

*Leave of Absence*

*Tuesday, February 15, 2005*

**SENATE**

*Tuesday, February 15, 2005*

The Senate met at 1.30 p.m.

**PRAYERS**

[MADAM PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Madam President:** Hon. Senators, I have granted leave of absence to Sen. The Hon. Knowlson Gift from today's sitting of the Senate.

**SENATOR'S APPOINTMENT**

**Madam President:** Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards:

“THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency Professor GEORGE MAXWELL RICHARDS, T.C., C.M.T., Ph.D., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

/s/ G. Richards  
President.

TO: MS. ROSE JANNEIRE

WHEREAS Senator Knowlson Gift is incapable of performing his duties as a Senator by reason of his absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, 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, ROSE JANNEIRE, to be temporarily a member of the Senate, with effect from 15<sup>th</sup> February, 2005 and continuing during the absence from Trinidad and Tobago of the said Senator Knowlson Gift.

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 11<sup>th</sup> day of February, 2005.”

*Oath of Allegiance*

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#### OATH OF ALLEGIANCE

*Sen. Rose Janneire took and subscribed the Oath of Allegiance as required by law.*

#### CONDOLENCES

(MR. HECTOR ORMESBY NAUGHTON MCCLEAN)

**Madam President:** Hon. Senators, the Senate will now extend condolences on the passing of former Speaker, Mr. Hector McClean.

**The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Madam President, I am thankful for the opportunity to make this statement on behalf of Government Senators.

We note, with great regret, the passing of the late Hector Ormesby McClean, former Member of Parliament and one who has served as Speaker of the House of Representatives in the period 1995 to 2000. Mr. McClean was an outstanding Minister of Government and an exemplary parliamentary representative. He had an independent spirit and experienced a most dynamic career in the political life of Trinidad and Tobago.

His independence was, perhaps, best exemplified when as Speaker of the House of Representatives he demonstrated objectivity and impartiality in the management of the affairs of Parliament. He was able to sustain the dignity of the House and brought honour to Trinidad and Tobago when he attained the prestigious post of President of the Commonwealth Parliamentary Association. His tenure as Speaker will always be remembered.

The late Hector McClean gave 40 of his 64 years to the service of the people of Trinidad and Tobago and remained willing to serve to the very end. The country is most fortunate to have had such dedication. Hector McClean belonged to that special group of outstanding nationals who, in the formative years of our nation, came forward with great enthusiasm and patriotism to build the new society of Trinidad and Tobago. He has made an invaluable contribution to the development of this country to which we must be eternally grateful. May he rest in peace. On behalf of all Government Senators, we extend deepest condolences to his family and friends.

Thank you.

**Sen. Wade Mark:** Madam President, the passing of Hector McClean has come as a great shock to the nation. Whilst we were aware of his illness which, no doubt, contributed to his decision to tender his resignation as Chairman of the

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Commission of Enquiry into the Health Sector, no one could have expected that Hector McClean's life would have been snatched from us so early. Hector McClean has been called by the Master to the great beyond. He was a great son of the soil and fought relentlessly and fearlessly for social justice, fair play and independence. He was a giant in his own right, standing and openly challenging the mighty Dr. Eric Williams during the height of his career.

He served as Speaker in the House of Representatives under a UNC administration between the period 1995 to December 2000. As Speaker, Hector McClean was fearless, impartial and firm. He was a strong believer in protocol, propriety and decorum. An attorney at law, Hector McClean served in various ministerial capacities during the period 1971 to 1981. He also served as Deputy Secretary General of the Commonwealth Parliamentary Association based in London, United Kingdom between the period 1987 to 1991. He also served as a member and a judge of the Industrial Court. Hector McClean was an outstanding and extraordinary human being who served this country with distinction and honour. He was a man of uncompromising moral and ethical principles who articulated and exemplified moral values which we can all do well to emulate.

On behalf of the UNC and my senatorial colleagues on the Opposition Benches, we collectively extend and record our profound sympathy and condolences to his dear wife, children, relatives and close associates. May Almighty God grant him eternal rest and may perpetual light shine upon him.

Thank you.

**Sen. Dr. Eastlyn McKenzie:** Madam President, I rise on behalf of all of us on the Independent Bench to extend our condolences to the wife, children, relatives and friends of the late and former Speaker Hector McClean.

My experience with Hector McClean was mostly in the Commonwealth Parliamentary Association and it is from that standpoint that I would make my comments. Permit me, Madam President, to speak a little longer than Sen. Mark has done today.

I joined the Senate in 1995, and in 1996 a delegation from the Senate had to travel to the Turks and Caicos Islands to represent the Parliament of Trinidad and Tobago. The delegation comprised former Senator and now hon. Minister Penelope Beckles; former Senator Deborah Moore-Miggins and myself. Before we left, former Speaker McClean summoned us to the Speaker's office. He counselled us; he instructed us; he taught us; he informed us; he educated us and he even warned us and we went there fully prepared. Needless to say, our contribution was very impressive and we owed a lot of that to former Speaker McClean.

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[SEN. DR. MCKENZIE]

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In 1998, there was a big conference in New Zealand. Former Speaker McClean was head of the delegation, which comprised former Attorney General, Ramesh Lawrence Maharaj; former Vice-President, Phillip Hamel-Smith and myself. The parliamentary staff was represented by the present Acting Clerk of the Senate, Mr. Neil Jaggassar, and Clerk of the House, Jacqui Sampson. That year the parliamentary members of staff, Mr. Jaggassar and Miss Sampson, were going to learn how to perform in 1999, because we were going to host the plenary. I was a bit sorry for them when I saw what they had to go through, but they went ahead in advance and had to learn everything that the New Zealand Parliament did, so that when our turn came in 1999, we would stand out. So they were trained and sent ahead.

Those of us who comprised the rest of the delegation were summoned to the former Speaker's office. We were warned in the most soft, beautiful tone you can think of, with immaculate English, "Members, may I just tell you that come 1999, Trinidad and Tobago will host the CPA conference; the people of New Zealand know absolutely nothing much about Trinidad and Tobago and our products; they do not know anything about our Angostura rum and, therefore, every member of the delegation, I am asking each one of you to bring two bottles of Royal Oak rum." The former Attorney General was also instructed to walk with his two bottles of rum. I cannot say who walked with theirs, but I diligently walked with mine.

What was the reason for this? Former Speaker McClean was going to be the head of the Commonwealth Parliamentary Association the following year that we were going to host it. He had to have a little function to introduce himself after he was put in office and he wanted to ensure that what he served to his guests came from Trinidad and Tobago. Well, I do not know how good a mixer of drinks Mr. Jaggassar turned out to be, but he had to be there in the party that evening mixing rum and coke.

Madam President, let me tell you, former Speaker McClean was an exemplary person. I will tell you why I say that. Because of his knowledge of the workings of the CPA—he was once its Deputy Secretary General—he took an interest on behalf of the smaller democracies. He advised those countries and their representatives how to get funding and programmes out of the CPA in London. Today, our branch in Trinidad and Tobago is wealthy because of the actions of former Speaker Hector McClean. He got our due for us, as a local branch, and hence our healthy financial status. He fought on behalf of the smaller democracies. We have benefited from that.

Because of his fight, he was liked internationally; he was known. Trinidad and Tobago gained, in that respect, because up to today this Parliament has gotten the respect in the eyes of the outside branches. They call on our members, as you all know, to help, to lecture, to be on committees of the general CPA. As a Speaker, he recognized the role of Speaker as a defender of the people's democracy. *[Interruption]*

**Sen. R. Montano:** The Prime Minister is falling asleep.

**Sen. Dr. E. McKenzie:** When we were going on that delegation to New Zealand, former Speaker McClean had a number of resolutions to be brought up at the plenary. We discussed the resolutions and for many of them we thought, "Well, we do not have a foot to stand on, but nevertheless, so it is." We got into New Zealand and it was about 10 o'clock in the night. Mr. Jaggassar called us up and said, "Mr. Speaker would like to have a meeting with the delegation at 1.00 a.m." We went dutifully and sat there at the table and he instructed us. We knew that nowhere in life could we win those resolutions. Nevertheless, the next day, former Attorney General, Ramesh Lawrence Maharaj presented those resolutions as if his life depended on them and the three of us sat there waving our little Trinidad and Tobago flags.

At the meeting I said to former Attorney General, "Mr. Attorney General, you really believe in those things you are saying?" He said, "The head of delegation said so and so will it be." I admired his humility. When I came back here I related to a meeting how former Speaker McClean had drilled us; how we lost and how I admired the humility of the former Attorney General. Everybody said, "But how could you get up in the meeting and talk those things and the Speaker was in the Chair; he would be so annoyed with you?" When we left the meeting, I was a bit scared that he would pull me over the coals. He came to me and shook my hands and hugged me and said, "Senator, I am so glad you said those things at the meeting, because people feel when we go to these CPA conferences, we go to fun and frolic; let them know it is hard work even if it is late in the night." Nevertheless, we lost all the resolutions. *[Laughter]*

Madam President, he taught us in those meetings how important it was to perform without fear or favour in the parliamentary divide. He came to work early and left late. From my meetings with him in the CPA, if he left you here as a member of the parliamentary staff, you deserved to be here, because once you were not suited to work in the Parliament, he saw to it that you were not there. He was a stickler for details. He taught the Clerks tolerance and patience: You had to

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do it until you got it right. Many times I saw them wilting when they said, “This is the 15<sup>th</sup> time the hon. Speaker is asking me to do this and do it over.”

