

*Leave of Absence**Tuesday, May 15, 2001***SENATE***Tuesday, May 15, 2001*

The Senate met at 10.30 a.m.

PRAYERS[MR. PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. President: Hon. Senators, leave of absence from sittings of the Senate has been approved for Sen. The Hon. Lindsay Gillette during the period May 10 to May 19, 2001, and Sen. Danny Montano from today's sitting.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence 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.

TO: MR. DAVE COWIE

WHEREAS Senator Lindsay Gillette 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, DAVE COWIE, to be temporarily a member of the Senate, with effect from the 15th May, 2001 and continuing during the absence from Trinidad and Tobago of the said Senator Lindsay Gillette.

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
9th day of May, 2001.”

Oath of Allegiance

Tuesday May 15, 2001

OATH OF ALLEGIANCE

Sen. Dave Cowie took and subscribed the Oath of Allegiance as required by law.

SPECIAL RESERVE POLICE (AMDT.) BILL

Bill to amend the Special Reserve Police Act, Chap. 15:03; brought from the House of Representatives [*The Minister of Finance*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [Sen. The Hon. G. Yetming]

Question put and agreed to.

AIR NAVIGATION BILL

[SECOND DAY]

Order read for resuming adjourned debate on question [May 8, 2001]:

That the Bill be now read a second time.

Question again proposed.

Sen. Christopher R. Thomas: Mr. President, I hope to make a contribution with respect to this Bill that is now before the Senate. I have read the Bill and related pieces of correspondence and legislation including the Civil Aviation Authority Act, the Act in relation to the airport, related Bills such as the Chicago Convention, Tokyo Convention and Montreal Convention.

The present Bill, when approved, would be the third Act in relation to aviation and related matters in Trinidad and Tobago. I therefore begin with three basic questions. Is it the intention that the present Bill will cause to be repealed, the other two Acts in Trinidad and Tobago at the present time? From my reading of the repealed clause of the Bill, this is not the case. I conclude that we are likely to have three Acts running simultaneously. They are the Civil Aviation Authority Bill, the Airports Authority Act and the present Bill. I ask another question: if this is the case, is the present Bill so structured to accommodate the provisions of the two existing Acts which are now before us? Can there be a happy coexistence among the three pieces of legislation?

I have briefly examined the other pieces of legislation in relation to this Bill against four considerations, in order to determine whether there is likely to be a

happy coexistence. I have looked at the purposes and functions of this Bill in relation to the others, the power and competence of the Bills, a comparative analysis of the mechanisms of implementation and the value of the Bills in national aviation interest.

In relation to primary purposes and functions of the Bill, I have noted general purposes, compliance with international obligations, maintenance and efficiency of airports, regulation and promotion of safety and the establishment and operations of airports. In relation to the Civil Aviation Bill, the primary functions are listed as regulations on civil aviation operations; compliance with international obligation; advising the minister on matters related to aviation and promotion and maintenance of high standards of aviation, safety and security within the aviation industry.

10.40 a.m.

Mr. President, clause 10 reads as follows:

“The Authority has the exclusive right to provide the following aviation-related services within Trinidad and Tobago:

- (a) Aerodrome control services at international aerodromes;
- (b) approach control services;
- (c) area control services;
- (d) flight information services; and
- (e) aeronautical information services.”

And it does say “the exclusive right” to do that.

The principal functions and purposes of the Airports Authority Act, as seen in clause 12(1), refers to managing and maintaining the airport, to improve and repair facilities, to ensure the provision of efficient, secure and safe aviation services compliance with international obligations of Trinidad and Tobago in relation to matters of civil aviation.

It, therefore, seems to me in the first instance, that with the single exception of the establishment of airports the primary purposes of the Bill are, indeed, the same. There is a general convergence of purposes in relation to all three Bills, that is to say, the existing legislation and the Bill that is now before us.

Let us take a look at the competencies of the Bill. The competence of the Bill before us, among others, says in part 2—to establish regulations, to give effect to

Air Navigation Bill
[SEN. THOMAS]

May 15, 2001

purposes and functions. Such relations will be designed to promote safety, efficiency and sound development of aviation services and national security.

Part 3 refers to the competence to establish bye-laws through airport operators and to establish fees for airports.

Part 3 is specific that such bye-laws should not derogate from the competencies of the Airports Authority Act and specifically Part 3 clause 8(6) says—if I may find that—

Mr. President, in relation to the competence of the Bill, that is, Parts 2 and 3, the competencies of the Airports Authority to which this Bill is related among its competencies has general and specific regulations and by-laws for all existing Trinidad and Tobago airports and clause 8 (6) also says that the bye-laws and regulations of the Airports Authority will be incorporated as amended to the Bill.

The competencies of the Civil Aviation Authority Bill has, amongst others, establishment of regulations on its air services, fixing of related fees and, of course, exclusive rights as indicated in clause 10.

Mr. President, what in fact we are seeing is that in its present form, the Air Navigation Bill will provide for parallel purposes, function, powers and competencies among the three pieces of legislation which are not sufficiently defined in the Bills to be complementary. In that event we must look to the implementation mechanisms to see how these Bills are going to be implemented since they are not necessarily complementary at the present.

The present Bill will, in fact, be implemented through the Minister, through airport operators and the Civil Aviation Authority. The Civil Aviation Authority Bill will be implemented through its board and its director, not necessarily inconsistent in many respects with the implementation mechanism of the Bill.

The Airports Authority Act is presently being operated through the Minister, the Prime Minister and Minister of National Security. The Airports Authority Act has, as its basic implementation mechanism, a security committee that is drawn up with members of the military service, members of the security service and in fact, it makes very clear in its provision where it states at section 4:

“There is hereby established a Security Committee which shall consist of the following members:

- (a) a Chairman to be appointed by the Chairman of the National Security Council;

- (b) the Chairman of the Authority;
- (c) the Chief of Defence Staff;
- (d) the Commanding Officer of the Regiment;
- (e) The Commissioner of Police
- (f) the Chief Fire Officer; and
- (g) a senior officer appointed by the Chairman of the National Security Council.”

It goes on to say in section 5 (2):

“The Security Committee is accountable directly to the Prime Minister and in his absence to the Minister responsible for National Security.”

So in relation to the implementation mechanism, we see here the Prime Minister is responsible or accountable, the Minister of National Security, the Minister of Transport and there may also be other Ministers in relation to other Bills. So the question then will be: How do we reconcile the level of accountability and implementation if two of the existing Acts, when we have concluded and approved this, will not be repealed? This is for me one of the first stumbling problems in relation to the Bill. In such circumstances, with due respect to my colleague, attorney, Sen. Daly, I believe this is the sort of thing that constitutes a field day for lawyers and attorneys in terms of interpretation of levels.

I know that previous legislation—we are here to make laws—causes earlier legislation to fall, but if we are not derogating from earlier legislation I would suggest that we seek, first of all, to marry the provisions of the three pieces of legislation so that they are in harmony with each other. At the moment they are not and I think this is one of the prime defects in the present Bill in terms of its vision. Let us have a clear identification of jurisdiction, complementary competencies and administrative authorities. There are a number of authorities in the present Bill. The interpretation section defines “authority” as “the Civil Aviation Authority”. Within the Bill we find a number of others. Clause 14 speaks of the Airport Authority, clause 14 (2) speaks of “an Airport Authority and clause 14 (3) speaks of “an Airport Authority, subclauses 4 (8) and (9) speak of “the Airport Authority. As I went through the Bill I became very confused as to what is “an airport authority” in relation to “the” airport authority. How many airport authorities are we going to have? What are their respective competencies? I think we need to get this right before the Bill is approved.

Mr. President, Trinidad and Tobago is one state and one country. The United States is one country and several states; so it is with a number of other larger countries. What we have done here is sought to pattern legislation based on larger countries when we talk about several states and by-laws and other countries that have autonomous jurisdiction within their correspondence. For example, Chicago would have its own airports and its own by-laws and its own airport authority. Florida might have the same. Washington, New York.

10.50 a.m.

When we look at our present Bill, we wonder whether we are seeking to pattern that Bill on external bills without necessarily making the adjustments. We in Trinidad and Tobago, in my humble view, do not need 36 airports, 36 airport by-laws, 36 airport authorities and 36 regulatory acts. We may have an additional airport or two, but one sees that we are moving towards a large area of regulation and by-laws, which seem to pre-suppose the establishment of a number of airports. I do not really understand why this is going to be so. Let us try to have one airport authority, one set of regulations and one set of rules.

Happily, in Trinidad and Tobago, we have one customs authority. If we did not, we might have had several navigators entering through different ports under different by-laws. There are countries not too distant from ours where there are several airports, from which nationals are debarred. The privileged few are entitled and a number of activities take place at these airports that are not necessarily consonant with the national interest. I hope we are not moving in that direction when we talk about the establishment of airports.

I now make a few general and specific comments on the Bill. The Bill offers more than the two existing pieces of legislation, in outreach, in content and in substance. If our existing regulations are not to be repealed, then we need some coherence and connectedness among the pieces of legislation. My suggestion would be the one that Sen. Montano made at the last sitting when he suggested that we look at the different pieces of legislation to ensure that we make them compatible.

In relation to my specific comments, clause 6 of the Bill says:

- “(1) The Authority in exercising any aerodrome licensing function in relation to any aerodrome to which this section applies, shall take into account the need to minimise so far as reasonably practicable—
- (a) Any adverse effects on the environment, and

- (b) any disturbance to the public, from noise, vibration, atmospheric pollution or any other cause attributable to the use of aircraft for the purpose of civil aviation.”

Studies in larger countries continue to indicate that toxins and noise from aviation are increasingly injurious and damaging to the health of population and to the general environment. I consider, therefore, the existing provision to be a little too casual in relation to the seriousness of the situation.

In the Trinidad and Tobago Civil Aviation Authority Act, there is a stronger provision. Section 7(2) says:

“Subject to subsection (1), the Authority shall perform its functions and exercise its powers in a manner that ensures, as far as is practicable, that the environment is protected from any detrimental effects associated with the operation and use of aircraft and for this purpose the Authority shall observe the provisions of the Environmental Management Act and any other written law.”

The present provision in the Bill before us is very casual therefore and I indeed propose to make an amendment to the Bill somewhere along the lines of the provision in the Civil Aviation Authority Act.

Clause 27(1) and (2) seem to be very contradictory. I believe these are the clauses that give the Director of Civil Aviation wide jurisdiction that, in my view, is not consistent with any discretion that should be given to a single officer in relation to any Air Navigation Bill. It says:

- “(1) The Director General may grant exemptions from the requirements of observing any regulation or rule made under this Act if in the opinion of the Director General such action would be in the public interest.
- (2) Save and except as provided at subsection (1), the Director General may not grant exemptions from the requirements of this Act.”

The first instance seems to me to be contradictory and, in the second instance, I believe the authority and the discretion given to the Director General too broad to be a burden on one person. I propose, therefore, that that also be somewhat amended.

Clause 51(1) and (2) also provides for almost absolute discretion by the Director General. I do not propose to read it, but it says that he is able to dismiss complaints without hearing. He has the discretion to accept or reject a complaint without hearing. It does not in the least indicate whether the Director General, in

dismissing the complaint without hearing, has an obligation to reach the persons concerned to give a report in writing or otherwise. It simply says “without hearing”. That sounds to me very peremptory and I think that we should look at that again.

One of most recurrent provisions of the legislation before us is penalties. Penalties range from months to years and from thousands to tens of thousands of dollars. I am not sure whether there is a benchmark for determining whether a prison term should be one year, five years, or whether a penalty should be \$25,000 or \$10,000. We in this Senate are making laws for ourselves. We ourselves may run foul of some of these laws. I ask whether there are some criteria on the basis of which we have penalties that range so widely.

In one particular part, four offences, beginning with a mere apprehension of someone on a flight seeking to do something, to a suspicion that he might do something, the penalty ranges from, I think, one year imprisonment as an offence—I am not sure I can find the relevant clause, but it deals with aircraft in flight and how people should behave on aircraft.

It is clause 22, beginning with subclause (3).

- “(3) A person on board an aircraft in flight who is intoxicated to such an extent as to give rise to a reasonable apprehension that he or she is likely to endanger the safety of himself or herself or the safety of others on board the aircraft shall be guilty of an offence.
- (4) A person on board an aircraft in flight who, without justification, engages in behaviour that is likely to cause serious offence or annoyance to any person...shall be guilty of an offence.
- (5) A person on board an aircraft in flight who engages in behaviour of a threatening, abusive or insulting nature...shall be guilty of an offence.”

Then the penalty for the offence says:

- “(6) Any person who commits an offence under this section shall be liable on conviction to a fine of twenty-five thousand dollars and imprisonment for one year.”

So, we are dealing with four different kinds of offences, and the penalty seems to be the same. Right through the Bill there are different areas where there are penalties and I am not sure on what basis we are concluding that this is a justifiable kind of relationship between offence and penalty.

11.00 a.m.

Mr. President, clause 11(1), compulsory acquisition of land, I am not going to read the clause but it does say that the Minister has the authority by agreement or by compulsion to acquire land. Now given the debate that we had here last week, I read this Bill right through and unless I am mistaken, I find it a little, shall I say, insensitive, coming after that. There is no provision here at all which speaks about compensation, prompt or otherwise. It simply gives the Minister the blanket authority to acquire land by agreement or compulsorily. There is no indication that the landowners or the occupiers would have, at least, the conciliation of a prompt and satisfactory compensation. I propose also to amend that provision because in its present form, it appears to me to be autocratic in the extreme.

Clause 9(5) troubles me a little; it concerns non-compliance of landowners, and occupiers with the directives of the Minister. It says that the Minister should get such assistance and use such reasonable force as is required in the acquisition or the removal of the impediments to land. Mr. President, I trust the police and security personnel of our country—my father was a police officer, big and brawn and kind in heart—I do not believe that everyone shares that opinion. In the interest of those who continue to feel that they need to be secure, I think that provision should be amended because it tends to suggest an undue amount of force in relation to directives of the Minister. I therefore propose to amend that.

Finally, Mr. President, I sit with great unease on an aircraft and any provision that requires optimum safety on an aircraft is a provision that I would support very easily. I wondered, however, about clause 23(2). Clause 23(2) is very wide and it refers to constraint of persons on an aircraft who are not only committing crimes or offences but those who have attempted to commit or who are suspected to be about to commit crimes. It is very broad and it says that any Member of the crew can arrest that person without a warrant and, interestingly, it says that person should be dealt with, without warrant, as is dealt with by a constable who arrests that person, may be, in Trinidad and Tobago.

I do not know whether there is a special formula for a constable arresting people in Trinidad and Tobago. It says in the same manner as a constable as opposed to a sergeant or anyone else but I know that there are reports and there are certain characteristics about how people are arrested in this country. I believe that in the interest, again, of the persons themselves, as much as I am concerned about aircraft safety, that kind of competence should be vested, perhaps in the air, in the pilot or in the senior security personnel on the aircraft and not given to each

Air Navigation Bill
[SEN. THOMAS]

May 15, 2001

member of the crew who will then arrest persons, perhaps without even security training, at their discretion.

