Centre of the University of

*Professional Psychologists (Inc'n) Bill*  
[MR. N. BAKSH]

*Friday, September 29, 2000*

the West Indies, St. Augustine, submitted a memorandum expressing specific concerns with the Bill.

Your Committee considered all the evidence before it and agreed with the submissions made by Dr. Derek Chadee, that the use of the word "professional" in the name of the Association could be misleading and caused a list of the appropriate amendments to be prepared. The promoters had no objection to the proposed recommendations. Your Committee made a careful examination of the preamble and clauses of the Bill and, having regard to all the evidence, your Committee is satisfied that the facts and allegations presented in the Bill are true and correct.

Your Committee wishes to report that it has completed its deliberations and has found sufficient proof and support for the incorporation of this Association by an Act of Parliament. Your Committee, therefore, recommends that the Senate accept the Bill subject to the amendments listed in the Appendix.

Mr. Vice-President, I beg to move.

*Seconded by Sen. Rev. D. Teelucksingh.*

*Question proposed.*

*Question put and agreed to.*

*Report adopted.*

*Question put and agreed to, That the Bill be now read the third time and passed.*

*Bill accordingly read the third time and passed.*

#### ADJOURNMENT

**The Minister of Energy and Energy Industries (Sen. The Hon. Finbar Gangar):** Mr. Vice-President, before moving to adjourn this honourable House, I want to thank all Senators for their co-operation in sitting at this late hour, 2.20 a.m. doing the business of the people of Trinidad and Tobago. I think everybody needs to be congratulated in this particular area.

I would also like to thank, on behalf of the Government, all Senators, the parliamentary staff, and the security staff for their devotion to duty also. [*Desk thumping*] I want to assure Senators that it is purely coincidental that we have sat the latest in the five years with my brief acting as Leader of Government Business.

*Adjournment*

*Friday, September 29, 2000*

**Mr. Maharaj:** We are following in the footsteps of Sen. The Hon. Wade Mark. *[Laughter]*

**Sen. The Hon. F. Gangar:** I just want to crave the indulgence of hon. Senators that next week, mostly likely, we would be meeting on both Tuesday and Thursday. We have a fairly packed agenda. We will start on Tuesday morning with Motion No. 4, to adopt the Report of the Special Select Committee to consider the report on the Summary Offences Bill, 2000 and the Praedial Larceny Prevention (Amdt.) Bill.

Then we would move on to Motion No. 3 on the Order Paper, which is the Working Paper on the Reform of the Management Structure of the Parliament of Trinidad and Tobago. Motion No. 5 is amendments to the Bailiffs Bill. Then we go to the Supplemental Order Paper and we will deal with the Children's Bill package as a package. Then we will deal with the Justice Protection Bill, 2000.

Finally, Motion No. 2, which deals with the Report of the Special Select Committee of the Senate to consider the report on the establishment of the Integrity Commission. We propose to start at 10.00 a.m. and conclude at 10.00 p.m. on Tuesday.

Mr. Vice-President, I beg to move that this Senate do now adjourn to Tuesday October 03, 2000 at 10.00 a.m.

*Senate adjourned accordingly.*

*Adjourned at 2.21 a.m.*