He was the first Speaker to start a parliamentary choir, because he loved the arts and loved to sing. He enjoyed the office of Speaker very, very much and he was loved by his staff. He loved high standards and insisted that those elected to govern and make laws should be respected and given certain minimum standards of service. Madam President, you would have been here before I came. You would have noted the tea room, how upgraded it was; Speaker McClean caused the upgrade of the tea room. We used to have some simple glasses. At that time, the Clerk of the House and I referred to them as “the peanut butter glasses”. He saw to it that those were changed. He said that the cutlery and crockery should have the mark of the Parliament.

Even the Speaker’s robes; Madam President, you look very nice. At one time I remember that the Speaker's robes were made by ordinary seamstresses and he said, “No, no, that is not good enough.” His experience abroad made him order these robes and that is why you have such well-tailored garments. He looked the part of the Speaker and you could see his pride in wearing his robes. Even the dining tables he protected; he said, “Oh no, no, you do not put hot things on the tables like that; they must have an underlay.” You had to dress properly and I remember him saying, “If you are travelling with me, you look the part,” so you had to be really dressed.

We never heard him raise his voice, even when he was imparting his brand of discipline; he was always soft and very nice, but very effective. My friend, Sen. Prof. Ramchand, agrees with me, when they met frequently in Edinburgh, when he would go up for intellectual discourse and he had a fine taste for fine wine.

Former Speaker McClean never allowed the Salaries Review Commission (SRC) to decide the salaries and conditions of service of parliamentarians, without his input. Even if he had to go up there and argue the case for better conditions of service and salaries for Members of Parliament on all sides, he did that, because he had a very rude saying, “If you pay peanuts, you get monkeys.” He said that you must really pay people properly to get the best.

Today, I am richer—not financially, probably—but in spirit and in mind, because of having been associated with former Speaker McClean. He was truly a lovely person. He was truly a strong person who stood up for what he believed in, for principle. Although everyone says that he said, “The Opposition will have its say, the majority or the Government will have its way,” he also said, “You must have your say so others will know how you think, even if you did not have your way.”

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We will miss him. We will miss his strong walk down the corridor, the stately and elegant look, and his stickler for principle, justice and fearlessness. May his soul rest in peace.

Thank you.

**Madam President:** Hon. Senators, I join with previous speakers in extending my sincerest condolences to the wife, children and family of former Speaker, Mr. Hector McClean. As had been said, he served his country at all levels and there is no service higher than service to one's country.

As a young lawyer, he sacrificed a legal practice to serve in the Parliament and Cabinet of the then PNM Government. He made his contribution in many ministries until his departure from government and, eventually, from Parliament. He then spent a number of years in his legal practice before being elected Speaker of the House of Representatives; a position which he held with distinction, as you heard today. He was recently appointed Chairman of the Commission of Enquiry into the Health Services, but due to ill health had to resign that position. I do not think any of us realized that his illness was life threatening until we heard of his demise.

We honour him as a loyal son of the soil who put country before personal gain and who stood up for what he believed to be right. Here was a man who served under two opposite parties and yet maintained his individuality and dignity.

To his wife, Dr. Rosemarie Paul, I extend sincerest condolences on behalf of my husband and myself and all the Members of the Senate. May God give you the strength to cope with your loss and may he sustain you through this difficult time.

I will direct the Clerk to convey the sentiments expressed here today to the bereaved family.

Senators, I now ask you to stand for one minute in silence.

*The Senate stood.*

#### **CARIBBEAN COURT OF JUSTICE BILL**

Bill to implement the Agreement establishing the Caribbean Court of Justice in its original jurisdiction and for related matters, brought from the House of Representatives [*The Attorney General*]; read the first time.

*Motion made*, That the next stage be taken later in the proceedings, in accordance with the provisions of Standing Order 48(2). [*Hon. J. Jeremie*]

**Sen. Wade Mark:** Madam President, let me first of all indicate that I had discussions with the hon. Leader of Government Business on this matter. This was before the judgment of the Privy Council delivered on February 03, 2005. We have been advised by our attorneys that this matter borders on unconstitutionality, but we intend to further deliberate on it. Therefore, I suggest, in accordance with Standing Order 48(1), which says that this Senate needs 15 days clear notice to deliberate on this matter, that we defer this particular matter to 15 days from today in order to allow the UNC to study it in full detail. We believe it would be a bit premature for us to proceed today, having regard to the fact that we have been tentatively advised on this matter. We also believe that because of the significance of this matter, it should not be rushed today; so we invoke Standing Order 48(1).

**The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Madam President, as the Leader of the Opposition in the Senate indicated, we did speak on the matter. At that time, I had his concurrence that we could deal with it. He has indicated that subsequent events have made it imperative that they seek legal advice and if that is so, I have no objection to that. We will go on to the next item.

**Madam President:** Hon. Senators, the agreement, therefore, is that we postpone this particular Bill to 15 days from today.

*Agreed to.*

#### PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the financial statements of the Tobago Regional Health Authority for the year ended September 30, 2000. [*The Minister in the Ministry of Finance (Sen. The Hon. Conrad Enill)*]
2. Annual audited financial statements of Evolving TecKnologies and Enterprise Development Company Limited (formerly Property and Industrial Development Company of Trinidad and Tobago Limited) for the financial year ended September 30, 2001. [*Sen. the Hon. C. Enill*]
3. Annual audited financial statements of Evolving TecKnologies and Enterprise Development Company Limited (formerly Property and Industrial Development Company of Trinidad and Tobago Limited) for the financial year ended September 30, 2002. [*Sen. The Hon. C. Enill*]

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4. Annual audited financial statements of Point Lisas Industrial Port Development Corporation Limited for the year ended December 31, 1997. [*Sen. The Hon. C. Enill*]
5. Annual audited financial statements of Point Lisas Industrial Port Development Corporation Limited for the year ended December 31, 1998. [*Sen. The Hon. C. Enill*]
6. Annual audited financial statements of Point Lisas Industrial Port Development Corporation Limited for the year ended December 31, 1999. [*Sen. The Hon. C. Enill*]
7. Annual audited financial statements of Point Lisas Industrial Port Development Corporation Limited for the year ended December 31, 2000. [*Sen. The Hon. C. Enill*]

**VENTURE CAPITAL (AMDT.) (NO. 2) BILL**  
**Special Select Committee Report**  
**(Presentation)**

**The Attorney General (Sen. The Hon. John Jeremie):** Madam President, I beg to present the following report:

The Fifth Report of the Special Select Committee of the Senate appointed to consider and report on the Venture Capital (Amdt.) (No. 2) Bill of 2004. In accordance with the provisions of Standing Order 51(2), I propose to deal with the report later in the proceedings.

**ORAL ANSWERS TO QUESTIONS**  
**Attorneys at Law**  
**(Payments made)**

**27. Sen. Wade Mark** asked the hon. Attorney General:

Could the Attorney General inform the Senate of the amount of money which has been paid by the Government of Trinidad and Tobago and Government-controlled State Enterprises to the following attorneys at law: Mr. Kerwin Garcia, Mr. Anthony Jacelon, Mr. Michael Quamina, Mr. Theodore Guerra and Mr. Lloyd Barnette during the period January 2002 to May 26, 2004 for services rendered to the State?

**The Attorney General (Sen. The Hon. John Jeremie):** Madam President, on March 11, 2003, the then Attorney General caused to be circulated to Members of the Senate a detailed document containing information on legal fees paid by the

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Ministry of the Attorney General and state enterprises to private attorneys at law and/or law firms from as far back as 1996 to January 24, 2003. Much of the information relating to this question is already contained in that document.

The only other sums of money paid are as follows: payments to attorneys at law: Mr. Kerwin Garcia; Mr. Anthony Jacelon, Senior Counsel; Mr. Michael Quamina; Mr. Theodore Guerra, Senior Counsel and Mr. Lloyd Barnette, during the period March 2003 to May 26, 2004, for services rendered to the State.

In the case of Mr. Kerwin Garcia, there were three separate requisitions: one dated September 10, 2003, in respect of legal fees for High Court Action 1835 of 2003, the Trinidad and Tobago Unified Teachers Association versus the Teaching Service Commission. In respect of that matter, he was paid \$153,333.32. On October 06, 2003, in respect of High Court Action 14537 of 2003, Chandresh Sharma versus the Regional Judicial and Legal Services Commission, a matter which the court eventually found to be misconceived, he was paid \$103,038.33. On March 15, 2004, in respect of Court of Appeal No. 15 of 2003, which related to the same matter to which I referred as being misconceived, he was paid \$115,000. He was also paid in respect of a non-contentious matter dealing with Caroni (1975) Limited, the sum of \$76,666.66. His grand total was \$448,308.31.