Thank you, Mr. President.

Sen. Martin Daly: Thank you very much, Mr. Vice-President, Mr. President, I am sorry. Probably, all these elections are confusing but it does not apply to you, Sir, and I apologize.

Mr. President, my contribution would be relatively brief. I wish to congratulate my colleague, Sen. Thomas, for his masterful analysis of some of the drafting deficiencies in the Bill. I wish to identify completely with what he and Sen. Montano have said about the need to bring into harmony the existing Airports Authority Act, the existing Trinidad and Tobago Civil Aviation Act with this Air Navigation Bill, 2001.

I have said before, Mr. President, how pleasant it is that the Senate is being allowed to do its work in an unhurried fashion by, what appears to be, a new governance in the Senate. I do not know how long it is going to last but it is certainly inuring to the benefit of the country. We had a long debate over the Telecommunications Bill and I think we got a bill with which everyone was pleased at the end. We are having a fairly open debate about this Bill, which I think would produce a better Bill in the end.

Mr. President, I will not point out any of the deficiencies that I see—they largely arise through the lack of harmony of this Bill with the two existing pieces of legislation—because I had the privilege of having a meeting with the Minister and some of her advisors in which they permitted me to point out some of the things in a rather less tedious fashion than doing it here. I would like to thank the Minister for the courtesy which she extended me. She gave me certain assurances about the harmonization of this legislation, which I unhesitatingly accept and, on that basis, I do not propose to dwell on it any longer.

There is another aspect of the Bill about which I feel very strongly and I have submitted an amendment. No doubt as a result of my endeavours yesterday it was submitted a little late and that has to do with clause 3 of the Bill—which I have managed to misplace. I was so anxious to put aside the other legislation that was not in harmony but Sen. Dr. Mc Kenzie is going to come to my rescue. Thank you, Sen. Dr. McKenzie. One of the interesting things about this legislation is that it seeks to harmonize everything to do with air traffic and flying—I like to use simple terms—and puts everything to do with flying in one place subject, as I understand it, to the Airports' Authority continuing to be responsible for the real

estate that is comprised by the airport. So much so, Mr. President, that this Bill purports to spell out, not only what the Civil Aviation Authority and Airports' Authority would do, but also the responsibilities of the Minister responsible for flying—and I insist on calling it flying because as I learned yesterday from the Minister's advisors, flying has to do with things as basic as how wide the yellow line is painted on the ground. I really learnt a lot and I was very glad that I volunteered my services. So it seeks to bring everything to do with flying under this Act and it sets out what the responsibilities of the Minister are going to be. That is spelt out in clause 3 and that is a very refreshing development.

Mr. President, I am, however, not happy with clause 3(b) which I would read quickly. The introductory words say:

"The Minister shall be responsible for the administration of and the execution of this Act and is charged with the general duty of organizing, carrying out and encouraging measures for—"

And it sets out various things. I continue to quote:

“(d) the continuance of an air transport system which satisfies the needs of the domestic and international trade and commerce of Trinidad and Tobago at the lowest charges consistent with the aforesaid standard of safety and securing the sound development of the civil air transport industry of Trinidad and Tobago;”

11.10 a.m.

I simply pick out, Mr. President, the words:

“...satisfies the needs of the domestic and international trade and commerce of Trinidad and Tobago.”

I commend the draftsman for placing expressly on the Minister the responsibility for organizing measures that satisfy the needs of the domestic and international trade and commerce of Trinidad and Tobago. I support that but I am supporting it in an amended form and I will explain the amendment in a minute. First of all, though, it is a welcome relief and it is not often that governments have such a wonderful sense of timing that, as Tobago slips into the airlift crisis, they are bringing a piece of legislation that fixes squarely the responsibility of the airlift crisis in Tobago on a Minister of Government. I compliment the Government and indeed I compliment the Minister for grasping that nettle so firmly, but it raises a few interesting questions.

Air Navigation Bill
[SEN. DALY]

May 15, 2001

Now, it is important and it is worthy of support that air transport to Tobago is being put expressly in the hands of a Government Minister because, until now, Mr. President, we have had signal failures by various persons scurrying around—and I think, on this occasion, I have to return to crazy ants—like “crazy ants” trying to “hustle a drop” to Tobago. So, first of all, we see in today's *Guardian*—today being, I think, May 15—an article by Sita Bridgemohan, Tobago Bureau Chief, “Rough future for Tobago tourism” and I quote:

“BWIA is asking for US \$50,000 per flight in risk-sharing to operate a New York to Tobago route, Rene Seepersadsingh, vice-president of the Tobago Chapter of the Trinidad and Tobago Hotel Association said yesterday. Seepersadsingh said negotiations were continuing with BWIA, which is also considering a Manchester to Tobago run as the island's tourism industry faces a looming airlift crisis with the pull-out of two airlines, Condor and JMC, from the route next month.”

It is unfortunate that the writer did not remind us of the impending pull-out of British Airways in June. So first of all we have the Tobago chapter negotiating with BWIA to save Tobago. That is “crazy ants” number one.

Then we have a report in the *Express*—and I try to be ecumenical in my reading. We have a report in the *Express* of May 08, 2001 in which it quotes the hon. Transport Minister saying that:

“Government's plan to prevent foreign airlines from pulling out of Tobago has reached an ‘advanced position’, Transport Minister Jearlean John said yesterday.

‘We are going to do everything possible so that they do not pull out,’...

Several quickly constructed committees—”

The report continues:

“—which include Tobago hoteliers and...(Tidco) have been working on the plan to prevent an airlift crisis on the sister island.”

Well I merely would say the Tidco posse is “crazy ants” number two. Of all the trouble I have got into in my 11 and a half years in the Senate, with three sitting Prime Ministers whom I had the honour to serve, I think the remark that got me into the greatest trouble was my dismissal of Tidco for exactly what they were, a posse. That is to say, people who go on sprees all over the world and, every so often, we still have a crisis in tourism in Tobago. I say without fear of

contradiction today, the present situation with the airlift crisis in Trinidad and Tobago fully vindicates my remarks concerning the Tidco posse.

Then the article goes on to say that:

“Enterprise Development Minister Mervyn Assam, Energy Minister Lindsay Gillette, Infrastructure Minister John and Prime Minister Basdeo Panday have also been working to save Tobago.”

Well, so far as we know, their efforts have been entirely unsuccessful. The airlines are still leaving. So “crazy ants” number three is this high-powered, quickly-constructed committee which is working to save the airlift in Tobago, and that is not succeeding either.

Then, sometimes, Mr. President, we have to be protected from our friends because, in a report in the *Express* on May 05, 2001 repeated in the *Newsday* on Sunday, May 06, there is an identical report of remarks made by the CEO of BWIA. Among other things, he explains what BWIA’s difficulties are in flying to Tobago and I will come to that, but—he says, and I quote:

“‘Tobago needs to review its product,’...‘The size of its hotel plant, its quality of hotels’...and most importantly, the customer service attitude of its hospitality personnel.’

Second is the price, Aleong said.”

Well, I believe that you always have a difficult choice between patriotism and the truth but this is certainly implicit, at least, a criticism of the Tobago hotel product. So I do not know how this is going to help us in encouraging airlines to fly to Tobago. The fact is, it is quite wrong. We have two world-class hotels in Tobago. One is the Coco Reef and the other is Hilton Tobago, which the Prime Minister opened with great ceremony sometime ago. In fact, I have particular knowledge about this because one of my board appointments—I do not make any money on it so there is no interest to disclose.

I happen to know that rave reviews have been coming in from the international golfing community about the new golf course at Tobago Plantations, and it is quite likely that whatever deficiencies—which I dispute that there are—there are in the Hilton Hotel product will soon be overcome by people who wish to play golf on this world-class golf course. However, this is a very strange statement for the head of BWIA to be making. It is particularly strange because one of the investors in this Tobago Hilton is a company of which one of the

Air Navigation Bill
[SEN. DALY]

May 15, 2001

shareholders has as its chairman the same business magnate for whom I have the greatest respect, who is also the chairman of BWIA.

So here we have the CEO of BWIA implicitly criticizing the tourism product of his chairman of BWIA in another manifestation—all very interesting—and all of this is indicative, of course, of the fact that they have no idea what to do about the Tobago airlift. It has always been my view, Mr. President, that it is the business of BWIA to carry people to Tobago, at least internationally. I am not getting into any argument today about the domestic situation. It must be in our interest to have BWIA fly people internationally to Tobago. I offended one Prime Minister by referring to “Tidco posse”, and I offended his predecessor, at the time of the privatization of BWIA, by insisting that tourism in Tobago should be protected, whatever arrangements were being made for the future of BWIA.

I specifically pointed out—and it is in the *Hansard*. We do not have research assistants so I have not had time to get the precise quotation, but I specifically insisted that BWIA had a developmental role to play in Trinidad and Tobago. There were people who exported flowers and BWIA was the only way of getting their floral exports out of the country. There were people who exported fish from Tobago and BWIA was the only way of getting that fish out of Tobago and, last but by no means least, every time BWIA flew from Frankfurt and wherever else they flew from in Europe, they brought 200 to 300 people into Tobago which kept the tourism industry in Tobago partially alive.

So whether it was economic or not to bring these 200 people was a macroquestion which had to do with the development of Tobago. It was not simply number crunching to say, well, flying 200 people once a week from Frankfurt is not economical, because there is a much bigger issue when you bring those 200 people into the separate island that is part of our unitary state. So today, Mr. President, I make no apologies for saying “I told you so” and, therefore, I am proposing that there be an amendment to clause 3 of the Bill before us. I am not going to interfere with subclause (d) because I think it goes as far as is necessary, but I have sent in an amendment, Mr. President, insisting that we insert a new subclause (e), immediately after (d), which mandates the Minister to provide an air transport policy. Let me find the words which mandate an air transport policy. I use a particular form of words because they come from a particular source. Yes, here it is.

I want a subclause (e) that says:

“an air transport policy that encourages, develops and protects tourism in Tobago.”

So the Minister will be charged with two things as far as Trinidad and Tobago is concerned: the continuance of an air transport system which satisfies the needs of domestic and international trade and commerce of Trinidad and Tobago and then, specifically, “an air transport policy which would encourage, develop and protect tourism in Tobago” and the reason for it is obvious. We have no policy. Tidco is spreeing, a hastily convened high-powered committee of Government Ministers is trying to deal with it, the Hotel Association is trying to deal with it and, to my own knowledge, certain hoteliers are also conducting direct negotiations with the airlines. The reason that the airlines are pulling out of Tobago has nothing to do with any fault in Tobago's product.

I know what the occupancy figures are for the top hotels there. What it has to do with is certain mergers that have taken place, in the case of JMC of which the principal owner is Thomas Cook, and they are using the airlines to satisfy their own tourism means without reference to us. In the case of British Airways it has to do with the fact that they are going to have fewer seats in the plane because American Airlines took seats out of coach to give more legroom and everybody has followed, and it is no longer economical.

Mr. Aleong is right about one thing. It is not economical to fly 200 people into Tobago, so British Airways has taken a decision to have less seats and, therefore, it is not economic to fly to Tobago, so they are pulling out of Tobago for that reason, which is why BWIA is saying that it is not economic to fly 200 people. It has nothing to do with the Tobago product and this is how decisions are made by international investors, not on our merits. They are made on their merits and what they need for their business, and we get left out in the rain. So I am very grateful to the Government that the Minister is now going to expressly shoulder the responsibility for the air transport system that includes Tobago, but I think we need to have in there the specific objective which I have outlined.

As always, Mr. President, I do not want people to think that I sit and think these things up myself or that I am being creative. Those words which I am using in my amendment have an origin, and their origin is the investment agreement that was signed between the Government, BWIA, the Acker group—you remember them, Sir? You remember the Acker group, the gentleman in the white spats going around to all the cocktail parties in the spat shoes—Loeb Investors who, incidentally, still have a representative on the BWIA board and Loeb Partners Corporation dated January 06, 1995.

In this investment management agreement at section 9.13 I quote. This is a series of assurances. “Assurances”, Mr. President, was the title contained in a

Air Navigation Bill
[SEN. DALY]

May 15, 2001

series of assurances which were given in this investment agreement. At section 9.13 was "Protection of Tourism in Tobago". BWIA and the Government were a party to this and it says:

"The parties..."

May I repeat who they are: the Government, BWIA, Acker, and Lobe, and Loeb still has a representative on the board:

"The parties agree that in connection with preparing the Annual Business Plan each year attention will be given and efforts will be made to encourage, develop and protect tourism (in) Tobago."

So since the Government agreed to that and it has not been done, let us put it in here. Let us make it part of the law. The assurances have not worked. The Government cannot possibly have any objection to this. Albeit it was their predecessors who signed this agreement, they cannot possibly have any objection to it because they signed to it in 1995 and I say that it was a sound policy then. Unfortunately, the government of the day that signed this did not believe in it so they did not do anything about it.

I would respectfully suggest, Mr. President, that instead of making speeches about the Tobago product, the management of BWIA should do the following things: set about considering how, in partnership with the Government and whoever else, they are going to make themselves the principal carrier of tourists to Tobago and, while they are doing that, they better get their capital structure in order because my information is that the present capital structure of BWIA is in a mess because the IPO, initial public offering, which they made sometime ago, was a failure. It was underdescribed, undersubscribed and it was a failure.

So instead of making speeches about the tourism product and instead of criticizing our own product, get your capital structure in order after the failure of the IPO which was undersubscribed, and if your shares are undersubscribed you have no moral authority to criticize anybody else's product. Get your capital structure in order and set about figuring out how you are going to be the principal carrier of tourists to Tobago because in one hotel in Tobago they are at 87 per cent occupancy rate that is being sustained by the two flights that British Airways brings into Tobago every week. I know this for a fact because the hotel concerned is a client of mine. I know what their occupancy rate is and it is sustained by the two flights that British Airways brings into Tobago every single week.

11.25 a.m.

I dare say, assuming that BWIA does not criticize the Tobago product, that this 87 per cent occupancy or the people who comprise this 87 per cent occupancy would be quite happy to travel on BWIA to Tobago where they like to go. It is not a problem. It is “suck eye” business. Just step in and take over the market. If it is necessary, because BWIA does not have enough seats on its L-1011, to subsidize BWIA because they do not have enough seats and it is only economic to carry 300 instead of 200, then give them the money. Why do they want to give it to American Airlines or anybody else? Give it to them.

So, it is a simple problem. You have 300 people who want to come into Tobago twice a week. You have 200 seats. Bring the 200 people into Tobago to keep Tobago's tourism going and give BWIA a subsidy for the difference between the 200 and 300 seats. To me this seems very simple. If I am wrong, I dare say in the course of this debate the Government will respond. But I want to hear. I challenge the Government to contradict me that the capital structure of BWIA right now is in a mess. I challenge them to contradict that.

I challenge them to contradict that the initial public offering was a failure, and while I will be putting down a parliamentary question about this, I would also like them to look into who arranged the IPO, and at what price. “Me ain’t ‘fraid no Privileges Committee” which is the latest encroachment on free speech. I am not afraid of any Privileges Committee, but out of respect to the management of BWIA, I will repeat the question. Who arranged the IPO? Who was paid a consultancy fee for doing it, answered how much? The failed IPO.