In respect of Mr. Jacelon there were two matters. High Court Action 1537 of 2003, in which he acted as senior counsel leading Mr. Kerwin Garcia, Chandresh Sharma versus the Regional Judicial and Legal Services Commission, the matter to which I referred as being misconceived. Mr. Jacelon was paid \$143,750. In respect of the appeal in that matter, in which the State was also successful, he was paid \$172,500.

In respect of Mr. Michael Quamina, he was given one brief and that was by a state enterprise, the National Broadcasting Network Limited. He was paid \$44,700.

Mr. Theodore Guerra, Senior Counsel, did quite a bit of work with respect to the airport enquiry for which he was paid \$1,075,000. Dr. Lloyd Barnette has done the most work on behalf of the State; he is a Jamaican. In respect of High Court Action 767 of 2003, Robinson Crusoe Limited versus the Attorney General of Trinidad and Tobago and High Court Action 2525 of 2003, Basdeo Panday versus the Attorney General of Trinidad and Tobago, he was paid \$886,614.69. Dr. Barnette is the preeminent counsel in constitutional matters in the Caribbean.

Thank you, Madam President.

**Sen. Mark:** Madam President, could the hon. Attorney General indicate to this Senate a breakdown of the \$1 million that was received by Mr. Theodore Guerra. Was that just confined to the airport enquiry or was it for more than that?

**Sen. The Hon. J. Jeremie:** Madam President, the information sought in the question was answered and to the best of my information it was in respect of the Commission of Enquiry into the Piarco Airport project, which ran for close to one year and, in respect of which, I think a TT \$1,000 million lawsuit has been filed in the United States of America.

**Sen. R. Montano:** Madam President, could the Attorney General kindly indicate whether this Kerwin Garcia is the same person who is married to Minister Christine Kangaloo. [*Crosstalk*]

**Sen. The Hon. J. Jeremie:** I fail to see the relevance of that question. Mr. Garcia is an attorney at law in private practice. He has a vibrant civil practice and is entitled to take a brief, if it is offered to him. What I can say, without fear of contradiction, is that at no point in time was any approach made to me to grant Mr. Garcia a brief. [*Laughter*] It does not matter whether you believe me or not. [*Crosstalk*]

**Madam President:** Senators, we are very close to the end of question time. I am not too sure if we should move on. I think we should postpone the other questions. We just have about two minutes left. [*Interruption*] All right, let us go with question No. 28.

**Sen. Mark:** Question No. 28 to the hon. Prime Minister and the Minister of Finance; he is here with us and I hope he will respond.

**The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Madam President—[*Interruption*]

**Sen. R. Montano:** Are you the Prime Minister?

**Sen. The Hon. Dr. L. Saith:** If he wants to use up the two minutes, that is fine. [*Crosstalk*]

**Madam President:** Can we have some quiet, please.

**Sen. The Hon. Dr. L. Saith:** I wish to advise that the answer to this question is not yet ready. I have been advised that in two weeks time it will be ready.

**Sen. Mark:** Madam President, this question, as you would have noted, has been in the possession of the Government for the last six months. It is really in contempt of this Parliament.

**Madam President:** Sen. Mark, do not make a speech, please.

**Sen. Mark:** Madam President, at the same time, may I ask you to rule on the written responses to my questions in the Appendix, which were due since October 21, 2004. The other one was due in December 2004; as you know, we are now in February 2005.

**Madam President:** Hon. Senators, question No. 28 will be deferred for two weeks. You have one written question that has been circulated. I ask the Senator, the Leader of Government Business, to bring those other written answers as early as possible.

**Sen. Mark:** He asked for a two-week deferment.

**Madam President:** We have deferred.

**Sen. Mark:** He asked for a two-week deferment. I am not in agreement with that. [*Crosstalk*]

**Madam President:** Hon. Senator, he asked for a two-week deferment. [*Crosstalk*]

**Sen. Mark:** If the hon. Minister says he wants one week, we will bow, but not two weeks. This has been there for six months; we are not prepared to go for two weeks. We will like the hon. Leader of Government Business, who we understand is to be the acting Prime Minister shortly, to give this Senate an undertaking that within one week the answer will be ready; otherwise we will go a little further.

**Sen. The Hon. Dr. L. Saith:** Madam President, I will ignore the threat. I chose my words very carefully; I said that the answers were not ready and that I had been advised they will be ready in two weeks.

**Madam President:** If the Minister says the answers are not ready and that he is not going to have it before two weeks time, then we have to accept that.

**Sen. R. Montano:** No!

**Sen. Mark:** We are not accepting that!

**Madam President:** Sen. Mark, please sit.

**Sen. R. Montano:** Where do you have the authority to do that?

**Madam President:** Hon. Senators, we have agreed to grant—[*Interruption*]

**Sen. Mark:** We have not agreed!

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*Question put.*

**Madam President:** We have now passed 2.15 p.m.

**Sen. R. Montano:** Division! [*Crosstalk*]

*The Senate divided:* Ayes 24 Noes 6

AYES

Saith, Hon. Dr. L.

Yuille-Williams, Hon. J.

Jeremie, Hon. J.

Joseph, Hon. M.

Montano, Hon. D.

Enill, Hon. C.

Manning, Hon. H.

Chin Lee, Hon. H.

Dumas, Hon. R.

Abdul-Hamid, Hon. M.

Titus, R.

Kangaloo, Hon. C.

Sahadeo, Hon. C.

Ramroop, Hon. S.

Janneire, Mrs. R.

McKenzie, Dr. E.

Ramchand, Prof. K.

Deosaran, Prof. R.

King, Mrs. M.

Seetahal, Miss D.

Anmolsingh-Mahabir, Mrs. P.

Khan, Bro. N.

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Ali, B.

Cropper, Mrs. A.

NOES

Mark, W.

Baksh, S.

Kernahan, Dr. J.

Montano, R.

Seepersad-Bachan, Mrs. C.

Augustus, R.

*Question agreed to.*

**Madam President:** The other questions will be put on the Order Paper for next week, since we are now past the time.

**Sen. R. Montano:** Madam President, just for the record and so that there will be will be no argument—[*Interruption*] please be quiet—I wish to give the Senate notice that I agreed with the Minister of National Security, on his request, that the answers to questions Nos. 56 and 57 will be postponed for two weeks. I had agreed with that, rather than it coming up next week.

**Madam President:** Thank you; that is the kind of cooperation I like to see. [*Laughter*]

*The following questions stood on the Order Paper:*

**Community-Based Environmental Protection  
and Enhancement Programme**

- 28.** A. Could the hon. Prime Minister and Minister of Finance inform the Senate from which ministry vote/head is the CEPEP programme funded?
- B. Could the Minister provide the Senate with details of the allocation of expenditure made to the CEPEP programme on a yearly basis from its inception to May 31, 2004?
- C. Could the Minister indicate what plans, if any, have been put in place to conduct an efficiency and forensic audit of the CEPEP programme from its inception to May 31, 2004?

- D. Could the Minister inform this House whether the Auditor General's Department is responsible for the audit of financial accounts of the CEPEP programme? And if not, why not? [*Sen. Wade Mark*]

**Piarco International Airport Runway  
(Details of Works)**

33. A. Could the hon. Minister of Works and Transport provide the Senate with the following information pertaining to the paving of the runway at the Piarco International Airport:
- (i) who were the appointed consultant engineers of the project;
  - (ii) did the engineers possess any previous experience relating to airport runways;
  - (iii) what was the original estimate provided to the Government for the project by the engineers; and
  - (iv) were the tender documents of the contractors ever evaluated by the consultant engineers;
- B. If the answer to (iv) is in the affirmative, could the Minister state:
- (i) what were their overall recommendations; and
  - (ii) did they recommend the lowest tender? [*Sen. Wade Mark*]

**Tobago  
(Lands acquired in)**

53. (i) Could the hon. Minister of Agriculture, Land and Marine Resources state whether all lands acquired, used or entered upon in Tobago by the State for development projects have been paid for?
- (ii) If the answer is in the negative, will the Minister state in detail those parcels of lands not paid for:
- (a) their acreage, location and boundaries, owner/s, and purpose for which the lands were acquired;
  - (b) the reasons for the delay in affecting payment? [*Sen. Dr. Eastlyn McKenzie*]

**Forensic Science Centre  
(Matters before the Courts)**

56. A. With respect to matters currently before the courts of Trinidad and Tobago that have been postponed because they are awaiting a forensic report from the Forensic Science Centre, could the hon. Minister of National Security inform the Senate of the number of such matters as at January 18, 2005, which are more than one month old from the date of arrest and charge and in which the accused persons are in custody because they have been unable to get bail?
- B. Could the Minister provide a breakdown of the number of matters referred to in (A), with particular reference, but not limited to:
- (i) date of the offence;
  - (ii) nature of the offence;
  - (iii) length of time the matter has been pending; and
  - (iv) amount of bail that has been fixed? [*Sen. Robin Montano*]

**Forensic Science Centre  
(Court matters postponed because of)**

57. With respect to matters awaiting trial before the courts of Trinidad and Tobago in which the accused persons have been granted bail, but which matters are being postponed because they are awaiting a forensic report from the Forensic Science Centre, could the hon. Minister of National Security provide this Senate with details of:
- (i) the number of such matters;
  - (ii) the date and nature of the offence; and
  - (iii) the length of time the matter has been pending. [*Sen. Robin Montano*]

*Question time having expired, questions 28, 33, 53, 56 and 57 were not dealt with.*

**STATEMENT BY HON. PRIME MINISTER  
(OBJECTION TO)**

**Madam President:** The hon. Prime Minister.

[*Hon. P. Manning and Sen. Mark stand*]

**Sen. Mark:** On a point of order, Madam President.

**Madam President:** Sen. Mark, I cannot have two people on their feet.

*Statement by Hon. Prime Minister*

*Tuesday, February 15, 2005*

**Sen. Mark:** On a point of order.

**Madam President:** Mr. Prime Minister, a point of order. What is your point of order, Sen. Mark?

**Sen. Mark:** I will like you to refer this honourable Senate to the relevant Standing Order that you are using to allow the hon. Prime Minister to address this honourable Senate. [*Crosstalk*] Can you indicate to this honourable Senate what Standing Order is being used?

**Madam President:** “Statements by Ministers” on the Order Paper and any minister from the other House can come and give a statement in this Senate.

**Sen. Mark:** I want to refer you to section 62 of the Constitution of the Republic of Trinidad and Tobago. That section makes it abundantly clear who can and cannot speak in this honourable Senate. This is not an arm of the Executive or the Cabinet; this is the Senate; it is an independent Chamber. If you look at section 62(1), you, as the President, must do something in the context of a resolution inviting. The only person, under this Constitution, who has the authority to address this Senate, without any equivocation or argument, is the Attorney General, under section 62(3).

We have allowed the hon. Prime Minister to address this Senate the last rounds, but we would not want it to develop into a practice where the Prime Minister comes to this Chamber, violates the Constitution of the country, rather than address this Senate. I will like you to look at section 62 of the Constitution. Unless the resolution is put to this Senate, to grant the Prime Minister permission to address this Parliament, he cannot come and address us without that resolution. I will like you to refer to section 62 of the Constitution, which is the supreme law of the land, and it stands above the Standing Orders of this Parliament. [*Interruption*]

**Sen. Jeremie:** Madam President, the hon. Senator referred us to section 62 of the Constitution, but he was silent as to what in section 62 forbids the Prime Minister from making a statement. By practice and convention a minister may make a statement in this House, as he can do in the House of Commons; that is also a part of the Constitution.

**Sen. Mark:** No, no, no; we are guided by the Constitution of the country.

**Madam President:** Senator, please! [*Crosstalk*] Sen. Mark, we will proceed. [*Desk thumping*]

*Statement by Hon. Prime Minister*

*Tuesday, February 15, 2005*

**Sen. R. Montano:** Madam President! [*Crosstalk*]

**Madam President:** Will you please sit down!

**Sen. R. Montano:** Madam President—

**Madam President:** Please sit down!

[*Sen. Mark and Sen. R. Montano stand*]

**Sen. R. Montano:** Section 62(3)—

**Madam President:** Please sit down, Sen. Montano! I have given the Prime Minister permission—[*Interruption*]

**Hon. Senators:** But you do not have the authority to do so; that is the point!

**Sen. R. Montano:** Madam President, may I refer you to section 62(3) of the Constitution:

“A Minister attending any sitting of the Senate or the House of Representatives under subsection (1) may take part in any debate or other proceedings concerning matters falling within his portfolio in such House and may speak on any motion before the House concerning such matters and move amendments to any such motions, save that such a Minister shall have no vote thereon.”

It is clear that a minister may attend either House to speak on matters in proceedings. However, I turn now to Erskine May, Twenty-third edition, 2004, page 111:

“The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. This is naturally extended to the forms of business in which the House takes action, and the whole process, the principal part of which is debate, by which it reaches a decision.”

In other words, a proceeding in the House is some form of action whereby the House is being helped to reach a decision. A proceeding is not a statement by ministers; that is the point. [*Crosstalk*]

**Sen. Mark:** This is our House; he cannot come and speak! The Prime Minister is a stranger in this House. The Constitution is what guides us.

**Hon. Senator:** This is our House! [*Crosstalk*]

*Statement by Hon. Prime Minister*

*Tuesday, February 15, 2005*

**Madam President:** I am advised that the Prime Minister has the right to make a statement and I am giving him permission. [*Desk thumping*]

**CHIEF JUSTICE  
(INVESTIGATION OF)**

**The Prime Minister and Minister of Finance (Hon. Patrick Manning):** Madam President, I wish to thank you for this opportunity to address the honourable Senate this afternoon and, through you, the national community, on a matter of tremendous importance which has come into the public domain.

In mid-January, the Prime Minister received two items of correspondence emanating from the Attorney General and the Director of Public Prosecutions (DPP) making several allegations against the Chief Justice in the discharge of his duty. When these circumstances arise, the Constitution provides a process by which such matters are dealt with by the Prime Minister. According to the constitutional process, the Prime Minister must decide whether the question of removing the Chief Justice ought to be investigated. Naturally, such a decision should be made only:

- (a) after a thorough examination of the issues is undertaken; and
- (b) if there is a serious enough case to answer.

Once the Prime Minister is satisfied that an investigation ought to be carried out, he must refer the matter to the President to appoint a tribunal comprising judges and ex-judges from anywhere in the Commonwealth. If the tribunal determines that the Chief Justice should be removed from office, it refers the matter to the Privy Council for confirmation or otherwise.

We can see from the process outlined, that the Prime Minister and Government have no authority whatsoever to remove a Chief Justice from office. That authority resides ultimately with the Privy Council and the Privy Council only.

It is extremely important to note that the Prime Minister does not determine guilt or innocence, but merely satisfies himself that the question of removing the Chief Justice from office ought to be investigated.

I draw attention to and emphasize the fact that once the Prime Minister is in receipt of authentic correspondence and is satisfied, after due enquiry, that the question of removing the Chief Justice from office ought to be investigated, then the Prime Minister himself must act or be exposed to the serious accusation of dereliction of duty.

*Chief Justice (Investigation of)*  
[HON. P. MANNING]

*Tuesday, February 15, 2005*

**2.30 p.m.**

In this regard, the Prime Minister must be slow to act, and only after a thorough examination of the facts. I now wish to inform the national community that upon receipt of the complaints, I invited the Chief Justice to my office on January 24, and advised him of the correspondence received from the Attorney General and the Director of Public Prosecutions (DPP) providing him with copies of the documents and requested him to respond in writing to the allegations.

On January 26, this conversation was formalized in writing with attached copies of the documents. The Chief Justice was requested to respond within a two-week time frame. The Prime Minister has received two separate items of correspondence from the Chief Justice: one dated February 01 raised *inter alia*, among other things, issues relating to the constitutionality of the provisions of the part of the Constitution where the procedure to be followed in these circumstances is outlined; the other which was received on February 08, responded to allegations raised by the Attorney General and the Director of Public Prosecutions.

Upon receipt of these two letters, I sought advice from senior counsel who recommended that the response received on February 08, should be referred to the Attorney General and the Director of Public Prosecutions for comment. This, Madam President, has been done.

Madam President, as a consequence of statements made in correspondence from the Chief Justice and the Director of Public Prosecutions, indicating that in one of the meetings with the Chief Justice, former Director of Public Prosecutions and now High Court Judge, Mr. Justice Mark Mohammed was present, the Prime Minister wrote to Justice Mohammed on February 14, requesting his assistance in providing further and better particulars in an effort to garner as much information as possible.

When all of this information is received, it is the intention of the Prime Minister to continue his consultation with his legal constitutional advisers; one from Trinidad and Tobago and two from the United Kingdom who have acknowledged expertise in these matters to assist in determining if there is a serious enough case to answer to warrant the setting up of a tribunal to investigate the matter.

**Sen. Mark:** [*Inaudible*] Kangaloo, eh.

**Hon. P. Manning:** It must be made absolutely clear that one of the complainants in this matter is the Attorney General, who is the legal adviser to the Prime Minister and Government of Trinidad and Tobago. It follows therefore,

Madam President, that in this particular matter, the advice of the Attorney General cannot be sought because of the obvious conflict of interest.

Accordingly, the Prime Minister is receiving appropriate advice from eminent senior counsel in Trinidad and Tobago, and in due course, the United Kingdom. It can therefore be seen that the Prime Minister has not come to any conclusion or decision in this matter since he is not yet in possession of the totality of the facts. The matter is still in a fact-finding phase and it is anticipated that this can continue a while longer until all of the required information is available.

Let me give the assurance that the Prime Minister has not met a single Judge of the High Court, or the appellate division...

**Sen. Mark:** That is not true. Tell [*Inaudible*] so.

**Hon. P. Manning:** ...and I hope that those who are peddling information will note...

**Sen. Mark:** Kangaloo. Wendell Kangaloo.

**Hon. P. Manning:** ...that no Judge, whether by invitation, appointment, or request has been seen by the Prime Minister.