I am saying, Mr. President, that the Government has been wonderfully forthright and the Minister is a brave person. Note, Sen. King, that I have used the gender correct term. She is a brave person to accept responsibility expressly for the requirements of the airlift to Tobago. So, I hope that we can iron out the technical difficulties in this Bill as soon as possible so we can start beating down the Minister's door about making arrangements for the airlift to Tobago.

Check into the occupancy figures, check how many seats BWIA has, and if they need a subsidy for the rest, give them! Because some people running around and saying they are giving American Airlines and the government of St. Lucia has given a subsidy to some foreign airline to keep bringing their tourists in there, and I believe that Barbados is contemplating, if they have not done it, a subsidy to American Airlines.

Air Navigation Bill
[SEN. DALY]

May 15, 2001

This is a very timely occasion on which to debate this whole question of the airlift to Tobago. It is great vindication for me because I was yelled at by the Prime Minister in 1995 when I was making these remarks that that was a development issue. "Pass the Bill and then we will discuss it" was what I was told in a certain conversation. It is a good thing that I do not bruise easily as a result of the licks I get for the statements I make in Parliament.

So, let us wave goodbye to the "Tidco posse". Let us wave goodbye to all of these hastily assembled committees. Let us wave goodbye to all of these presidents of Tobago chapters. I actually understand that there were some people in the Tobago Hilton last weekend who apparently were having a swim in the pool and they were there to see about tourism. I do not know how come, because tourism is seen about by the Long Haul Manager of British Airways in London.

Incidentally, have we talked to Butch Stuart of Air Jamaica? Why do we not do that? It is not an original idea of mine either. I have heard that someone else is doing it. If we need the tourists and if we are in a crisis and BWIA cannot do it, well then we have to be very objective. Let us go and talk to Butch Stuart of Air Jamaica.

I went to Jamaica for the first time in my life recently and was amazed at the size and activity in Montego Bay Airport. I was also amazed by the fact that the tourism directorate in Jamaica and the part-owner of Air Jamaica seemed to be in complete harmony about what they were going to do. They were actually so clever that they renamed Montego Bay the tourism capital of Jamaica. They have everybody saying this because, of course, they want people to forget that Kingston is in Jamaica. They are making everybody think they are not going anywhere near to Kingston because there is a complete harmony between the Government and the tourism authorities.

Maybe they go on international sprees too, I do not know. Maybe they do, but at any rate, they have lots of new aircraft, they are very busy. Like our aircraft, the aircraft is winning hospitality awards, but they are winning it on routes to Jamaica where they come from. You know the expression, "Is Jamaica me come from"? Well they are winning the hospitality awards carrying tourists into Jamaica. So, I suggest that if BWIA does not want to do it, maybe we should start talking to Air Jamaica. You must forgive me, Mr. President, because I have learned a little about this industry in the course of my professional career.

Mr. President, obviously to come to some other parts of the Bill now that I have beaten the "tourism in Tobago drum", may I say—I would make this point—

I see my beloved Mayaro is about to be spoilt, but that is the price of progress. I would make the same point if we were discussing an airlift out of Blanchisseuse to Mayaro. If we have a tourism product, we have to support it. We cannot just leave it out there to wither and die. So, my amendment would be circulated in those terms.

Now, to return to some other matters in this Bill, I just offer this piece of advice. Like Sen. Prof. Kenny and all of my colleagues on the Independent Benches, we are always giving free fix-it advice after the foreign consultants have left us with this. I guess that is what happens when you volunteer for public service. Sen. Prof. Deosaran is always giving free advice on how to combat crime from a social science point of view. They do not appear to listen to him, although I wish him success in getting the UNDP report and probably the person who signed it recalled. And Sen. Prof. Kenny did the Shipping (Marine Pollution) Bill and fixed it for the Government, and we are always fixing things for free after the foreign consultants have been here. That is not by way of complaint. That is just a way of recording the sterling contribution that my colleagues make.

In the harmonization that is to take place between these three pieces of legislation, I would also support Sen. Thomas in this specific. It is very important to get the offences to do with the flying of aircraft comprehensively done and correct. Because every day, genius people are finding new ways of interfering with the safety of aircraft, so, if for no other reason, the Government's caution and the Government's willingness to listen to the comments on this Bill will serve us well when they sit and draw together from the various pieces of legislation, all the offences. I would not make any more comments about air rage. I made one sotto voce on the last occasion and I am disinclined to repeat it.

It is very important, Mr. President, to get these offences properly and comprehensively laid out, given all the creative ways in which aircraft are being interfered with. Also, Mr. President, when the legislation is harmonized, I would like to have some clear idea of what are going to be the respective responsibilities of the Director General of Civil Aviation, and whoever the top person is in the Airports Authority. Because if it is that the Government is very sensibly going to divide responsibility for the airports on the ground—put that in the Airports Authority—and responsibility for the safety of flying in the hands of the Director General, it will be important that these two persons work together and do not have—another reason why we have to harmonize this legislation is we have to eliminate all possibility of jurisdictional disputes so that these two people can work together to make sure that from the time the aircraft goes to sleep in the

Air Navigation Bill
[SEN. DALY]

May 15, 2001

hangar, until it comes out again on the runway and takes to the skies, there is a complete harmony of operation putting a protective cordon around our aircraft.

We have been extremely lucky that we have not been subjected to some of these international incidents, but as you can see from looking at the television unit on any given day, there are crazy people all over the world. We have to be very careful not only to get the offences right, but to draw the jurisdiction line between the Director General of Civil Aviation and whoever is the head of the Airports Authority very clearly so that they could work together instead of dissipating their energies and fighting each other over turf.

Mr. President, I have taken a very benign approach to my contribution on this Bill because this is an occasion on which the Minister can hardly be blamed for the lack of harmonization in the legislation. She has had poor advice, and I am free to say that because I know that some of it came from abroad. It is no point making a big political song and dance about the deficiencies in this Bill because it concerns the safety of us all and it concerns carrying out our international obligations which we have to do in a manner consistent, not only with what we pledged to do internationally, but with our own peculiar requirements as a twin-island state.

I have said it and I will say it again. When you live in a twin-island state—Sen. Montano asked what is a national airline—or even a single island state, we the people, through the government, through the executive, must have some control of airlift movements in and out of here. It does not only have to do; I am not a socialist. I am not against privatization, but I insist that in a twin-island state the people, through the Executive, must have some control over airlift movements in and out of the island. Not only between Trinidad and Tobago internationally with Tobago for tourism purposes.

I always give the example and I learned from Sen. Prof. Spence that you only get results if you repeat it often enough. Think of the 1990 coup. Long after the airport was opened and it was safe to fly in and out of Trinidad and Tobago, BWIA was flying because we had a measure of control, and American Airlines and the others came back in here six or eight weeks later. We had sick people who had to go away. We had students who had to return. These were not people going to Miami to buy toothpaste. These were sick people, students, ministers of government who had international commitments, businessmen who wanted to take care of their investments here. We were being completely dictated to, save for the wonderful job that BWIA did on whether people could or could not go out of Trinidad and Tobago.

So, Mr. President, while I may have focused too sharply and too long on one aspect of the Bill, it is because we need an urgent debate about this air transport issue. I am putting my thoughts on the table in the context of this Bill which seeks to place, for the first time, expressed responsibility on someone, namely the Minister—and I can only hope, Mr. President, that the Government would think carefully about this particular crisis and let us get away from these ad hoc attempts to save Tobago. It is so patronizing!

I certainly do not want to get into those disputes, but it is so patronizing to read about people going to save Tobago. It is patronizing. We have the means in our hands to do it, and if the Minister of Finance has to re-look at some of his budget for this purpose, I think it is important to do so. Nobody is asking for any charity, but you say you have a tourism business in Tobago and you have to have ways, you have to figure out ways and means to keep it alive.

If all of these developments take place in Mayaro, then you are going to have airlift into here as well. You are also going to incidentally have to have arrangements for overcoming the 2-hour 65-mile drive. Well, I suppose it is about 45 miles from Piarco. You are also going to have arrangements for this. This is all coming at a very important time, because the Government is right. We are not only going to be confined to Piarco Airport and Crown Point Airport in the future.

Sad to say, I was impressed by the arrangements in Jamaica. They have four airports. It is a much bigger country than ours, but nobody is going to drive over rugged terrain for two hours to get from Ocho Rios to Negril, for example, so they have four airports. Depending on which location one chooses for one's pleasure in Jamaica, one can go there fairly directly. One may have to go through either Kingston or Montego Bay, but one can go there fairly directly.

For example, during the spring break that takes place in the United States, I think it is around March, Negril has become one of the key spots. I have forgotten the figures, I do not keep these things in my head, where millions of dollars are spent by US college kids flying into Negril for, essentially, long weekends, and they fly there by Air Jamaica, spend up a set of money, support the underground economy and go back to the United States where they come from. [*Laughter*]

11.40 a.m.

The people in the official and unofficial economy—sorry, Sen. Prof. Ramchand—make some money too, so these are important issues, if they arise, in my respectful view, in a very timely way in the debate on this Bill. I would ask the Government to really get down, and mean it. Let us pass this Bill once we

Air Navigation Bill
[SEN. DALY]

May 15, 2001

have harmonized it, and get down to providing us with the policies that are catered for in clause 3.

Thank you.

Sen. Glenda Morean: Mr. President, I had intended to make a pretty lengthy contribution on this Bill. However, from what has been said by both Sen. Thomas and Sen. Daly, I do not propose to be long.

When I looked at this Bill and compared it with the existing legislation, as the others before me have done, that is, the Trinidad and Tobago Civil Aviation Authority Act of 2000 and also the Airports Authority Act, I thought that, unlike what Sen. Lucky has said, that this certainly had not been got right. I thought that this morning we were just coming here to waste time, especially in the light of the message that I had received from the Parliament with respect to the contribution.

I thought that, perhaps, the better thing to have done would just have been to withdraw this document and come back afresh, so that we can all address our minds to something and be really working and not wasting time, because this is what I think we are doing here, since this Bill certainly will have to be redrafted totally.

The word that has been used by both speakers before that of “harmonization” is what has to be done to the Bill, so that we do not have three different entities jostling with each other for territory.

When we look at section 12 of the Airports Authority Act which sets out the function of the Airports Authority, we see that that is largely duplicated in this Bill. It appears to me that what was really intended by this bit of proposed legislation is really to deal with security and the international protocol and to legislate for the safety of—to use Sen. Daly’s term—flying. That, basically, is what was intended, but somebody got it wrong and really muddled the whole thing.

I do not propose to go into the whole thing clause by clause, but, as was pointed out before, the Bill is very confusing in the sense that what is being talked about is an authority, the authority; we do not know what is being dealt with here. Rather than go through page by page or clause by clause, I think the whole document has to be taken apart and it has to be done over, because this is an area that is very important to the nation—a mode of transport.

We have just spent—and we do not have the figures; should I say I do not know what the figures are; I have been hearing figures; I have been hearing

billions of dollars—on an airport, a terminal building and a parallel airstrip. We have just spent a lot of money on that.

In fact, from what I recall of the original plan from the construction of this new terminal and the airstrip, the cost would have been somewhere in the vicinity of about US \$75 million, but that figure has doubled, trebled or whatever. Here we have spent quite a bit of money and, again, we have not got it right yet, because I have seen quite recently in one of the newspapers over the weekend where there has been no provision in the present terminal for the fire services. They have been complaining and this is a serious matter. This is something that really ought to be looked into, because we are dealing with safety and putting in a lot of measures for the safety of our travellers and our visitors. An elementary and simple matter as providing an essential service, as a fire service, that has not been taken care of. I would like the Minister really to address her mind to this. I know that she has a lot on her mind. [*Interruption*]

Sen. J. John: Sen. Morean, that is incorrect. There has been a provision of \$12 million to construct a new fire station for the fire service.

Sen. G. Morean: Thank you for saying that. Is that additional to what has been spent already or is it part of what—

Sen. J. John: That is not so. The station has just not been constructed, but the money has been set aside; it is included.

Sen. G. Morean: So money has been set aside and we are hearing that the airport is being opened, but we do not have the facility on stream as yet, but, at least, it is good news that it is being thought about.

So far as this legislation is concerned, I know that we would have to make a contribution on it, again, because, surely, I do not think it was a deliberate act to embarrass the Minister with this piece of legislation, but this is how it looks. It is in all our interests to have it right. As Sen. Lucky has said, I am hoping that on the next occasion it would be in better form so that we can make a better contribution towards the proposed legislation.

Thank you.

Mr. President: Just for guidance of Senators, however, when referring to a Minister, do not refer by name, refer to the person by their ministry.

Sen. Prof. Kenneth Ramchand: Mr. President, I thank you for the opportunity to make a brief contribution on the Air Navigation Bill, 2001. My

Air Navigation Bill
[SEN. PROF RAMCHAND]

May 15, 2001

contribution will be even more brief following the preceding contributions which I fully support.

I will make my points—although most of them have been made—if only because one has a different run-up and, perhaps, a different mode of delivery.

If I were to summarize in three words my response to the Bill, the three words would be “puzzling”, “confusing” and “sinister”. The Bill is supposed:

“...to make provision for the regulation of the establishment and operation of airports, for the maintenance and operation of air navigation facilities, for the carrying out of the Convention on International Civil Aviation, for the promotion and regulation safety in air navigation and for purposes related thereto.”

This may seem to be a clear statement of purpose, but after reading through the Bill and in spite of noticing this declaration of purpose, I am not clear what the Bill is really for. Is it just-in-case legislation? Is it we-have-to-do-what-we-have-been-told-to-do-legislation to conform to international obligations? Or, is it legislation to facilitate some plans that the country is not going to hear about until it is too late for the country to do or say anything about it? Mr. President, although the Bill seems to declare lots of intentions and purposes, I am very puzzled about what it is really for.

I find it confusing because it overlaps in many places and also has conflicts with three existing Acts namely: the Airports Authority Act, the Trinidad and Tobago Civil Aviation Authority Act 2000 and the Trinidad and Tobago (BWIA International) Airways Corporation Act of 1978. It is confusing further because it contains provisions perhaps a little too blindly copied from legislation more appropriate to larger countries.

I find it sinister, and maybe I am being unduly suspicious, because it shifts emphasis away from the Civil Aviation Authority to the Minister, and it appears to take away the functions of the Trinidad and Tobago Civil Aviation Authority and of the Airports Authority and assign these functions to the Minister. It is a change of emphasis. I have no doubt that the Civil Aviation Authority will be involved, but the way in which this Bill is presented indicates a shift of emphasis and a drift towards more ministerial responsibility.

I can explain that by looking at the Trinidad and Tobago Civil Aviation Authority Act of 2000. Part II of that Act is entitled “Establishment, functions and powers of the Trinidad and Tobago Civil Aviation Authority”. Through clauses

5—10 it lays out the functions in a comprehensive and unambiguous manner. Then in clause 11 subclauses (1) and (2), it describes the position of the Minister:

- “(1) The Minister may give the Authority such specific or general directions, not inconsistent with the provisions of this Act and the Authority shall give effect to any such directions.
- (2) All directions referred to in subsection (1) shall be in writing and signed by the Minister.”