**Sen. Mark:** That is not true.

**Hon. P. Manning:** These inaccuracies are not helpful in what is already a most delicate and sensitive matter.

**Sen. Mark:** [*Inaudible*]

**Hon. P. Manning:** As the process unfolds, Madam President, I advise that the national community can rest assured that your Prime Minister shall continue to act in accordance with and adherence to the Constitution and on the basis of sound advice. I shall not refrain from acting if the occasion demands, but I shall act fairly. I shall condemn no one and I am mindful of the solemnity and consequences of this process that is underway.

**Sen. Mark:** You better be.

**Hon. P. Manning:** If, at the end of that process, it is felt that no further action should be taken, then the matter ends there. Nonetheless, we must deprecate in the strongest terms those who express views of intending gloom and plots, and who see ethnicity in every facet of activity.

**Sen. Mark:** You must stop leaking news to *Newsday*.

**Hon. P. Manning:** They are urged to desist from their intense determination to divide and fragment the society.

*Chief Justice (Investigation of)*  
[HON. P. MANNING]

*Tuesday, February 15, 2005*

Similarly, Madam President, the national community is advised that the Government has taken note of the threat of violence emanating from one important quarter. In response to this threat, I merely wish to state that the Government acknowledges its responsibility to preserve law and order in this society, a responsibility that we will discharge without fear or favour.

Madam President, this is indeed a challenging time. All of us would have preferred to let this cup pass, but Government is about ensuring that equality of opportunity and common fairness apply to all of us however powerful or weak we may seem to be.

This Government is about building a collaborative society that is assured of justice, fairness and equity. We therefore assure all citizens that the Government will respect the Constitution as we have always done and permit the constitutional process to be observed in the quest of fairness to all. When the occasion next arises, I shall advise the national community of any pertinent developments germane to this matter.

Thank you, Madam President. [*Desk thumping*]

**Sen. R. Montano:** Madam President, may I ask some questions?

**Madam President:** No. Sen. Montano, it is not the custom in this Senate to ask questions of Ministers following a statement.

**Sen. R. Montano:** But, Madam President—

**Madam President:** Sen. Montano, I am on my feet.

**Sen. R. Montano:** Madam President, may I refer you to—

**Madam President:** I do not want to be referred, thank you very much.

**Sen. R. Montano:** But there is a procedure to be followed.

**Madam President:** Sen. Montano! [*Crosstalk*]

There is nothing in the Standing Orders that says questions following statements by Ministers are allowed.

Mr. Clerk, will you continue please?

**Sen. R. Montano:** [*Interruption*] ...then the practice of the British Parliament shall apply.

**Madam President:** Sen. Montano, please!

**Sen. R. Montano:** Madam President, page 359 of Erskine May says:

**Madam President:** Sen. Montano!

**Sen. R. Montano:** “As no question is before the House, debate on such statements is strictly speaking irregular, but questions arising from the statement are normally raised...”

*[Madam President pounds gavel]*

Look at the rules.

**Madam President:** Sen. Montano, in this Senate we also follow usage and custom, and the custom is that we do not ask questions following statements, and unless the Standing Orders are changed, then we have to follow what is in our Standing Orders. Please continue. Sorry, Senator, you wanted to say something.

**Sen. King:** Madam President, I am really very disturbed at the tone of voice of the Member and I think that there has to be some rule that we refrain from shouting in the Senate. It is most disturbing. *[Desk thumping]*

**Madam President:** Sen. King, I agree with you, and as you know, I have said to Senators before that there is absolutely no need to shout and carry on in the way some of our Senators are apt to do.

Clerk, will you continue?

#### **EDUCATION (AMDT.) BILL**

Bill to amend the Education Act, Chap. 39:01 [*The Minister of Education*]; read the first time.

#### **VENTURE CAPITAL (AMDT.) (NO. 2) BILL**

#### **Special Select Committee Report**

#### **(Adoption)**

**The Attorney General (Sen. The Hon. John Jeremie):** Madam President, I beg to move,

That this Senate adopt the Fifth Interim Report of the Special Select Committee of the Senate appointed to consider and report on the Venture Capital (Amdt.) (No. 2) Bill.

Madam President, the work of the committee has been delayed by the absence of a key person from the Ministry of Trade and Industry, nevertheless, in accordance with Standing Order 51(2), I wish to report progress and advise the Senate that work shall continue on the matter.

**Sen. King:** Madam President—

**Madam President:** Sen. King, let me propose the question for debate and then you may say whatever you need to say.

*Question proposed.*

**Sen. Mary King:** Madam President, what I am saying is that this has been postponed five times already and if it is because a person is missing, I do not think that is an acceptable excuse, but if it is, can we get some kind of time frame as to when this person will be back and what is happening? Because we cannot go on and on just signing something to defer again without knowing what is really going on.

**Sen. The Hon. J. Jeremie:** Through you, Madam President, my understanding is that the individual who has encyclopedic knowledge on this is pregnant and is having some complications. I propose to speak with the line Minister, Hon. K. Valley, to ensure that this will be our last adjournment of this matter.

*Question put and agreed to.*

*Report adopted.*

**OFFENCES AGAINST THE PERSON  
(AMDT.) (HARASSMENT) BILL  
[Second Day]**

*Order read for resuming adjourned debate on question* [February 01, 2005]

That the Bill be now read a second time.

*Question again proposed.*

**Madam President:** A number of persons spoke on the last occasion and I believe the Minister was about to wind up and he spoke for one minute, so he has 44 minutes left.

**Sen. The Hon. M. Joseph:** Thank you very much, Madam President. Madam President, as I am reminded I had commenced at the last sitting to respond to some of the concerns raised by my honourable colleagues as they relate to this particular Bill, and I had started by placing on record the Government's and my appreciation for the comments and contributions made by the various Senators.

What I will attempt to do, as best as I can, is try to respond to some of the concerns raised by colleagues. I do not intend to respond person by person but will try to see if I can lump what I call to be some general comments that were made.

There were some comments that spoke specifically to the legislation, for example, my colleague Sen. Dr. Kernahan, felt that generally, the wording of the legislation is very vague and should be more precise; Sen. Prof. Ramchand said that terms like “bully”, “intimidate”, “threaten”, “obstruct”, et cetera need to be mentioned in the Bill particularly as they relate to behaviour exhibited at schools.

The Senator also felt that the legislation should have been developed separately from the Offences Against the Person (Amdt.) (Harassment) Bill to deal more comprehensively with issues such as harassment related to the communication revolution, bullying and intimidation at schools and felt that—no; it was Sen. Mark who felt that there should be a distinction between harassment and stalking.

Sen. Cropper raised issues about the implications for the Magistrates' Courts which are already overburdened, and about the large volume of cases that will naturally emanate as a result of this legislation. She also felt that we need to consider implementation of programmes that will address some of the cultural issues that direct behaviours and said that there was need for a wider range of parallel actions to ensure the proper implementation and effectiveness of the Bill, for example, police training and preventative approach to crime fighting. She also felt that the education system and the family as an institution must all come into play.

All these comments are noted, especially the question of the likelihood of overburdening the Magistrates' Court, and that about training for police officers so that they could be sensitive to how they implement this new piece of legislation.

Sen. Mark also asked about the haste in implementing the legislation. He wanted to know if any consultation was done in developing the legislation and I think when I was piloting the Bill, I indicated that the Law Reform Commission did—in fact this was something in the making for a number of years and there were a number of consultations done. Sen. Mark also said that 90 per cent of the contents of the Bill are provided for in the Domestic Violence Act and that it is a recipe for permanent and continuous harassment of persons, organizations and individuals in the society who are either in opposition to the PNM or whom the PNM sees as being opposed to its policy.

Madam President, nothing could have been further off mark—if I could use that term, because the whole intent of the legislation was clearly articulated.

Let me get to some of the specific concerns that were also raised and I lump them under what is defining harassment. Harassment is very relative and very subjective, was the comment of Sen. Prof. Deosaran, and I think we need to indicate that it was deliberately agreed that a wide definition of harassment would be used to allow for instances of varying nature to be covered under the Bill and I cannot remember who responded to that in their contribution.

This country's multireligious, multicultural nature makes it difficult to define harassment, was the comment of Sen. Dr. Kernahan, and harassment is such a broad, vague and generalized term that by trying to confine it to a fixed definition will only facilitate perpetrators in engaging in behaviour other than that which is provided for in the Bill.

It is a fact that stalkers habitually engage in a diverse range of behaviours during their pursuit of the victim and, therefore, any limitation as to the nature of the conduct will limit the reach of the law. That is the comment to Sen. Dr. Kernahan.

The Senator in describing harassment also said that the focus is placed on the effect of harassment on the victim and does not consider whether the offender is aware that his or her conduct constitutes harassment and I think the Bill addresses that. Harassment and stalking are intertwined in the Bill and should be treated separately.

Sen. Prof. Ramchand also said we need to include in the legislation a more comprehensive listing of the forms of malicious communication that will constitute harassment before inserting the words “or in any other way”.