So the Minister is ultimately responsible; but the way it is formulated in the Trinidad and Tobago Civil Aviation Authority Act makes it, I think, more palatable to a population. The Authority will carry out the functions. The Minister shall give the Authority specific or general directions not inconsistent with the provisions of the Act.

The present Bill completely turns that around and in Part 2 under administration, clauses, 3, 4, and 5 deal with functions which are put under the authority of the Minister. Some people might say it is a subtle difference, and does not matter, but I think it is a major difference. I would like to continue with my sense of unease, my feeling that it is sinister, by looking at other ways in which it may be sinister.

Before I do so, I want to note section 62(d) of the Trinidad and Tobago Civil Aviation Authority Act which speaks about international outreach, section 73(a) which speaks about obligations under the Chicago Convention and any other agreement relating to safety and so forth.

11.55 a.m

One wonders, therefore, what is the need of spelling out the items in the Chicago Convention when it is already stated in clause 7(3)(a). “Obligations under that convention and any other convention.” I want to point to clause 7(2) which is very important. It calls for strict compliance with the EMA Act and any other written law. “Strict compliance.” This is quite different from what is in the parent Act.

As I have already indicated, Mr. President, my first sense of something sinister or uncomfortable about this Bill has to do with what I see as a shift of emphasis, the functions being assigned to the Minister. The same purpose could have been served by retaining the formulation that is in the Trinidad and Tobago Civil Aviation Authority Bill.

The major respect in which the present Bill differs from the other Act is in giving to the Minister the power to designate a privately owned airport as an airport to which this Act applies. Mr. President, I must say this has led to much speculation in my mind, some, perhaps, comforting. Is it too farfetched to wonder if there is some thought or plan to set up a military aerodrome, a function, perhaps, of a forthcoming aeroplane rider agreement? I do not know. It is not stated here, but this Bill will allow that.

If that were one of the intentions or plans of the Government, I would like to know about it. Are there any plans to build an airport for the tourism project in Mayaro? If there are such plans, if the Government intends to set up an airport in Mayaro to work in the way the Montego Bay airport works in Jamaica, we would certainly like to hear about it. We would like to have an opportunity to discuss it. So that phrase giving the Minister the power to designate a privately-owned airport and to open airports, that phrase may be covering things that the nation will want to discuss and I wish the Minister would enlighten us if there are such plans.

Thirdly, the Bill gives to the Minister the power, under clause 7(2), to appoint an airport manager outside of, and without reference to the Civil Aviation Authority. I cannot think of that as a favourable development and certainly it is not a development I would like to see creep in through the back door, that the Minister can go ahead and appoint airport managers without having any kind of consultation with the Civil Aviation Authority, thereby setting up an operator of an airport quite different from the Authority.

Fourthly, on the sinister line, and this is outrageous. It gives someone—and I have to deduce because the three clauses are very badly written—apparently the Minister, the power to repeal existing laws without coming to the Parliament. Unless I am reading the whole thing wrong. I draw your attention and hopefully the attention of the country to this flying dictatorship, with its hanger in the Schedule—Supplemental Powers, Power to repeal applied written law—clause 1 which reads:

"Without prejudice to any power of repeal conferred by any other written law, a power to which this paragraph applies shall include power to repeal any applied written law of "like effect ..."

"The power to which this paragraph applies shall include power to repeal any applied written law of like effect notwithstanding."

I can only take that to mean that the Minister or whoever, because as I said, it is execrably phrased—it seems to me to be an intention to confer power upon somebody to repeal law without reference to Parliament. And that seems to me to be a travesty and something very frightening.

If the government intends to retain the Civil Aviation Authority Act, the Airports Authority Act and the Trinidad and Tobago (BWIA International) Airways Corporation Act, then the areas of overlap and the areas of conflict need to be attended to so that the provisions and the purpose of a considerably slimmed down Air Aviation Act may become clear and the necessity for the Act shall be demonstrated. But if it is the intention to repeal the existing Acts and establish one piece of legislation, then the present unsatisfactory draft should be withdrawn and rewritten, incorporating the valuable sections in the Acts to be repealed; setting out clearly the new clauses; incorporating in the legislation the useful legislation attached to the Act to be repealed; and writing in new aims and objectives suggested by new technology, new patterns of trade and travel and other new circumstances.

In this respect, I would like to see an intention to deal with the establishment of intra Caribbean travel and cooperation by the Caricom states. And I would like to see a determination that BWIA and the Government wish to establish service to Tobago that would make it impossible for foreign companies to threaten or bully us for subsidies.

I think the Government looks as if it is willing to listen and Sen. Daly has spoken passionately and incisively on this particular question about travel between Tobago and Trinidad. I would like to add the other islands as well. I do not see why the Caricom heads cannot get together and deal with the crisis facing their tourism industries. Either of these courses—and I will go for the latter, that is a complete rewrite—would lead to legislation that would be less confusing and suspicious. It would lead to legislation that parliamentary debate can enhance and shape in the best interests of the sovereignty, security and economic well-being of the people of Trinidad and Tobago.

Thank you.

12.05 p.m.

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. President, I propose that we defer the debate on this Bill to a later date to allow us to consider the concerns expressed by Senators and to closely examine the points made. [*Desk thumping*]

Air Navigation Bill
[SEN. THE HON. G. YETMING]

May 15, 2001

I beg to move, that the debate on a Bill to make provision for the regulation of the establishment and operation of airports, for the maintenance and operation of air navigation facilities, for carrying out of the Convention on International Civil Aviation, for the promotion and regulation safety in air navigation and for purposes related thereto, be deferred to a later date.

Question put and agreed to.

EQUAL OPPORTUNITY (AMDT.) BILL

Order for second reading read.

The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Gillian Lucky): Mr. President, I beg to move,

That a Bill to amend the Equal Opportunity Act, 2000, be now read a second time.

The Equal Opportunity Act, 2000, is, according to its long title, and I quote:

“An Act 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.”

This Act was assented to by His Excellency the President, on October 20, 2000 and on November 20, 2000, His Excellency, the acting President, signed a proclamation pursuant to section 2 of the Equal Opportunity Act, 2000, whereby it was provided that Part VI of that Act be brought into force on the said date, November 20, 2000. It also fixed January 31, 2001 as the date on which the remaining parts of the Act should be brought into force.

Section 26 of the Act establishes the Equal Opportunity Commission which is the administrative and investigative body entrusted with the responsibility of working towards the elimination of discrimination through the undertaking of research, education and other programmes. The commission is required to receive, investigate, address and resolve complaints of discrimination. The commission is to comprise five commissioners who, by virtue of section 26(1), are to be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition.

Section 26(3) of the Act stipulates that a panel comprising representatives of every principal religion in Trinidad and Tobago, shall act as advisers to the commission. However, provisions relating to the panel's appointment were omitted. Also, due to inadvertency, it was provided in section 26, by virtue of subsection (4), that the Minister to whom responsibility for equal opportunity is assigned, appoints the Chairman and Deputy Chairman of the commission.

This, therefore, is clearly in conflict with subsection (1) which I have referred to earlier. In the circumstances, to remove this glaring discrepancy and to cater for the omission referred to earlier, that is the appointment of the advisers to the commission, the Equal Opportunity (Amdt.) Bill, 2001 would delete the aforementioned subsection (4) and put in its place a new subsection which empowers the Minister to appoint the panel of advisers referred to in subsection (3).

I beg to move [*Desk thumping*]

Question proposed.

Sen. Rennie Dumas: Mr. President, it should be quite easy to just say, we stand in favour and let this pass. It sounds so simple. The little problem we would have though, arises when one examines the fact that, as the Senator proposing the amendment just said, maybe there are parts of this that may just be inconsistent. Before she looks at me with that strong eye, I would just want to make the point quickly.

There shall be a panel of advisors to the commission comprising representatives of every principal religion in Trinidad and Tobago. That is because somebody thought, or the framers of the law thought, that the commissioners by themselves would need advice. Then one looks and one asks: Why is it that they only need advice from the religions? Maybe if you are going back into the law, you should go back into the law in the fullness of consideration of what the law seeks to do.

Is there any other body of people, any other representatives of the wider community, that we should include in the concept of the panel of advisers? What is this special consideration for religion, why we need the panel of advisers to be only from the religious body, when the gamut of activities, the gamut of concerns that the Equal Opportunity Act seeks to address, is very much wider than religious issues? What is the argument for saying that we need advice from labour, from business activity, from social groups, from other community groups? Is there no need for advice from these people? The difficulty we have is the absence of address of that wider question if we are going to come back to discuss this matter.

Secondly, the Minister shall appoint these people, based on what criteria? They should be representatives of every principal religion in Trinidad and Tobago. How do we determine that they are, in fact, representatives? If we are going to fix the law, I think we have to fix it well. What do we do? Get a letter from someone saying, "This is our representative"? Are we going to have elections or appointments? How are we going to determine this, "every principal religion"?

For example, how are we going to determine the representative of the Orisa religion? How are we going to determine the representative of the Baptist faith? By what means? I think we have a significant difficulty and it cannot just be decided by suggesting that the Minister shall be appointing.

I know the one paragraph, the two lines, the twelve words, sound very simple and we should just go on, but it is not good law, and the Senator, as the one who advises that we should put law right in this session, I want to follow her advice; I want to recommend her own advice to her. No Minister can tell me how the representative is going to be selected if the law does not tell me how the representative is going to be selected. That is my simple and short discussion on this matter.

Thank you, Mr. President.

12.15 p.m.

Sen. Prof. Ramesh Deosaran: Mr. President, the amendment seemingly is a very minor one, but because of its relationship to the parent Act and the implications which this panel of advisors hold for the general objectives of the Act, for such unrelated reasons, I think like some of my colleagues on the Independent Benches, we would like to make some comments which quite possibly would help the amendment to achieve the objectives which it implicitly sets out to achieve.

The previous Member raised two very important points. I will deal with those in some detail. Why the emphasis on religious representatives? As he went on, I am even more convinced that as welcome as the amendment and its parent Act are, we are entering into some very murky waters, as far as the search for consensus, harmony and the avoidance of conflict are concerned in this small multicultural society. The amendment seeks to remove some ambiguity, but in my respectful view it still leaves something unclear, unless my assumption is wrong. The lack of clarity exists as to who would appoint the chairman and vice chairman of the panel of advisors. I am invited to make that comment, especially since apart from stating that there would be a panel of advisors, it does not tell us exactly

how this panel would function. Would it be *ad hoc* and to what extent would it be permanent? If indeed, there should be some statutory permanence, I believe that there should be a structure which would at least include a chairman or vice chairman. It leads me to my minor but very critical point, because we would not like to see amendments returning to be fixed up when we could fix them in this instance. That is, who would appoint the chairman and possibly a vice chairman of the panel? The amendment is critical because this panel of advisors—it was well recognized by the previous speaker, Sen. Dumas—is a key organic link between the Equal Opportunity Commission, as a commission on one hand and the people of the country on the other hand. The panel is that intervening, mediating structure which will bring quite alive, the general objectives of the parent Bill. I thought I would spend a few minutes in trying to see how improved we can make not only the Bill, but also its related aspects of the parent Act. As I proceed I would suggest an amendment and in the spirit of things, I believe I see great hope in the accommodation of such amendment, given the premise on which it would be gently based.

I am sorry that the Attorney General is not here, although I welcome the gender equity that pervades at present in the ministry. I would like him to hear. I never liked the term junior minister. Be that as it may, the junior minister in the ministry is here. I hope that in their meeting subsequent to this sitting, the views transmitted here would be conveyed to the Attorney General and perhaps some reconsideration would be given.

In the first place, the Act places exclusive emphasis on religious representation. That bothers me, not because I am not a religious person or we should think that religion is not a very important integral feature of this small multicultural society. When one refers to a very important and related part of the parent Act, section 7, as it connects to this panel of advisors in terms of the objectives and section 3, where it delineates several status categories, there is religion, but there are also race, ethnicity, people who are psychologically impaired, physically handicapped and sex. There are about eight discreet status categories. When one emphasizes for a panel of advisors with exclusive representation by religion, I believe we ought to sit back, considering that we are a diversified society, not only on the basis of religion, but also in some other areas and in some cases equally important to religion.

In this day and age, the movement for gender equality is not only very conspicuous, but also a largely deserving movement. Therefore, if out of these eight areas of concern as expressed by the Bill and up for adjudication as

contained in section 3, how is it they are including in their panel of advisors only the question of religious representation?

My concern is not with the policy powers of the minister to appoint. My question is: Is the Government perhaps unwittingly committing an act of statutory discrimination, by this amendment? In fact, literally that is what is being done. It is not a good message to send to the national community. Many people in this country prefer not to have religion at all in the classical sense. They are certainly not less spiritual than those who claim strong allegiance to their respective religions.

The Bill deals with the national community and not with a set of different religions. Therefore, the whole is greater than the sum of these parts. Therefore, the legislation and this amendment in particular should have the capacity both in substance and execution to cover the holistic environment in which it seeks to play out itself. I think the Government should shy away from seemingly committing such an act of discrimination in its own legislative effort. I support the previous Speaker in this regard.

This does not mean to say that we are not aware of the importance of religion and the role of the panel of advisors in this particular respect. Just as there are complexities in religion with respect to rituals and customs, so to there are nuances and complexities of gender discrimination.

12.35 p.m.

Perhaps the IRO represents the principal religions of the country. That really raises my concern. What about the others that are really, and more often than not, the targets of victimization and discrimination? To whom will they go, or is the amendment and its parent Act unwittingly trying to create some religious hegemony in the country by calling some “principal” religions and inferring that others are less principal? I think it is a wrong principle. We must let all flowers bloom. This amendment should demonstrate our capacity or our willingness to do so and I think a revisit to the amendment should help.

I, therefore, want to propose three possible solutions because I know how difficult it is—

Mr. President: Hon. Senator, I suspect you will be on your feet for a while yet. I do not want to curtail your contribution in terms of time, but will you be on your feet for sometime yet?

Sen. Prof. R. Deosaran: I think you had better have the lunch now.

Mr. President: We will break for lunch at this stage. This sitting is now suspended until 1.45 p.m.

12.37 p.m.: *Sitting suspended.*

1.45 p.m.: *Sitting resumed.*

Sen. Prof. R. Deosaran: Mr. President, with regard to what I was saying earlier, I believe it would be helpful if I attempt to advance some practical proposals for the Government's consideration. I need to emphasize that it is not merely a matter, in this instance, of legality, as much as it is invoking empathy and confidence in the system which the Government attempts to create, if only because it involves so many of people's anxieties and uncertainties in the context of this very enigmatic problem of discrimination.

I am saying so because I appreciate the serious difficulty that a Government will have in trying to legislate for such things as equality of opportunity and fairness, to the satisfaction of all concerned.