I wish to draw on the comments of Sen. Cropper, who I believe summed it up very nicely when she said that it is impossible to encompass in the legislation every possible situation that can arise and, therefore, it is the rule rather than the exception that will be addressed. This is not to say that the exception will be ignored—it will not—but to attempt to include every possibility would be to undertake an exercise in futility. So I think Sen. Cropper responded to that concern which was raised by Sen. Prof. Ramchand.

Sen. Prof. Deosaran, in addressing new section 30A.(1)(b) stated that the conduct in question should have been carried out on at least two occasions and he felt that one occasion is sufficient depending on the severity of the conduct, and

Sen. Prof. Ramchand also said that rather than “course of conduct”, it should read: “conduct, or a course of conduct” to leave open the option for action to be taken on offences perpetuated only once.

In my presentation, Madam President, I alluded to the three essential components of the conduct which result in the harassment of a victim: the element of repetition is one of the defining characteristics of the conduct and was an issue that was met with some concern by Sen. Prof. Deosaran and Sen. Prof. Ramchand who felt that allowance should be made for a one-off incident. However, although a one-off incident may be annoying, or even cause fear, it does not qualify for the purposes of the proposed offence.

It was felt that a single incident would be placing the bar too low, so it is proposed that the behaviour or complaint must have occurred on at least two occasions, early enough to nip the conduct in the bud but yet maintain one of the essential components of the offence repetition. So I hope that deals with the concerns raised there.

Reference was made also in 30A.(1)(a)(v) to offensive material but there is no definition of that term. One of my colleagues, Sen. Dr. Kernahan, expressed concern with respect to the use of the word “offensive” in new section 30A.(1)(a)(v).

It is quite common to find the word “offensive” in criminal legislation; it is not at all vague to use the word without alternating to define its meaning. The courts have a great deal of experience in determining what constitutes “offensive” in any given circumstance and within the context of current norms. I hope that addresses the concerns raised by my colleague.

Sen. Prof. Deosaran says that rather than two standards in new section 30A.(2)—“knows or ought reasonably to know”—which may be used by the offender as an escape clause should read instead: “ought reasonably to know”. He was of the view that an escape clause was provided by saying that the perpetrator should know, or ought reasonably to know that his conduct amounted to harassment. Why do we need the double standard “knows” or “ought reasonably to know”?

I am advised that in criminal law, this formula is used to deal with instances where the accused denies that he or she had the requisite knowledge where he or she says I did not know. The law says; “Let us look at this matter objectively, would a reasonable person know?” If the answer is yes, then the accused ought to have known, the accused cannot evade the responsibility merely by claiming ignorance.

Sen. Mark suggests that if you are not found guilty under new section 30B.(3), the court can find you guilty of an offence under another section. He wanted to know what it meant. The Senator admitted some level of confusion with respect to that section which allows a court to find an accused guilty of harassment under new section 30A. where the charge is brought under new section 30B.

I would like to assure Sen. Mark that this is a common provision in criminal legislation—at least, that is what I am advised—and it is not at all sinister. Where the constituent components of more than one offence are similar, one often finds this type of default provision. I am advised that it allows the court to address the behaviour complained of, without the necessity of a fresh indictment.

Sen. Seetahal made some comments with respect to new section 30C.(b). This section will protect the actions of the press once they are reasonable. If I were winding up this debate last week, I would have said that Sen. Seetahal nicely covered most of the questions raised, especially on that side, and she did an excellent job. I think I started off by saying that and I want to place on record the fact that she was able to articulate and respond to many of the concerns raised, especially the vexing question as it related to the press, because the impression was being given that this legislation somehow or the other would negatively affect the press in the discharge of its responsibilities and I think Sen. Seetahal responded to that very nicely.

Sen. Cropper also raised in defence that the police and the media are sufficiently provided for in the Bill. She also recognized and indicated that the concerns as they relate to both the media and protective services were adequately addressed by Sen. Seetahal.

Sen. R. Montano and Sen. Augustus raised the concerns of insufficient protection to the press and that all steps must be taken to ensure that freedom of the press is maintained. As I indicated, this is extreme and is not the case at all.

What I thought was also very interesting was that there was one set of people who were complaining about the police and their ability to discharge their responsibilities under this Bill, and then there were others on the same side in praise of the police, so the inconsistency in terms of the argument left some things up in the air.

### **3.00 p.m.**

There was also the question that confidence in the police must be restored so that legislation and law enforcement go hand in hand. One has to acknowledge that there is always the potential for abuse when a new power is created. We

cannot fail to act because we fear potential abuse. Each time a new offence is created there is that possibility. What we do is to weigh the benefits to be derived against the possibility of abuse. We also use education to create awareness of the proper and appropriate circumstances in which the provisions are to be invoked. We cannot say with absolute certainty that there will be no abuse because we are dealing with humans.

However, I can give my assurance that steps will be taken to sensitize and educate our police officers who will be responsible for implementing the proposed provisions. Even when there is a potential abuse of power, it is for the courts to decide that an offence has been committed. Law enforcement officers must be guided by the decision of our courts. This Government feels that the victims of harassment deserve redress. The way to do that is to create an offence upon which our law enforcement officers may act.

Many of us were fearful at the introduction of the Domestic Violence Act. We feared that the provisions would be abused. However, that fear did not materialize. We anticipate a similar outcome with this legislation. The proposed provisions are attempting to make illegal or denounce otherwise legitimate activity in prescribed circumstances. The average citizen has nothing to fear; we may continue about our business. Legitimate police activity is protected by the proposed new section 30C(a).

The proposed new section 30C(b) offers protection to law enforcement personnel and ordinary citizens whose conduct is authorized by any law.

In other circumstances we have recourse to the proposed new section 30C. The subsection is not vague. It is drafted in general terms to permit flexibility. If the circumstances in which the conduct complained of can be explained as being reasonable, then the conduct is not illegal.

Journalists are well within their rights to pursue their legitimate business and will have nothing to fear, so too any professional or trades people. I think I heard my colleague, Sen. Prof. Ramchand—Do not worry, they will fall under the ambit of what we are trying to address as it relates to stalking.

Sen. Seetahal raised some concerns with respect to psychiatric evaluation of offenders. She felt that it should be mandatory rather than discretionary. There should also be a provision for evaluation and counselling of offenders. Let me advise that the proposed new section 30F permits the court, where it considers appropriate, to make an order for mental health evaluation.

Sen. Seetahal and Sen. Mark felt that this should be mandatory. However, I am advised that the proposed provision was deliberately crafted to be discretionary and not mandatory. It may not be necessary in every case to evoke the provisions. It is not advisable to legislate in the context of a court which is afraid to use the power which it is given. We have to assume that magistrates are aware of their responsibilities under the law and will discharge them without fear. That is the response to the question about mandatory rather than discretionary.

Sen. Seetahal also raised the question about civil protection as provided for by the protection orders on compensation. It is felt that civil remedy should not be included in criminal law. Again, I am advised, because as Sen. Seetahal knows I am no lawyer—it was felt that it was necessary to afford injunctive and monetary relief to the victim of an offence. These are not novel provisions. Before the introduction of the Domestic Violence Act, the Summary Courts Act provided for the award of compensation.

**Sen. Seetahal:** Through you, Madam President, if it is being suggested that I said that these remedies should not be available, that is not what I said. I meant because we are including civil remedies whether that had a place in an Offences Against the Person Act. I made the point that that would be why one would have thought that it would be a separate piece of legislation. You would be encompassing criminal as well as civil remedies.

If the Minister means that now we are including quasi civil remedies here, we have already done that in criminal Acts—I am using that as an example—I appreciate that. I was merely using that as an example as to why I thought that it should be a separate piece of legislation. It is not that I did not think that we should have compensation or protective orders. I know that the courts have the power to give compensation and rightly so. I agree with it. I was saying perhaps, it should not be in an offences legislation amendment.

**Sen. The Hon. M. Joseph:** Thank you very much for the clarification.

Sen. R. Montano raised the question about the Canadian legislation where a person who stalks another person commits a tort which allows for an action in civil law without proof of damages. I am advised that consideration was given to this approach. However, it was felt that creating a civil tort in the legislation would not be the best remedy for the victim. It was felt that it would be both costly and time consuming. The Bill provides for the granting of injunctive relief and compensation where an offence is proven to have occurred.

**Sen. R. Montano:** Would you take a question?

**Sen. The Hon. M. Joseph:** Yes, but I do not know if I can answer the question.

**Sen. R. Montano:** Is it possible for the Minister to expand on that? It is not making sense to me. The question of the tort means that I would be entitled to civil damages. I do not see how civil damages could affect the Government or anybody along those lines. It seems to me that the better thing to do if you have a crime—this is what this Bill is about. It is creating the crime and you would also create the tort, that is to say the civil wrong and give rise to both. In other words, you would have both criminal as well as a civil remedy. This is why I suggested it. It is in the Canadian legislation

**Sen. The Hon. M. Joseph:** I have been advised by the legal drafters that it was considered and it was felt that this is the way for us to go.