My first proposal, with respect to the panel of advisers, is to remove the words "representatives of every principal religion" and insert instead "representatives of every status category" as defined in section 3 of the Act. Again, it may not be the perfect solution, but I am submitting that it will be a better compromise in trying to achieve the purpose of the Bill and, in particular, the objective of this panel of advisers. It will give it the breadth of representation so as to make it more consonant with the major objectives of the Bill, as stated in clause 7, and also better suited to the different status categories in clause 3. So, you are really making a more rounded effort.

The second proposal is, instead of just having one panel of advisers, as stipulated in clause 26(3), maybe there could be several panels of advisers so as to reflect each status category as defined in clause 3.

The third proposal for possible consideration is to let the establishment of a panel of advisers be open for discretionary action by the Equal Opportunity Commission itself, and maybe remove this specific statutory provision, which is in the amendment.

With this discretionary power, the Equal Opportunity Commission could respond, not only to the allegation of discrimination or to the grievance by the victim, but to the circumstances therein, in each particular instance. It is not enough, I believe, to say that the Equal Opportunity Commission itself could

handle these matters, without accompanying or supporting advice. We need some other structure to offer advice to the Commission, if only because, as I have stated before, of the complexity and the fluidity of the problem. To attempt to establish something like a permanent panel, based exclusively on religious representation, is really an attempt to fly in the face of today's realities.

1.50 p.m.

In the Constitution, if I may point out, section 4 makes it clear that there shall be no:

“...discrimination by reason of race, origin, colour, religion or sex...”

It lists some other specific provisions but these, as we all know, largely pertain to public authorities and public agencies. I believe when this new Equal Opportunity Act was first brought to Parliament, there was the indication that it would serve as a supplement to what is guaranteed in the Constitution for public authorities and public agencies. The question arises, therefore, as to the role of a panel of advisers in the particular case of colour. I am yet to understand it, given certain commissions of inquiry in this country and given what a lot of us know about colour discrimination, apart from, or beyond race or religious discrimination and in the face of significant research literature in the Caribbean from Jamaica to Guyana, which strongly suggests that colour is a discrete variable in itself in discriminatory practices, especially in matters of employment. Of course, we have not seen the other forms of discrimination, which is discrimination from political affiliation in terms of jobs, political preferences and so on. In fact, political discrimination is the godfather of all forms of discrimination in this country. Mr. President, the panel of advisers, that whole concept and the provision, would have to be revisited.

We have to understand that there is a lot of discrimination that we see around us or that we perceive, but there is very little we can do about it. In fact, hypocrisy is the art, as I have said, of a civilized society. Hypocrisy is what, in the large sense, greases our social relationships. Sometimes the hypocrisy is called good graces, good manners, or even good diplomacy but all the same, what you see is not what you get.

Mr. President, we accept all of that and to show you once again the difficulty of having the provision in the form of the amendment as it now appears, let me follow the example by Sen. Rev. Teelucksingh and give you a hypothetical example. If, for example, there is a tight political contest in a party with three

candidates, one being a woman and she does not get elected to that office, she might very well feel it is because of her gender; or if the other gentlemen who is, let us say, of African descent in a party where a vast majority of East Indians have membership, he might feel it is because of his race or religion; and if the other candidate wins who is of East Indian descent, political parties being as they are strongly “machoistic” he may not know whether he has won because of his talent, ability or because of his ethnicity. Mr. President, these configurations even, hypothetically, should lead us to review this question of panel of advisers. In fact, the example may not be so hypothetical after all.

There are several commissions of inquiry, which have dealt, in particular, with the question of colour. That is why my own preference, ever since this idea of an Equal Opportunity Commission arose, has been for a wider human rights commission which would have solved some of the problems mentioned. Such a body would have given the Commission more flexibility, more public confidence and it would have reduced some of the public apprehensions as seem to have been invoked with this particular Act and even in the amendments.

Mr. President, there were several pertinent inquiries and even court cases on matters of race and colour. There was a court case involving the Orisa and Trinidad and Tobago Television in which my distinguished colleague, Sen. Daly, played an important part. There was another inquiry that had to do with the allegation of race and colour discrimination at the Country Club. There was another commission of inquiry into race and colour discrimination in the private banking sector. Two commissions of inquiry were appointed in 1969 and I wish, very briefly, to refer to these so as to help to underline the importance of a panel of advisers in a reviewed form. I do not believe the commission itself with only five members could rise to the challenges that would come its way on a regular basis. It would need another machinery, another kind of advice. One of the roles of the panel, I submit, Mr. President, is to be very acquainted with these inquiries, the reason for them and what the reports said.

Mr. President, if you will permit me, I wish briefly to recall what the lone commissioner, Appeal Court Justice Clement Philips, said in what has been known as the Country Club affair. He said in part of his report to the Government after analyzing the case and the evidence:

“The paramount question for consideration however, is whether this was due to their racial origin or colour. This question is not free from difficulty and this is so for a variety of reasons...After careful examination of all the

relevant evidence, I have come to the conclusion that Mrs. Aleong's reaction..."

That is the Country Club's employee:

"...to the Hanna's request to be allowed to play tennis at the Club was influenced by the fact that they were coloured people of the darker skinned variety..."

It is important for the panel, commission and the legislation itself to be informed by such antecedents. The Commissioner went on:

"This type of reaction is a phenomenon which is frequently observed in our society and has its roots deeply embedded in the past history of the political, economic and social dominance of persons of white or light complexions over those of darker hue."

That was sometime ago, in 1969 and of course a lot of water has flowed under the bridge, a lot of people have become more enlightened and what we still have, as I would indicate, is certain aberrations with regard to colour discrimination which still need attention by a panel of advisers.

2.00 p.m.

Justice Philips went on:

"I am of the view that legislation is not an apt remedy for the solution of problems of this type. Apart from the constitutional questions involved, any legislation that might be devised to apply to this kind of situation would be unworkable in practice and likely to do harm to the community."

I do not know if all of us will be so strong in this particular view. My view is that the legislation is helpful, it is a required compromise, but I am just indicating to you the scepticism that is experienced by those in proper authority over such matters. I am underlining this point because it should increase the importance of advice that could search through the nuances and the complexities not in a legalistic way but in a very empathizing manner.

From the report on the inquiry into race and colour discrimination in the banking sector, a similar advice was given and I quote briefly:

"We accept that the use of the set two factors, racial and colour discrimination, may not always be conscious, and indeed when some of the glaring disproportions were called to the attention of those in a position to be responsible, it was revealed that this was always not the result of conscious

discrimination but of patterns of employment in which discriminatory factors were passively permitted to operate.”

So all along, Mr. President, the question of vigilance, enlightenment and an understanding of these issues are what will be required by a proper panel. In fact, I will tell you—incidentally, Sen. Daly and I share a lot of friends in common, and there are a lot of people who are described as Caucasian, or white people, in this country. They, too, complain about discrimination, which is a kind of reverse discrimination, so it makes the situation even more complex. It is not only gender; it can be compounded by being of a different colour. So it really is not—as my colleague, Sen. Dr. Phillips, would tell you, it is a complex issue. We have spent—she, in particular, has spent a long time teaching about these things especially how to measure it, if not how to prove it but it is the kind of understanding. As difficult as it might be, it must be lodged within a proper panel so that the advice given will be free of any suspicion or aggravation.

Mr. President, I am quite sure I have strained your own patience by delivering a longer than usual discourse but I could not escape the fact that I still consider the parent Act and the amendment very important. So I did not want to miss the opportunity to see what help I could have given to the Government side and also to help provoke some further thinking on the matter by all hon. Senators in this House. I hope that the hon. Minister would be gracious enough to, if not agree, but, understand that there are serious issues still to be resolved. I, myself, have not moved a firm amendment to take it into the purely legal terrain but I have left it for good sense to put what seems wrong right.

Thank you very much, Mr. President. [*Desk thumping*]

Sen. Prof. Julian Kenny: [*Desk thumping*] Mr. President, this amendment teaches us a lesson. It teaches us a lesson in parliamentary procedure. I think that some of us here, and certainly on the other side, will remember this legislation going through and will remember the police escort to take Sen. Dr. McKenzie to her hotel and driving home and getting home at three o'clock in the morning; and this is a very, very serious issue. It is repeated and we are back here today because we did not do it properly at the time and I would like the Government side to remember this lesson. This could have been avoided had we a little more time in committee.

I understand the issue here. It is comparatively simple. We are tidying up something that was poorly done or poorly drafted at the time. I support this amendment but I would like to have a bit of clarification in that a panel is

proposed. I am not worrying too much at this stage about the religion part of it but there is a panel. It does not say how large the panel is, it does not say their terms of service, how long and so on, and I could interpret this to mean that the panel might be 50 or 60 people and you draw on them as you feel necessary. So I think that needs—while we are at it, let us just tidy it up so that those of us, or anyone who reads the law, will understand exactly what is meant by this panel.

Mr. President,—I do not want to reopen debate on it, but at the time that this matter was being—and we were departing at three o'clock in the morning—we were all very, very worn out. I think that the hon. Minister has, in fact, looked—I think this is highly commendable of her—at the *Hansard* record to see what some of us who spoke had to say. When you read the law—I think I have taken the point that Sen. Prof. Deosaran has referred to, the question of status rather than religion. Anyway, just above “status” in the interpretation clause you will see “sex” and it:

“does not include sexual preference or orientation;”

I queried it then and I query it again.

Now, is it intended to mean just maleness and femaleness as secondary sexual characters? Is that what the discrimination is based on? In this case, what does one do with an unfortunate hermaphrodite? Can you discriminate against them? When you say:

“‘sex’ does not include sexual preference or orientation;”

It means that it does not mean heterosexuals or bisexuals or homosexuals or autosexuals, so what does it mean then? I would interpret that this discrimination is against the superficiality of the person in terms of the secondary sexual character. So the law is actually saying you cannot discriminate against a person who looks like a male or who looks like a female. You know, we write this kind of legislation and we pass it at three o'clock in the morning and then we have to come back to correct the technical errors. I wonder how many of the 200-plus laws that we have passed are going to come back for amendment.

Mr. President, you know, I raised this matter at the time but it still is not in the law. It is discrimination on the basis of age. The business community, the insurance community in this country, discriminates against people once they have turned 65. You cannot get health insurance. You are finished. You have paid all your premiums all your life and then you are dumped. I am not asking for this matter to be reopened but, again, you see, it was a point made there. There was no

agreement on the Government side to adjust this. Now, if I fall ill I have health insurance but not from this country and I pay an enormous sum of money. To whom? Insurers in the United Kingdom, and I made the point then that we are discriminated against on the basis of age on the question of driving permits.

I think that some of us know that once a year we have to go to a doctor and the doctor takes your blood pressure and says, "Can you read that chart?" They then sign something. In other words, the State thinks that, because we are of advanced age, we are dangerous on the road and the insurance companies know that all the accidents are in the 18- to 25-year-old age group. That is why they put exclusion clauses. You cannot drive, you know, without them on your insurance policy. They say drivers over the age of 25 and yet you are discriminating against a poor, old person like me. I have the indignity of going there twice. You go and you get your licence once every three years. I have to go every year and I have to line up like everybody else, but it is once a year. So my point is that when you are passing legislation at three o'clock in the morning, even though we had made perfectly valid points, you so want to get this thing over with, it is discrimination. It is just as bad discrimination as discriminating against femaleness or maleness.

Mr. President, my final comment relates to the injection of religion into any legislation. It has always been a matter of personal policy that I shy away from entering any debate in which people start talking about religion. Indeed, twice or three times in my life I have faced the situation—twice in public—once before Justice Lucky when I was an expert witness for the State. The first time you go in there and some clerk asks you, "What's your religion", and my reaction is, "What business is it of the State, my religion?" This happened when I was a witness in a robbery case and, fortunately, parliamentary staff are a lot more civilized. I had a phone call from Parliament, when I joined the Senate, saying, you know, "What's your religion?" I said, "Well, again". They said, "Well, would you like to affirm?" Then the thing was glossed over.

Mr. President, it was not that long ago that a Member of Parliament in the United Kingdom was censured repeatedly and not allowed to sit in the House because he refused to swear an oath, and here you are in a society where the very first thing, when you are faced in public in a court of law—your religion and the book. Now, my religion, if I had one, is totally irrelevant to the State. I think that I would like to see, in this equal opportunity legislation, a move away from pandering to interests of that kind to the secular state where it eliminates all forms of discrimination on the basis of religion. I wonder whether the Government

would consider that the interests of people who do not subscribe to or do not conform to a form of religion might be represented on this panel.

For example, there are people who are agnostic and whose interests might need representation on such a panel. In my experience, I have met many people and there are some atheists who are as bigoted as any religious bigot is. So I wonder whether we could not somehow, as we implement this Act, tone down the concerns with religion and somehow upgrade the sort of secular interests—discrimination on the basis of age, discrimination on the basis of sex and in the biological sense, discrimination against the physically impaired. To me this is the more noble aspect of the legislation.

Notwithstanding what I have said, Mr. President, I will support this amendment. It is a technical error, which really ought to have been caught at the time. I would suggest also that, while I support it, perhaps the Government or the Attorney General's Office might look at this legislation again to pick up some of the things that might form the basis of comprehensive amendments at some future sitting of Parliament. Thank you, Mr. President.

2.15 p.m.

Sen. Joel London: Mr. President, I promise I shall not be too long. I keep hearing that the amendment is an easy one and should not occupy too much time in the Senate this afternoon. I will try to be as brief as possible. Mr. President, quite a few pieces of legislation have come before this Chamber, in recent times, proposing to give increased power to the Minister. In fact, Mr. President, the very selection of advisers, as stated in this piece of legislation, seems to me to be in breach of the Equal Opportunity Act, because it does not seem to give everyone an opportunity to be selected on the panel.

Mr. President, there are things that we need to be mindful of and the question has already been raised, and while the hon. Minister in the Ministry of the Attorney General may not be guilty of sheriff tactics, we never know who will someday occupy the office, as is the case presently.

I believe that we ought to have clear vision. We ought to have clear foresight and we ought to properly plan for the future. I want to take our minds back to a period in time in our history when we spoke about vision, foresight and planning for the future

There are those of us in this Senate who will remember that in 1970 during the “no vote” campaign, the People's National Movement government swept the

polls; all 36 seats, and we had no Opposition in the Parliament. The hon. Prime Minister at the time, Dr. Eric Williams, being the gentleman that he was, recognizing that that type of power can go to an individual's head, put certain things in place, as far as the Constitution was concerned, to ensure that for future Prime Ministers, we would not have a situation where, if that situation arose again, they could abuse the power that they found themselves in.

He went so far as to create a situation where he gave the backbenchers an opportunity to speak out against the things that were being said in the Parliament. They had an opportunity to say what they wanted to say, but vote for the party in any event. Eventually, we had one or two persons who broke away from the party, they formed the opposition. As a matter of fact, the then Leader of the Opposition, the first person he appointed as a Senator, was the hon. Basdeo Panday. I do not know how many of us remember that.

Here we had a situation where the foresight and vision and planning for the future that we were talking about was clear; it was evident, and the then Prime Minister, recognizing that this kind of power can go to an individual's head and not knowing who would occupy the office in the future, that type of legislation was put into the Constitution for such a time, Mr. President, as today.

We never know who may very well occupy the office, and the same situation is applicable to today. For while the hon. Minister in the Ministry, as I said before, may not be guilty of sheriff tactics, we never know who will occupy the office and we need to take precautions against a rogue or a runaway Minister, for we never know who will occupy the office and use the office in such a way that would bring the office into disrepute; and hire or put on a board or panel anyone he or she feels or sees fit.

The Minister alone, Mr. President, in my humble opinion, should not be solely responsible for the selection of the panel, and I think that too many pieces of legislation have come before this honourable Senate proposing to increase the powers of the Minister; proposing to give the Minister more powers to hire and to make decisions, and I feel that this is something of which we ought to be very mindful.

The Bill, Mr. President, does not speak of equal opportunity for religious matters only. The Bill also touches on matters concerning race, gender and promotional opportunities, and while I welcome the influence of religious leaders, because there is a pervading school of thought which suggests that the influence

of religion on the politics and the governing of our country is not as prevalent as it should be.

In this particular situation, Mr. President, that is not simply the case that we are dealing with. In this situation, there needs to be more say than just that of our religious leaders. It would be amiss of me, Mr. President, and I heard Prof. Kenny speaking of the difficulties that he faces as a senior member of our society. Of course, it will be very amiss of me if I were to stand here and not call for representation of our young people in our society. [*Desk thumping*]

You see, when we talk vision and we talk future, we need to think about our young people, and too many times we plan and we put things in place without thinking about the future of our young people. Too often, we underestimate and discriminate against what our young people have to say. Where is the voice of the young people, Mr. President? So much so to the extent that section 26(5) speaks about how the membership of the Commission shall reflect, as far as possible, a balance of race and gender, but it does not seem to encompass any room. There is no room inside there for the voice of the young people.

Who is ensuring, Mr. President, that our young people are treated with equity? I made the position before. Maybe if we had a young person on a panel, maybe more young people would be represented in the Senate today, but while I do feel a lot safer in the Chamber, yes, I look over and I do not see many young people on the other side, but I certainly do feel safer. [*Laughter*]

Sen. Lucky: Excuse me? You do not see young people? Shall we stand? Is it that you cannot see? [*Laughter*]

Sen. J. London: I know the hon. Minister in the Office of the Attorney General and Ministry of Legal Affairs, Sen. The Hon. Gillian Lucky and Sen. Dr. Moonilal would like to think that they qualify, but we went through the age limits already, as indicated. We know that neither of them are under the age of 30. Mr. President, we are asking the question, who is to ensure that our young people are treated with equity? I was making the point that I do feel a lot safer in the Senate, even though there are not any young people on that side; they have certainly given a new meaning to the term, "Is there a doctor in the house?"

I look forward to what our young people have to say and what our young people have to contribute, and I think this society takes a lot of things for granted as far as our young people are concerned. I had the pleasure or displeasure, depending on how you look at it, Mr. President, of attending an official function

recently, and while approaching the VIP booth, I was dismissed very loudly and I was told that, “You are not supposed to be on this—I said you are not supposed to be on this side!”

When I took out my invitation and I gave it to the lady and she saw who I was, she said, “I am sorry, Senator. Please have me excused.” Because it was apparent that someone of my age should not be there. It was not that the person approached me in a manner which may have suggested that I may have been a bit lost and she would try to direct me to where I was supposed to go. It was simply a matter that “you do not look as though you belong on this side”, and that was the approach that she took with me.

I am saying, Mr. President, that these are some of the issues our young people face. We are discriminated against, and sometimes nobody really wants to hear what our young people have to say. Again, I stand here unashamedly and extremely proud; I have said it before and I will say it again, I stand here as living testimony of empowerment, PNM style. [*Desk thumping*] I look forward to what my fellow young people will contribute, and I believe that the composition of the panel needs to be looked at and the very selection and the person who selects that panel—we also need to revisit the decision that the Minister should be solely responsible for the selection of the panel.

Thank you very much, Mr. President.

Sen. Rev. Daniel Teelucksingh: I thank you very much, Mr. President. Early in the debate, Sen. Dumas led us on, and he brought up the question of the religions, the pluralism in Trinidad and Tobago and then we had other speakers looking at the whole question of ‘principal’ religion and the possibility of discriminating against minorities.

I just want to point out, as far as definitions go, that although we see in Trinidad so many small religious groups, they will not be religions really; the principal religions in Trinidad and Tobago, the living religions of the world—I am using the word religions; not all these things that look like so many splinter groups in the land, getting us scared.

There is Hinduism, Islam, Christianity, Buddhism—not so much in Trinidad and Tobago, a little of it. There might be African religions and there is a mixture with the African religions and Christianity and so on, but we are looking at the living religions of the world and it is very possible in Trinidad for us in a time like this when we need to make up our minds. Because, let us take Christianity, there are so many—I know they would not like me to use the word, but I am just

borrowing the word—"sects". Denominations, maybe, is a good word, and so it is in Islam there are denominations, there are groups in Hinduism, there are so many but they fall under the general umbrella, Hinduism.

In fact, I rise to support this amendment. I am not too worried about principal religions in that all these—I would not say Presbyterianism, Catholicism, Anglicanism, Pentecostal groups and so forth. I would not call them religions. They are all Christian. They fall under the umbrella of Christianity.

2.30 p.m.

I think the amendment is good as is. It is clear in my mind that you need to differentiate between the principal religions. I think this is how I interpret principal religions in the Bill, over or against all these small sects, the denominations and the splinter groups of all the headings. This is how I see it. Therefore, the Bill is in order.

There are a lot of minorities, but they must be responsible to somebody. The sad thing about these minorities and splinter groups under the umbrella of a religion is that they are so contentious and they get after one another. This is one of the scandals of religion. I could tell you about Christianity, that they compete so much. They are all Christians; they use the same Bible, but they want to destroy one another. That is the scandal of Christianity. I know that the people in other religions might want to say it is a shame, since they have the scandal too. So I support the amendment as is, and I really do not have a problem there.

One time I thought that it might have been good for the Minister to discuss this with the Inter-Religious Organization (IRO), because in the IRO you have representatives from Christianity, Hinduism and Islam. The Bahais are also in the IRO. There are some other persons who feel that they have no allegiance to the IRO. Therefore, maybe the Minister, in his or her wisdom, will look for advisers from all these various groups.

Secondly, Mr. President, I just want to remind this honourable House, we are talking about religion and the importance of religion. Religion is so powerful a force in Trinidad and Tobago that it was the axis of the debate on the equal opportunity legislation. You know, funny enough, there are so many people who forget that there were 57 or 67 clauses in the Equal Opportunity Legislation, and yet the axis of the Bill was clause 7. Everybody forgot the entire Bill and all the clauses, and it was only clause 7 debated.

I also remember the Government being very anxious to get the Equal Opportunity Bill passed, and maybe the first and last set of people they had consultations with, the place of real religious compromise, was with some religious leaders in this country. That was the area of consultation, and that was make or break for that equal opportunity legislation. Let me tell you something, Mr. President, it was the religious leaders in this country who saved that Bill. That Bill was in for serious trouble. Government got the most pressure from certain religious groups, and it was only after there was a compromise on clause 7, when everybody decided to go along with the Bill, that the Bill saw the light of day. I just wanted to remind you of that.

I want to add too, that it would be a good thing to note that there is a pattern in recent times, not only in Trinidad and Tobago, but also in other countries of the world, for all governments and political parties to recognize the power of religion in the lives of people. There has been a strong temptation for political groups to be associated with and to pander to certain religious groups. We in Trinidad and Tobago need to be very careful. Political parties, because of our religious pluralism, need to stay clear of preferences for any religious group in this country. I think it is a dangerous thing. All the major parties in this country are to be very, very careful.

I want to commend the Government, as we are talking about religion—I did not start it [*Laughter*—I really wanted to stay out of it. I just thought that we needed to get some clarification on the difference between religion, as conceived in the Bill, and the multiplicity of sects and denominations. I want to add this while I close: I want to commend the Government for introducing religious exercises—I wanted to say prayers; I do not know what it is—the 20 minute prayers in government schools. I think it is a good move; really and truly.

The only problem, I understand, since the opening of school and the implementation of this suggestion of having religious exercises, prayers or whatever, is that teachers were not prepared for this, in that the Ministry of Education and the Government did not really prepare for this by giving the necessary guidance to teachers. On the first day of school they wondered what to do; teachers needed guidance. If the teaching of religion in schools has to be a success, I hope that the Government is planning to have comparative religion as a subject taught to teachers.

If teachers must do this there are two things that are involved in the teacher leading in the 20-minute religious knowledge or religious instruction in the

government schools. One is, are you going to teach religion as an academic exercise so that young people going out there will be able to appreciate the religious persuasions of their neighbours? That is a very important consideration. Why are you having religious exercises for 20 minutes in government schools? That is a very good objective, so that our young people would learn to appreciate one another's religion.

The other objective is: are you going to instill faith, encourage, and develop faith and nurture faith in our young people? If that is so, then you need to understand that not all teachers will be willing to handle this subject, because they may not be believers and they will have very serious problems. You still have, even in that class in the Junior Secondary or the Senior Comprehensive schools, this variety in your class in front of you. All the principal religions are represented: Hindus, Muslims, Christians and the smaller denominations are all there. How do you challenge the teachers to deal with religion in that 20 minutes allotted to them?

I want to compliment the Government. It is a very good move to introduce religious exercises, prayers and so on, to encourage our young people along those lines. But the Ministry must not stop there, it really must do much more. I hope that the Government continues dealing with some of those problems in order to prepare the teachers to teach religion, if even it is from an academic point of view. Then comparative religion should be a course at the teacher training college—and that is important—or there are some in-service training courses for the younger teachers even before they go to training college that should be introduced. I am very happy to support this small amendment by the Government

I thank you, Sir.

The Minister in the Ministry of Labour, Manpower, Planning and Industrial Relations (Sen. Dr. The Hon. Roodal Moonilal): Mr. President, like the last speaker before me, I had no intentions of contributing to this particular debate, but the debate is very interesting and, certainly, it has a bit of healthy passion as it relates to equal opportunity, religion, youth and discrimination. I would be equally brief as the last speaker.

These matters raised some fundamental issues. Although the amendment is small, it is profound, and some important issues are coming up for debate. On the issue of religion it is very interesting that, in my view, one of the most beautiful aspects of Trinidad and Tobago is our religion and diversity. Our multi-religious make-up brings with it a strength. A fundamental pillar which holds our society

together is our multi-religious character, and one may add our multi-cultural make up and so on.

This is a society where one could be born in a Hindu home, attend a Christian secondary school and have an Islamic companion; and I am not describing anyone in particular. When we have such experiences, and we learn about the religions of the world and several of the more—I will use the term—widespread religious doctrines and so on, it gives us a strength in interpreting, not only our plural reality, but events that we see in the world around us.

It is no secret that each day men and women all across this globe are killed on the basis of conflict dealing with religion; conflict between Christians and Islamic fundamentalists and so forth and different tenets of Christianity. When you have had the experience from Trinidad of growing up in such a plural society and mixing in such a healthy developmental way, people from different religious groups, churches and so on, it really prepares us to understand the world and conflict in the world, and also to contribute in our own little way towards helping to solve really big problems and global problems.

This is why I may add that several of our most distinguished citizens of this country, have contributed at international fora and international organizations and so on, and are held in such high esteem by citizens of the world. When you come from Trinidad and Tobago, our Islamic brothers and sisters across the world feel a sense of connection to us. Our Hindu and Christian brothers and sisters of whatever variation feel that because you come from Trinidad and Tobago in a way you understand them; you understand some of their problems and so forth. This is our strength.

In societies like Trinidad and Tobago that are much more advanced than other plural societies across the developing world, we need to deal in an institutional way with our conflict that emerges from our diversity. Because we have many cultures and religions we will have conflict. It is almost natural that there will be conflict in societies like ours, polarized as it can be by race, culture and religion. It is important that institutions are created and fashioned to handle diversity.

It is a credit to the first term administration of the UNC that this legislation came forward, was debated and passed, notwithstanding a lot of public outcry and dialogue and the late hours of Members of both Chambers. It is a credit to the administration of Hon. Basdeo Panday that in his first term we had equal opportunity legislation in this country that seeks to deal with our perennial conflicts that emerge in the society.

It is possible that we may not get it right, at first, when we are dealing with such complex issues as discrimination in very multi-cultural and multi-religious settings. We will not get it perfect, and we will come back time and time again to build upon a legislative, institutional, regulatory foundation. We may have to come back and build upon it. It is like building a wall and putting blocks as you go up. You may not reach the top; you may not reach perfect institutions that work and deliver what you hope it would be, you may have to come back and alter, amend and repeal legislation and so on. This, to me, is also very healthy.

In a society like this, dealing with our conflicts and dealing with the potential for social instability and extremist tendencies that arise because of perceptions and, in some cases, reality surrounding racism and discrimination on the basis of religion and so forth, those are important issues.

On the issue of religion, because it comes up here more than other issues, it is very interesting when we look at the plight of young people, as this society evolves, some of the problems that young people face. As someone just two or three years older than Sen. London, I think I can still speak with authority on youth and problems affecting young people. *[Interruption]* As a senior youth I can address myself to the issue of youth and religion.

It is advisable in this society for religious groups and churches to play a greater role in harnessing our young people. In fact, we should go in that direction to help churches diversify their operations, to get into community development, community strengthening. I think the church, mandir, mosque or whatever has an important role to play. Religion has an important developmental role to play in our society.

There is a point at which I agree, but I understand more than agree, with my good friend, Prof. Kenny's concern about this open and overt declaration of religion that comes sometimes in a vulgar way—the way you are approached and so forth. I understand that concern, your right to religion and to have your own beliefs. But religion is also an important issue in public policy making, because there are groups out there that complain about discrimination, whether perceived or real, in the allocation of state resources and in the treatment meted out from private sector enterprises. So that religion remains an important factor for public policy-making.

2.45 p.m

I support analysis that includes ethnicity and religion in our dialogue. I always say that it is only in politics, when elections are in the air, that everybody talks about ethnicity and politics. People do not want to talk about ethnicity; they do not want to talk about religion and so on. Those are important factors for policy making, not just around election time when we all look to see who is who. I support Sen Rev. Teelucksingh as well on this matter of the importance of religion.

I also want to say that as we build this type of legislative foundation, it is also important to look at other forms of discrimination. Ageism—we have discovered that one of the reasons we have a low female participation rate in the labour force is because of some type of in-built discrimination against older female workers returning to the labour force. So ageism, sexism, chauvinism, of one kind or another, are important issues that we should, at one time or another, reflect upon in order to strengthen our legislation and our institutional capacity to meet and treat with those sources of conflict if the society is to remain stable for our economic development and our social development and so on.

Mr. President, I support the amendment but I want to end by raising another issue that I hope does not trigger more debate; that is, our Constitution which affirms the principles of religion and the supremacy of God. It says:

"Whereas the people of Trinidad and Tobago—

- (a) have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God..."

Is that in a spiritual realm? That must be spiritual but not participatory religion. These are interesting issues when the Constitution commits us to the supremacy of God and yet we have a little debate over the role of religion in public policy making; in declarations on public forms and so on. I thought I would just end on that note. Thank you.