The Senator also raised the question about this legislation which is designed for First World countries which Trinidad and Tobago is not. I think that Sen. The Hon. Christine Kangaloo responded adequately to that. If we were to assume the position as articulated by Sen. R. Montano, we would be placing ourselves in a state of paralysis and retarding our development.

This sums up as best as I can the contributions made.

**Sen. R. Montano:** Could the Minister comment—if he has already I apologize because I obviously missed it. Would he consider an amendment to the legislation that would make it quite clear that journalists are not subjected to this legislation when in pursuit of their lawful business?

**Sen. The Hon. M. Joseph:** Unfortunately, I dealt extensively with that. I indicated Sen. Seetahal and Sen. Cropper also dealt with it.

There were some other comments. I do not know if I can say my friend, my colleague, Sen. Augustus raised the issue of the type of behaviour of school children et cetera. I must indicate that right now there is an initiative between the Ministry of Education and the Ministry of National Security which is designed to bring about a certain type of acceptable behaviour among our students. I am sure that there is some evidence of the success so far of those initiatives, to the point that I understand that some other Commonwealth countries have already started to look at the model being used here.

The Senator raised something about the Representation of the People Act. I did not understand the relationship between the ROP and this legislation. It was talking about harassment. In some instances the harassment being spoken about does not find its way in terms of this legislation.

**Sen. Seetahal:** I think that the Minister mentioned something about law enforcement officials. I had asked if there were plans for them to undergo specialized training to recognize and evaluate so as to effectively handle stalking crimes. We do not want people calling on the phone about something and a police officer saying, as some are wont, “Yuh so lucky”. I have heard those comments.

In terms of domestic violence offences, before we had the training they used to say, “Go back to your husband.” It is not funny. It is very serious. Then there are people marking other people’s face with a pen knife and saying, “Shut up.” What plans do you have? I do not mean arbitrary, little one week-thing. I mean proper training and keeping a record of offenders.

**Sen. The Hon. M. Joseph:** While you were not here I mentioned the fact that we are noting it. I cannot give you all the details, but we recognize that there will be need for training of our law enforcement officers. I did not make note about the question of the register but that can also be addressed.

**Sen. Prof. Ramchand:** I raised a question of certain kinds of harassment behaviour. I know that the legislation cannot cover every instance. If there is no other way of dealing with this issue, I want to know the Minister’s response to it. You might find a gang of men at a certain point and somebody passes and is harassed in the most obscene way, but that happens once to that person. Later in the day it will happen to somebody else. The act is repeated but not in relation to the same person. How do we handle that?

**Sen. The Hon. M. Joseph:** We will have to think about handling that in other areas. It is not in this legislation currently before us. I tried to allude to that earlier on when I was responding.

With those few words, I beg to move.

*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.*

*Question proposed*, That clause 1 stand part of the Bill.

**Sen. Seetahal:** It will be 2005. I assume that we will change it.

**Madam Chairman:** It stays as 2004.

*Question put and agreed to.*

*Clause 1 ordered to stand part of the Bill.*

*Clause 2.*

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

**Sen. R. Montano:** Madam Chairman, how will we take clause 2? Are we going to take clause 2 as 30A(1) and 30A(2) and so on? This is where we need to discuss it.

**Madam Chairman:** You say where you are concerned and we will deal with it.

**Sen. R. Montano:** I have two issues. The first will fall under section 30C. That is the question of the journalists. I heard what the Minister and Sen. Seetahal said. If the framers of this Bill thought it necessary to put in,

“It is a defence for a person charged with an offence under section 30A or 30B to show that—

(a) his course of conduct was pursued for the purpose of preventing or detecting crime;”

we should also be absolutely certain about it. I do not see that it takes away if we could add (d) or put a new (c) and change (c) to (d) by saying, “or his course of conduct was pursued for the purpose of journalistic enquiries” or words to that effect.

I am deliberately not giving the wording, but I am giving the intent. Once we get the intent we can get the wording satisfied right away. You want to make it absolutely clear that the police get a “get out of jail free card”. I understand the reasoning behind that. If you need 30C(a) or (c) you will need 30C. I am suggesting that it comes after (b). You give the journalist a “get out of jail free card”.

**Sen. Jeremie:** I appreciate the intervention. The Government thinks that the Constitution is the supreme law of the land and it is a legitimate purpose for a journalist to engage under the Constitution. Freedom of the press is an entrenched right. We do not think that it is necessary to put in a subsection (d) to protect the rights of journalists.

On the other hand, the conduct of police officers pursued for the prevention or detection of crime is difficult in relation to sting offences. Recently, we passed legislation which allows for special provisions to apply in respect of police officers who are under cover and might have carriage of prohibited goods for limited purposes. We do not think that the conduct of journalists falls under section 30C.

**Sen. R. Montano:** Put it under another section.

**Sen. Jeremie:** If we are proceeding in order, I thought that the point you made earlier was about taking clause 2 and we were going through section 30A(1), (2), (3), (4), 30B and then C.

**Sen. R. Montano:** I have no problem but I asked the Chairman and she said that we will take section 30 in total.

I said that I have two issues. I am prepared to do whatever you want. If you tell me that you do not like putting the “journalist clause” in section 30C, assuming but not accepting that you will agree to it, where will you put it? I do not agree with you about the non necessity of it.

I am concerned that nothing and absolutely nothing impinges upon the constitutional provisions of the free press. I am also concerned about the fact that we live in Trinidad and Tobago. You know as well as I do that I never said that it cannot be a defence. I want it to be crystal clear making it very, very difficult to have a journalist prosecuted under this Act. I was on that point. I did not want the journalist to rely on his constitutional rights or to say that his course of conduct was reasonable. I want him to be able to say that he is a journalist and this is it, in the same way, I am a police officer and this is it.

**Madam Chairman:** To make this whole thing easier, let us take it as you were suggesting. That is 30A(1) and if there are no amendments we move on to 30A(2), until we finish the whole thing.

**Sen. R. Montano:** I have no amendments until you reach 30C with the proviso that if you tell me, assuming but not accepting that you agree with me on the “journalist clause” and you come back and tell me that it should be under 30A.

**Sen. Jeremie:** I will not do that. I have a further point to make on 30C. Even if the clause was an expressed clause which sought to take away the right of a journalist, it will be unconstitutional. Because the clause is not expressed the

Constitution is the supreme law and there is absolutely no need for us to put in an expressed clause, where in the absence of “in silence” the Constitution will prevail.

**Madam Chairman:** Let us go to 30A(1). Are there any amendments? Any comments or amendments on 30A(2)? 30A(3)?

**Sen. R. Montano:** I heard what the Minister said about creating a civil offence of stalking or harassment as we are calling it in this Bill. Could the Minister please explain in more detail? I do not understand why you are so reluctant to give a person who suffers from harassment—he can get an injunction but you are not giving him anything else. I am getting compensation for loss of earnings; medical expenses; moving and accommodation expenses and reasonable legal cost, but I will not get damages for harassment. We are talking about the civil wrong, the tort. Can we not put in a clause that says “harassment shall be a civil tort”?

**Sen. Jeremie:** This Bill seeks to provide you with interlocutory or immediate relief so that you get an injunction. It does not take away your right to sue for damages.

**Sen. R. Montano:** That is in the common law. If I sue in common law I would have to prove that I suffered damage.

**Sen. Jeremie:** That is a basis for all actions.

**Sen. Seetahal:** The only normal thing you have when you are creating a crime is compensation and there is precedence for a protective order. I do not see that you can create a tort, with all due respect, which will lend itself to damages in the Offences Against the Person Act. It would no longer be Offences Against the Person Act. That is the nature of a criminal offence and all the offences under the Criminal Offences Act deal with crimes. That is what offence means as I understand it. We will have to sue for trespass against the person in the normal course of things. I do not see the need to create a specific tort for harassment when there is trespass against the person which covers a wide range of everything. I do not agree.

**Sen. R. Montano:** With the greatest of respect, I do not agree with that. We can make things absolutely clear. I am trying to make things clear. How do you lose by putting that in?

**Sen. Jeremie:** Sen. Montano, it is not necessary. It is a duplication of that. The common law protects you. This is principally a criminal statute which provides for civil remedies. The essence of it is that in civil law you are not

deprived of your remedy to sue and for substantial damages if you are substantially injured.

**Sen. R. Montano:** In the Canadian legislation, you are allowed to sue without proof of damage and that is what I was trying to create here.

**3.30 p.m.**

**Sen. Jeremie:** Perhaps we can look at that in relation to the civil law, but this is really the Offences Against the Person Act.

**Sen. R. Montano:** The Canadians have it in their legislation.

**Sen. Jeremie:** We have decided not to go that route.

**Madam Chairman:** Is there any comment or any proposed amendment to clause 30B(1), 30B(2), 30B(3) and 30C?

**Sen. R. Montano:** Well, we come back to my “journalist” legislation. I feel very strongly—although I do not agree with the reasoning, I am prepared to say, I accept the amendment being thrown out.

**Sen. Prof. Ramchand:** I had a problem with “course of conduct” since I do not really believe that the charge has to be two and more. I was wondering if we could insert “conduct or course of conduct”.