Sen. Martin Daly: Mr. President, I am going to do something that I think is very dangerous. I believe in Victorian times it was instilled in gentlemen and ladies, that in polite company, and certainly not in public, we never discuss sex or religion, because it was always likely to lead to passion of one sort or another.

I really did not plan to say anything about this amendment. I think it is a bad amendment and I would like to say why. First of all, I entirely agree with what

Sen. Prof. Deosaran said about the panel being monochromatic. Sen. Prof. Kenny has assured me that it is a good word, meaning of one colour. In this case, of course, we are not using colour in any sense other than the scientific sense. We have a commission—and I just want to repeat some of what Sen. Prof. Deosaran said, just to make my own point. We have a commission that has to adjudicate on a variety of forms of discrimination but we are going to have a panel of advisors that has only one group of the potential “discriminatees”, if I can call them that, advising the commission. It is not logical to start with, that if you have a commission that has a wide remit, you confine its panel of advisors to persons of one remit. It is simply not logical.

My objection is much more fundamental and that is if the commission is to have advisors, the commission should pick its panel of advisors. It may well be that from time to time, because of the problems inherent in administering legislation of this kind, that the commission will need, for want of a better word, expert advice and therefore, it may want to co-opt persons to advise it. Clearly, the appropriate persons to pick the advisers, even to pick the panel of advisers, is the commission.

Even more importantly, it undermines the independence of the commission to make the appointing authority the Minister. That is really my point of departure. This commission is sufficiently important that its chairmanship and vice-chairmanship are guarded by appointment by the President, after consultation with the Prime Minister and the Leader of the Opposition. This is not a Cabinet appointed commission, we have taken the trouble to guard the chairmanship and vice chairmanship by that method of appointment.

Nothing I have to say reflects on any particular Minister. Indeed, I will raise the question in a while, who is the Minister, not the personality, but which ministry we are talking about. I think it is quite wrong to give the Minister the power, in any form, and it is doubly wrong in the form in which it is presented to us.

Other speakers have made the point as to how do you determine what is a principal religion. I certainly am not going to enter into the arena, where Sen. Rev. Teelucksingh went, of Muslims, Hindus and Christians; that would really break my Victorian principles. I do not see why this important form of recognition of a religion should be left in the hands of a minister. It is somewhat contradictory that previous speakers have said that we must not have religion and politics mixed; and politicians must not seek to exploit religion for political purposes, but here you are handing an instrument of exploitation to a Minister. You are now

putting in the hands of a Minister a very important instrument of recognition of whether a religion has reached or has arrived to the status of principal religion; and that is wrong. What better temptation, if you are short of a few votes, or a few membership forms, to go to some religion, hitherto not thought to be a principal religion, by numbers at any rate, and invite them to have a seat on this panel. It is quite wrong and is, in fact, doing the very damage that previous speakers, including our religious representative, have said is a wrong and we should avoid. Therefore, this power ought not to be in the hands of a Minister.

Just to summarize. First of all, it is open to abuse; secondly, it is open to very easy muddling of church and state—to use old-fashioned language. It is against the spirit of a commission that has had its chairmanship and vice-chairmanship guarded. Those arguments, to my mind, with the greatest respect, are valid whether it is principal religions or all the status categories. I am against the power of this appointment residing in the hands of a minister. I am totally against that for all of the reasons that I have just given.

2.55 p.m.

I say it is compounded, of course, when you have this implicit recognition or certification by a politician, that some religion has now arrived at the heady status of principal religion. So I say it is a double whammy. I really think we should be proposing that the commission appoints its own advisers.

May I just say that everyone seems to proceed on assumption, listening to the debate so far, that the religion is a principal religion because of the number of its adherents. I do not accept that at all. History is replete with examples of quite horrible points of view—I would not call them religion for the minute—that have had widespread effects on particular societies. [*Interruption*] Thank you, Sen. Cabrera. Like myself, you are a centrist and civil libertarian. You know exactly where I am going.

So that if Germany, for example, had won the war and had decreed that Nazism was to be a religion, and even if that status lasted for five or ten years, and then that was reversed and they lost all of their adherents, it certainly would, for a temporary period of time, have been a principal religion, not just by number of adherents, but by the effect it had on the world. Indeed, I notice—this is why these matters are so dangerous, and I am afraid I will have to make a small mash on Sen. Rev. Teelucksingh's toes, because I did not hear any reference to Judaism. I am not at all sure that the Jews would like to be excluded from the description of principal religions or living religions. Indeed, if you live in the

Equal Opportunity (Amdt.) Bill
[SEN. DALY]

Tuesday, May 15, 2001

Middle East, you would certainly believe that Zionism or Judaism was a principal religion in the Middle East, even though it might not, numerically, have many adherents, when measured worldwide.

So you see, there is much value in listening to the scientist, Prof. Kenny, who would tell you that this business of religion, is not really the business of the State at all. That does not mean that anyone is decrying religion or saying religion is a bad thing or scoffing at religion, but it is not the State's business; it is not the Government's business and it is not the Minister's business. And those are the problems that are inherent in this particular amendment. Not only, as I say, do I have a principled objection to it lying in the hands of the Minister, but what is worse, is that the Minister being presumed able to recognize what is a principal religion in Trinidad and Tobago.

I am deliberately staying away from local examples for the moment, but there are many people—I got out the dictionary—in Trinidad and Tobago who might believe in worship of, or obedience to, a supernatural power. But they will have genuine differences of opinion as to the ideology of the worship; the method of worship; the form which the obedience is to take. They may have very legitimate differences, even if, loosely speaking, they could be put under one of the—I prefer to say—well-known headings. And there is conflict in this country about who should and should not belong to the Inter-Religious Organization and who should or should not qualify for membership in the IRO, and I do not think that a minister has any business in that kind of conflict whatsoever. Let the commission decide who it would like to have as its advisers.

I am encouraged by Sen. Cabrera's interest. To give another example, many powerful movements, whether they are religious movements or political movements really start quite small. In fact, what little I know about the technicalities of these things is that their leaders are first crucified before their word spreads. They have very few adherents. They are first crucified before their words are spread by the people who write, is it the Gospel, Daniel? It is an awfully long time since I went to Sunday school at All Saints' Church. But certainly in terms of one of the religions certified as a major religion by Sen. Rev. Teelucksingh, it was a very long struggle. But certainly those events that are related to us, had a profound effect on the world.

The interesting thing about it, at the time when these events were having their most profound effect, the religion would not have qualified as a principal religion, because everybody was worshipping Caesar. Tell me when I am going wrong; it is a long time since Sunday school. At the time when these most crucial events

were taking place, the religion would not have qualified as a principal religion and the poor gentleman would not have qualified as an adviser of the panel to the commission. The chief celebrant of this religion would not have qualified to be on a panel of advisers to our commission. So you see exactly how dangerous this is.

Of course, Mr. President, you know, I do it very badly, but I am dedicated to keeping us somewhat lighthearted in this Chamber. You know my views about snarling and so on. It is very interesting that Sen. Dr. Moonilal joined the debate. I know he knows me well enough to know that nothing I say is meant to take offence. But, you know, we had a political controversy recently. I do not know, if you have a new form of subscribing to membership in the Senate, which you never had before; in December you had a zero form of subscription, and then suddenly seven out of 14 were enough. Does that make the category to which the seven belong, a major political religion? Does that mean that that category that suddenly went from nought to seven, would become 14 and overwhelm us all? Who knows? Or will the tide be kept back? How do you decide whether something is principal? “Principally” represents anything, whether it is in politics or in religion, particularly in something that is so dynamic.

So I wholeheartedly support the suggestion of my colleague, Sen. Prof. Deosaran that, at the very least, section 26(3) should be amended so that the panel is broader based, but equally, within the narrow confines of this amendment, I cannot support an amendment that gives the Minister the ability to recognize, indirectly, by the appointment of someone to the panel, what is a principal religion. I would be proposing in due course, subject to what Sen. Lucky may tell us—because we know she is very amenable to good ideas and amendments and I do not suppose that her substantive post prevents her from being amenable to these ideas—and subject to what the Government tells us, I will either support the amendment in committee that is being proposed by Sen. Prof. Deosaran, or I am going to propose that we delete the word “Minister” and replace it by the word “commission”, but otherwise we are getting into really difficult territory.

You know, I could give many other examples of budding religions. Depending on which newspaper you read, sometimes the “come latelys” are on the verge of becoming a principal political religion; sometimes the Club 88ers are holding the fort as the principal religion; sometimes the NARites seem to be gaining the ascendancy as a principal political religion, and of course, you know, Lloyd Best speaks about the “Garveyites”; then I have mentioned the illustrious seven out of 14.

In case you are thinking, well he is definitely going off the subject of religion, may I just remind you that, of course, religion has a much broader-based meaning. I whispered to Sen. Prof. Deosaran during the break when I recognized the formidable difficulties that he was presenting to us, based on his illustrious career as a social scientist; I said: "But what if carnival is my religion?" Carnival is certainly a principal religion in this country. So does that qualify?

Just in case you think I am straying—because a rebuke from you is more than one could possibly stand—may I just say that this dictionary with which we are provided, has actually recognized the popular meaning of religion. The fifth meaning that they give to it is something of overwhelming importance to a person. The example they give, which is a very happy one, football is my religion; or football is his religion. Of course, you know if you start me off on football is his religion, where I would be going next, up the East-West Corridor and then Sen. Roy Augustus will have to join the debate.

So you see, there really are very, very formidable problems in deciding what is a principal religion, given the evolution of these concepts in the modern world. Anyway, I would like the commission to pick its own advisers.

Thank you, Mr. President.

3.05 p.m.

Sen. Prof. Kenneth Ramchand: Mr. President, when I saw this amendment, I just steupsed and said that I am not taking part in that debate because the whole Bill needs revision. I still hold that view. While listening to the debate and learning slowly to be grateful for small mercies, however, I thought that I should make a contribution based upon what I have heard.

I am very partial to the argument that the panel needs to be wide ranging in outlook, not biased towards religion and that it should upgrade the secular outlook. I am very partial to the argument of Sen. Daly that the commission should appoint its own advisers. I think that Sen. Prof. Kenny's remark about the size of the panel that may have seemed like a joke has the seed of a suggestion I would like to make. The commission should choose its own advisers. It should compile a list or a pool. There should not be a permanently appointed panel, but out of the pool, the commission may from time to time choose a panel to advise it where required and necessary.

Thank you.

The Minister in the Office of the Attorney General and Ministry of Legal Affairs (Sen. The Hon. Gillian Lucky): Mr. President, permit me to begin by thanking all honourable Senators for their very sterling contributions. I give them the assurance that, as usual, their contributions have not fallen on deaf ears. I must admit that I have always held to the view that no amendment is a simple one. Sometimes, the shortest amendment attracts the longest debate. I have learnt this because in my many years as a State prosecutor, it was often what appeared on paper as the shortest case took the longest time. I say this as an aside because it reminds me of a place that I miss very much. That is the courtroom. There was a criminal matter in which there was one witness for the prosecution and one accused person. The honourable judge sitting asked of the prosecutor and defence attorney: how long do you think this case would last? I leaned across to defence counsel and he said, "Well Gillian, just two witnesses, your witness and the accused. He would give evidence. I think we could say positively two days." I stood and said, as I usually do very powerfully and with great confidence, "My Lord this case will last no more than two days." How embarrassed I felt when after six working days in that case, I stood and told his Lordship that criminal matters are very often like cricket. Cricket, these days, is very unpredictable. Needless to say, after that, I never gave any estimate of time when it concerned a criminal matter. I have resorted to the phrase, I am in your hands when it comes to estimation, My Lord.

Because of that experience, when I saw the amendment, I knew I would be involved in a very big way, if I may use that phrase. In terms of having read it this afternoon and responding to it, I said to myself, do not be mistaken. Things are not always what they seem because with these amendments and the wonderful people who are very competent and committed to public service that sit in the honourable Senate, we would have a very long day. So said so done. I thank everyone for his or her contribution. I always say that I do not think that a contribution is without merit. I listen to everything that is said. Sometimes we may find favour and sometimes we would have no choice, but to agree to disagree. Let me say from the outset that this is such an instance where in some regard, we would have to agree to disagree. [*Interruption*] I thank the honourable Senator for recognizing that even though I am young, I can still be a boss.

I just wish to quickly address the matters which were raised this afternoon. It might not be in the order in which the Senators made their contributions. I remember Sen. Dumas asked the question, why is the panel of advisors in subsection 3? We are looking at a panel of advisors that would be comprised of

representatives of every principal religion. Why are we not looking at other areas of specialty?

I just want to indicate that when we are looking at the particular section to which we are addressing our minds, let us not forget that the Equal Opportunity Commission that is being established would be the driving force. Immediately, let us remember subsection (2). For a starring section, it has really played an off the stage role. Subsection (2) makes it clear that a commissioner shall be a person with training and experience in the field of law, industrial relations, sociology or administration who has served in either of these fields for a period of not less than 10 years, or who has served in a combination of these fields for a period within the aggregate of not less than 10 years.

My simple point is that with five commissioners with this high degree of expertise, the commission is the driving force. The independence in their operation is that it starts on the premise that they are being appointed by the President of Trinidad and Tobago. Because of that need for independence, there was the unfortunate oversight that in subsection (4) of the Act as it stands, the minister was given the responsibility to appoint the chairman and deputy chairman. Subsection (1), said that the President would appoint these five persons including the chairman and deputy chairman. There was recognition from the outset that the commission was the driving force. I always say that the law is one thing, but it gets its life when it is implemented and being operated. The driving force in this legislation, the commission, would enjoy the independence that it deserves.

The second point raised was, why are we looking at religions? Why do we have principal religions? We have heard it being articulated and ventilated in this honourable Senate, that even though there are the principal religions—I think there must be resort to religion—it does not mean that the religious aspect is the only aspect being considered.

Let us not forget that the commission would be comprised of five persons. Subsection (3) ensures that this commission has a panel of advisors. According to this subsection there shall be a panel of advisors to the commission comprising of representatives of every principal religion in Trinidad and Tobago. It does not mean that these advisors would mandate the way in which the commission works. It does not mean that the commission would not seek advice from the experts. We have been debating very important Bills in this honourable Senate. We may not be experts in the fields in which we are debating. I am no expert in air navigation

except that occasionally when I have time, I fly on an airplane and I wanted to be a pilot when I was very young. It is still a dream I intend to achieve. The point is that when arguing we go to the experts. Let us not underestimate their intelligence. When a particular point comes before them, they would have the opportunity to go to the experts. I remember in one contribution, I think it was that of Sen. Prof. Deosaran, he was a bit sceptical as to whether the commission would be able to deal with all the complaints coming to it.

Section 29 of the Equal Opportunity Act states that

“The Commission may appoint such officers and other staff to assist in the performance of its functions.”

There is recognition that there will be many complaints and some structure has to be set up. The commission would not be a body receiving complaints, but doing that which it ought to do, such as investigating, addressing and resolving.

3.15 p.m.

Yet another point made was with respect to a suggestion that the panel of advisers should be more all encompassing.

If one looks at how the Commission is going to operate, as I stated before, with five commissioners with that degree of expertise; having to resort to experts if they chose; and then having the panel of advisers from principal religions; the statutory provisions for it having the necessary staff to deal with the issues. So that if one looks at it in a holistic manner rather than in compartments, and just give this body a chance, one would see that it would work. Let us give it an opportunity to work.

The reason the amendment had to come before us—and I agree with the point that Sen. Prof. Kenny made that, because of this, there seems to be a degree of expediency—in the wee hours of the morning going until three o’clock this certainly slipped through the cracks in terms of recognizing that the Minister was getting a power that the President was supposed to get, or that the President had been given.

I am saying, yes, perhaps we can think of the proverb although some of my proverbs really do not do well with the media, but I hope that it is applicable when I say a stitch in time might have saved nine. That is why—and I hope I have quoted it correctly without even leaving out one word—therefore, having to star in articles over a period of three days—If one gives it a chance, it will work. I still

Equal Opportunity (Amdt.) Bill
[SEN. THE HON. G. LUCKY]

Tuesday, May 15, 2001

remain very committed to the phrase—I cannot claim copyright because it has been in the public domain for over 50 years—“We have to get it right.” I say here this afternoon, let us support the amendment and let us get the Commission up and running and if there are problems—and I am not one of those who are overly ambitious or so blind that I think everything is going to run smoothly when there are problems. If problems are encountered, we will be able to deal with those problems, but let us first see how it is operating.

There was also the point with respect to the definition. I know that whenever Sen. London speaks, he never forgets—and I commend him for remembering—the young people. But I wish to indicate to the Senator this afternoon that yes, he is young but I do not want to follow what seems to be his statutory definition of what young is. I prefer to say when you are young, it is because you are young at heart and that we are all young people in this Senate. Some may just be better looking than others.

I also wish to tell him that he is not the only person who suffers from this abuse. In fact, yesterday I visited a ministry and they refused to accept that I was the Junior Minister because I am too young. We must be careful because I do not know if Senators are aware that they are trying to—I think the age range for young persons according to the United Nations is 15—30 years. There is a move to make it 12—28 years, so if you adhere too much to the statutory definition you would be falling out. Sen. London, you are only about three years younger than I am.

I can assure Senators this afternoon that the reason that our Government has felt so committed to having this amendment passed and agreed to, is that the Act itself and the virtues of the Act and the work the Acts seeks to have implemented and all the good work that everybody has said about this Act will have good effects in our society. But we cannot get it running and give life to this Act because we do not have the Commission. We definitely need to resolve what is a technical glitch in order to have the work done.

I am very happy this afternoon that Sen. Daly and I seem to be resorting to the same thing as he referred to the definition of religion as it was given in the *Collins Concise Dictionary*, Third Edition. Whereas he went to No. 5, I have just decided what really is religion. Religion as defined in the very dictionary says:

“Any formal or institutionalized expression of belief in, worship of or obedience to supernatural powers considered to be divine or have control of human destiny.”

I did not go as far down in terms of the definition of religion, as Sen. Daly did. If I had done so, then there would have been nothing to worry about with respect to the panel. The panel would be comprised of the principal religions in Trinidad and Tobago, which would include footballers, carnival lovers and bandleaders. If one says that religion is, for example, love and your religion is football [*Desk thumping*] The point at the end of day is that there was a technical glitch.

We have heard sterling contributions and the contributions would not just be applicable to this particular Act, but to future legislations when, maybe, some of these matters would have to be looked at because they would be playing pivotal roles in future legislation. What the Government is asking for this afternoon, is that we support the amendment. With this amendment we can get the work done, we can, in fact, have that Commission appointed by the President. We can have the panel of advisers. The reason there is no number to the panel of advisers in subsection (3), I think is testimony to the fact that religion is something that is growing. It is dynamic in certain instances. A minor religion of today may become a principal religion tomorrow but the fact remains that you do not just put a number because if you were to put a number of persons to be comprised in this panel then it means you are suggesting that in terms of religion it is something that is statistical as opposed to dynamic. I think that level of testimony would allow all the various sects, as Sen. Rev. Daniel Teelucksingh said, in religions, if necessary, to be represented.

In other words, I am sure that when the Minister is appointing these persons to serve as advisers on the panel he would take cognizance of those principal religions and there may be some problem where a particular religion may say, it has so many denominations or sects that certainly the Minister would bear these things in mind. But at the end of the day, let us not fool ourselves into believing that the Minister is being given overwhelming power, because it is the Equal Opportunity Commission with its staff structure and its resources that would be making the necessary decisions and resolving the conflicting issues that might come before them.

Having said that, I think I have addressed some, if not all of the issues that have been raised and we on this side are asking for their support. I wish to thank all—

Sen. London: While you have addressed some of the issues, there are some issues that I felt you did not actually address. I feel they are also very important. I am quite pleased that you addressed the issue of the youth, but I asked the

question in terms of having youth representation on the panel—you addressed my concerns as far as young people are concerned and as far as both of us being young persons, but you have not actually stated a case for young persons not being on the panel. Not only that, you have not addressed the issue raised by Sen. Daly which concerns the Commission choosing the list of advisers for themselves. I would appreciate it if you would shed some light on that for us.

Sen. Daly: Mr. President, I looked at the *Gazette* for the assignment of responsibilities to Ministers, but I was unable to pick up the Minister to whom responsibility for equal opportunity is assigned. Could you tell us which Minister that is?

Sen. The Hon. G. Lucky: First of all, I too, looked at the *Gazette* and had not seen where that particular assignment was. So at this point I would be unable to indicate which Minister has been given that assignment. I, in fact, looked for it because I thought that would be one of the questions to be certainly asked—which Minister has the responsibility?

To answer Sen. London's question. I thought I had answered the question. The point I had made and I addressed it, but obviously it calls for greater clarification on my part. I apologize to you in those circumstances. The Minister, under subsection (3), will be appointing a panel of advisers. That panel is not limited in terms of number or composition. The only restriction is that it would be representatives of every principal religion so there has been no bar put in terms of the age of that person. One could be a young person like myself or you, and everybody else in this Senate, and all of us as young people, once we are considered to be properly representing a principal religion then we qualify.

I am sure the Minister who is assigned that responsibility will ensure in choosing his panel, which is not restricted by number, as our Government has always done and is committed to doing, that it is wide based and all encompassing and all inclusive. I hope that answers the Senator's questions.

3.25 p.m.

Sen. Thomas: Mr. President, is it that the assignment of equal opportunity has not been given to any specific minister so that, indeed, what is before us is a bill in which that particular minister might not have had any input, in relation to the final realization of this Bill?

Sen. The Hon. G. Lucky: Sen. Thomas, although there has been no assignment in terms of the amendment, when there are amendments, there are

committees of Government and every minister is able to give his input. These are matters that are circulated and suggestions taken. When those suggestions are put together, the amendment is drafted and brought here. There has been input.

Sen. Prof. Deosaran: I thank you, Mr. President and hon. Minister for giving way. I will be very brief. I, of course, cannot enter the debate on youthfulness. I have passed that stage, regrettably. This point occupied a centrepiece of the debate, and was emphasized by Sen. Daly. I myself emphasized the point about this “principal religion” aspect. I do not think we were speaking on our personal behalf, but I think—and I hope I am right—we were trying to convey the sentiments of the wider national community and possibly to save the Government from residual or consequent embarrassment, with the Bill as the target. That is why, out of precaution, we would have been happy if you could have revisited this matter of “principal religion”, whether living, dead or resurrected, in real terms, not so much in historical terms. I think the words “principal religion” are a bit offensive. Will the Minister promise, if not today, to revisit the issue, if only for such precautions?

Sen. The Hon. G. Lucky: Sen. Prof. Deosaran, as I indicated earlier, what has been said in those contributions does not fall on deaf ears. When the Equal Opportunity Commission is operating with its panel of advisers, there will be problems. I do not envisage any problems because I am sure that the Minister who is making the appointment is going to ensure that everyone is properly represented. The issue of those who may feel that they are being treated as minors when they are principals will be addressed. Your point is not just being put on a back burner and nothing more. We will bear it in mind and, should there be a problem, consideration would be given to it if such an amendment would resolve any problem that may arise.

Sen. London: Mr. President, maybe it is just I, but again I would like to ask the hon. Minister the question. It was proposed that the commission choose its own panel. I have not heard any clarification as to what is wrong with the commission choosing its own panel of advisers.

Sen. The Hon. G. Lucky: Sen. London, I did not say that anything was wrong with respect to the commission choosing its own panel of advisers. What I pointed out, to answer the concern that was raised by those who feel that the commission should have that power, was that just as we Senators, when we are debating bills that call for expertise we may not possess go out to experts, there is nothing that precludes a commission, depending on its area of expertise and the problem that it has to resolve, from going to an expert and getting the necessary

advice. I answered it by saying that we would not have changed it. I hope that answers your question.

Sen. Prof. K. Ramchand: Mr. President, I would like the hon. Senator to give an explicit reason for not considering the suggestion that there not be a permanent panel, but a pool of advisers upon which the commission can draw from time to time.

Sen. The Hon. G. Lucky: Sen. Prof. Ramchand, because of the wording of the subsection, I do not see a problem with respect to there being a static panel. The subsection says that there shall be a panel of advisers to the commission appointed by the Minister. I, therefore, see a level of dynamism and flexibility, even though there are representatives from the principal religions. That is why I make the point that there may be what someone considers a minor religion and they may be able to justify why they ought to be considered a principal religion. That is why I am saying there is no restriction in terms of anything, number, age or gender bias with respect to that subsection. I see that panel of advisers being a pool of advisers.

Sen. Yuille-Williams: I did not take part in it, but I am talking on behalf of the others. The amendment says that the Minister shall appoint the panel of advisers and that, I think, was the question. There was a suggestion that the commissioners should appoint the panel. The answer did not seem to fit in with this. That is what I think is the problem.

Sen. The Hon. G. Lucky: I think my answer did, but I will repeat it in a different way. In the amendment, it is stated that the Minister shall appoint the panel of advisers. The suggestion is that the word "Minister" be replaced by the word "Commission". In responding, I said that we would adhere to the fact that the Minister ought to appoint because the Commission would still be able to get the independent advisers, if it so chooses, in terms of resolving issues. In other words, if there is an area that calls for expert opinion, nothing precludes or prevents a commissioner from getting his expert advice. We are maintaining that it should be the Minister.

Sen. Daly: Point us to the section which says that the commissioners will be able to get independent advice. Point us to it.

Sen. The Hon. G. Lucky: I am saying, Sen. Daly, that these commissioners are given a certain mandate. In other words, they have certain powers, as commissioners, in resolving conflicts. They will be able to go, depending on the

conflict, to whomever they choose that they consider an expert. That is why I used the example of my having to debate a bill on which I may not have any expertise. This does not prevent me from going to somebody I consider an expert in the field and being advised. That is why we ask you to support our amendment that the Minister appoint the panel of advisers. The Minister, at the end of the day, will be accountable to some religion, which feels that it is not represented on that panel, as to why such a sect or religion is not being represented.

Sen. Prof. Ramchand: Mr. President, if the commissioners already have the power to choose their own advisers, what is the need to saddle them with a panel of advisers appointed by the Minister?

Sen. The Hon. G. Lucky: Sen. Prof. Ramchand, when I say that they have the power, I would like to use the word “power” very clearly. It means that nothing stops them from getting independent advice. The reason for a panel of advisers consisting of representatives from the principal religions is that it is envisaged that there may be particular matters coming before that commission that involves religious issues. I am sure that what is envisaged is that when such issues come before the commission, it will be able, in determining those matters, to go for the advice of the panel.

Sen. Prof. Ramchand: If it is not a religious matter, there will be no panel of advisers?

Sen. The Hon. G. Lucky: No one is saying that. We are saying that a panel of advisers will be available to the commission. It is how the commission, consisting of these five independent persons with their level of expertise, chooses to use that panel of advisers in terms of resolution of the conflicts of the matters that come before them. This is the position.

In the circumstances, I beg to move that the Bill be now read a second time.

3.35 p.m.

Mr. President: Hon. Senators, just for the purpose of guidance, again, I want to mention that when a Member raises an issue, the Member replying should reply through the Chair and to the House, not directly to the Member concerned.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in Committee.

Clause 1 ordered to stand part of the Bill.

Clause 2.

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

Mr. Chairman: Hon. Senators, Sen. Daly has just circulated the proposed amendment, which I will read and probably Sen. Daly will deal with it. It reads as follows:

Clause 2, proposed subsection (4): Delete the words, "the Minister" and replace with the words, "the Commissioner".

Sen. Daly: Mr. Chairman, I do not want to prolong the debate but we had it in question and answer form. I just said:

"I profoundly disagree with the suggestion that the Commission can go and get advice anywhere."

In legal terms, as you will appreciate, Sir, I would say that is ultra vires, they cannot go and get experts if the Act does not permit them to do it. Mr. President, I proposed the amendment and I do not want to prolong the agony but I do not believe they could go out and get experts. As I said, it would be ultra vires.

Mr. Chairman: Does anyone want to add anything to it?

Sen. Lucky: Mr. Chairman, might I indicate that what Sen. Daly describes would be ultra vires action—that is why I was careful in responding, perhaps, I was not careful enough, to say that it was not the power that we were asking them to exercise they did not have. Perhaps a better word might have been "consult" and that is why I thought using the analogy of the Senators when we have to do a debate getting the expertise that is needed, in that regard I used the phrase, "that they would be able to go," but certainly not considering that it would be an ultra vires action. I just wish to make that clear. We are, however, not in support of the amendment.

Sen. Daly: I do not want to join allegiance but that is not right. The Senator is not a creature of statutes so his powers are not confined in any way. I do not want to bore everybody, however, let us have a vote and let us go home.

Mr. Chairman: Are there any other contributions?

Question, on amendment, put.

The committee divided: Ayes 13 Noes 15

AYES

Yuille-Williams, Mrs. J.

Dumas, R.

Morean, Ms. G.

Kangaloo, Ms. C.

London, J.

McKenzie, Dr. E.

Daly, M.

Kenny, Prof. J.

Ramchand, Prof. K.

Deosaran, Prof. R.

King, Mrs. M.

Quamina, Dr. D.

Thomas, C.

NOES

Yetming, Hon. G.

John, Hon. J.

Lucky, Hon. G.

Phillips, Dr. The Hon. D.

Moonilal, Dr. The Hon. R.

Lasse, Dr. V.

Mark, W.

Amin, Mrs. R.

Lambert, J.

Als, M.

Augustus, R.

Jones-Kernahan, Dr. J.

Ryan, S.

Cabrera, V.

Cowie, D.

Rev. D. Teelucksingh abstained.

Amendment negatived.

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

Senate resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Minister of Finance (Sen. The Hon. Gerald Yetming): Mr. President, the next Senate meeting is Private Member's day but, by agreement with the Leaders of the Independent Benches and the Opposition Benches, the Senate will deal with Government Business.

I beg to move that the Senate do now adjourn to Tuesday, May 22, 2001 at 1.30 p.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.15 p.m.