**Sen. Seetahal:** What the Senator is talking about, if he is not happy with the course, he would be going back to 30A(1)(b)—the definition of “course of conduct”, but, as I was just kind of whispering to him, it would no longer be a “course of conduct” if you only have one.

**Sen. Jeremie:** The point is that, if it is two or more, it is repetitious. If it is one, then, perhaps, one might get away.

**Sen. Prof. Ramchand:** I just have a problem with the definition of harassment as requiring a “course of conduct”.

**Sen. Seetahal:** Harassment in itself suggests more than one. It would not be harassment. It would just be a one-off accosting, “sooting” or a one-off telephone call saying dirty things, but you have to do it more than once.

**Sen. Prof. Ramchand:** I promise the Senator I could harass her on one occasion and she will know it is harassment.

**Sen. R. Montano:** I am coming back to the “journalist” amendment. I am hearing what you are saying, but there is a danger that people will start arguing that freedom of the press is just about publication and so on, and this legislation did not specifically talk about “journalist” so that there is no reason they should be charged under this, and we could go on and on. The name of the game is to give the journalist a “get out of jail free card” in the same way we are giving the police a “get out of jail free card”. What is the problem with that?

**Sen. Dr. Saith:** You know who is a “police”, a man who is appointed by the Police Service Commission and all of that. What is the definition of “journalist”? How are you going to define “journalist”? Tell me. You are anxious about journalists being protected. What is your definition?

The Attorney General is saying that umbrella legislation protects the freedom of the press, including journalists.

**Sen. R. Montano:** We could say, “a member of the Media Association”.

**Sen. Dr. Saith:** If I am not a member of the Media Association, I am not a journalist?

**Sen. R. Montano:** We could say, “a person who is employed by any media house”.

**Sen. Dr. Saith:** So if I am employed by a media house owned by myself, am I a journalist? I am just trying to—

**Sen. R. Montano:** I see your point, but at the same time I am trying to get to—so you are saying then, because of the difficulty in trying to frame it, we should ignore the difficulty?

**Sen. Dr. Saith:** I am saying there is no difficulty.

**Sen. R. Montano:** With the greatest of respect, this, for me, is critical.

**Sen. Jeremie:** The position of the Government is that the Constitution, which is the supreme law, protects journalists and not only in terms of what they publish. Freedom of the press is widely defined and we think that it is a legitimate endeavour and it is read into legislation. We cannot pass legislation. No legislation passed which is in conflict with the Constitution can stand. This legislation is merely silent on the point, and that is the course to adopt when the Constitution is the supreme law and infuses everything. It is the groomed norm as they say. It is the highest norm.

**Sen. Seetahal:** There were two points made. One is, if the course of conduct was pursued under any written or unwritten law. As I understood it, this is so general that you want to have specific provision for somebody like a journalist and the point I am grasping from Sen. Dr. Saith and the Attorney General is that if you narrow it to journalists and you narrow it to a definition, you stand a chance that the fact that they are specially defined under subsection 30C, that in interpreting the legislation you might say, because it is drafted in that way you need to fit in the particular person who is claiming defence as a journalist. Whereas right now, if you say under a written law, meaning that I am protected by my right to freedom of the press, it is so wide that anyone who claims to be a journalist would have the protection, and also all of the case laws, which is unwritten law, which gives journalists rights, would protect them.

So I do not see the need because it is very wide. It says “a person engaging on a course of conduct or pursuing this course of conduct under any written or unwritten law”, meaning under the Constitution and all the case laws we have had over the years dealing with freedom of the press. And there has been a lot, even here where our courts have held that importation of newspaper is the right of a journalist. It was also said and it is stated here, it is a defence for a person to do this and you have to wait until the person goes to court after they have been charged before they can run the defence but this is not how it operates for those people who are in the criminal field.

Once it is stated like this—for instance, in the Drug Act there is a doctor who has in his or her possession certain drugs, you do not charge the doctor and then wait for him to say he is a doctor. In the course of investigations all these things would be cleared up. So I do not think it is a norm to put in legislation of this kind, it is a defence. That is the first point, and secondly, I think (b) is sufficiently wide to cover journalists. I have said it before and I am saying in my experience in the criminal field this is enough.

**Sen. R. Montano:** I am grateful to the Government Independent Senator for her advice but—

**Madam Chairman:** Sen. R. Montano!

**Sen. Seetahal:** I do not need to defend myself against that attack but I need to say something and the something is, if I think that a piece of legislation is good, I do not need the Opposition’s consent or any support from them or to agree with them. I think it is ridiculous because it is a piece of legislation—

**Madam Chairman:** All right, Senator, I know you are hurt.

**Sen. Seetahal:** I am not hurt. It is something that one would expect given the tone of the responses and the statements of Sen. R. Montano, but as a person in the legal profession, I am surprised at him. I am surprised that he would think that if one is supporting good legislation—

**Madam Chairman:** I am extremely disturbed that another Senator could refer to an Independent Senator in that manner and I really think, Sen. R. Montano, that you should withdraw your statement and apologize.

**Sen. R. Montano:** Madam Chairman, I am sorry. I have observed the conduct of this particular Senator and I have observed that she has—in any case let us just leave it alone.

**Madam Chairman:** No. I am asking you to apologize

**Sen. R. Montano:** And I refuse to apologize, Madam Chairman.

**Sen. Jeremie:** Madam Chairman, the Senate is not a place for us to behave like this.

**Sen. R. Montano:** I agree.

**Madam Chairman:** Let me deal with this matter. I cannot force you to apologize, Sen. R. Montano. We are in committee. It would go down as being a very rude and distasteful statement.

**Sen. Seetahal:** Madam Chairman, I have sat in this Senate and I have been accused of being pro-UNC. When I was accused of being pro-UNC, I know people on the other side felt that I should not have been re-appointed an Independent Senator because I represented certain people. I have been accused of being pro-other people all over the media, because I represented Chuck Attin. If I think that legislation is good now and the UNC is accusing me of being pro-government I think that shows that I am truly independent and I do not have to apologize to anyone or make any explanations to anyone. [*Desk thumping*]

**Sen. Dr. McKenzie:** Madam Chairman, I think that Sen. Seetahal has laid it to rest because I have been here from 1995 and I was pretty taken aback some years before when one of the Senators on the Independent Bench was accused of being pro-Government. It says to me that if something is good and the Government brings it, it is good. If the Opposition brings it and it is good, I agree with the Opposition. We go against each other. The last time there was a vote and Sen. Cropper went against all of us as we saw it, and this is how we see it and I think we should leave the personal, professional lives of people out of this. I think it is unfortunate. Let us go on.

**Sen. Mark:** Madam Chairman, with respect to section 30C, you would realize it is linked to section 30A. We want some clarification of “entering”. The entering property or interfering with property in the possession of a person in the context of 30C, there are two concerns we have here. We are saying that property relations are enshrined in the Constitution and if someone is stalking you or harassing you and is able to enter your property, we feel this is a particular area that infringes on sections 4 and 5 of the Constitution.

**Madam Chairman:** Attorney General, you wanted to say something on that?

**Sen. Jeremie:** I had a point in relation to the other issue because I was particularly stung about it. I am a member of the profession—

**Madam Chairman:** Let us drop that and let us move on. Minister, are you going to respond or have you stated your position?

**Sen. Joseph:** We have stated our position.

**Madam Chairman:** The Government said it has stated its position as far as 30C is concerned. Let us move on to subsections 30D, 30E, 30F.

**Sen. Mark:** Could the Attorney General advise the maximum statutory amount that the Magistrates’ Court could award in the case of harassment and other matters?

**Sen. Jeremie:** I have received advice that under the Summary Courts Act there is no maximum so that it is within the discretion of the magistrate as to what the quantum should be.

**Sen. Mark:** Madam Chairman, if you read 30E(2), it says: “shall not exceed a statutory maximum amount”, so there has to be a statutory maximum amount, not so?

**Sen. Jeremie:** Could you just hold? We will find the authority for you.

**Sen. Mark:** Okay, no problem.

**Sen. Jeremie:** We are looking at the question of cost and compensation under Chap. 4:20, 1980, of the revised laws, the summary courts. Do you want me to read? It says:

“77. (1) In every case where the complaint is dismissed, the Court may order that the complainant shall pay to the defendant such sum for costs as to the Court may seem just and reasonable, and if the Court is of the opinion that the complaint was frivolous and vexatious, it may also order the complainant

to pay to the defendant a reasonable sum, not exceeding two hundred dollars, as compensation for the trouble and expense to which the defendant may have been put, by reason of such complaint in addition to his costs; and such compensation shall be enforceable as a civil debt.”

In subsection (3) which is the relevant subsection, it says:

“Subject to section 70, in every case where an order is made against the defendant, the Court may, in addition to the penalty or sentence of imprisonment, if any, imposed on the defendant, order him to pay to the complainant such costs, and also, subject to the provisions of any written law in that behalf, to pay to the complainant or any other person such compensation as to the Court may seem just and reasonable; and such compensation shall be enforceable as a civil debt. This section shall not affect the procedure of the Court under any written law making express provision with respect to such compensation.”

This, in other words, gives the magistrate the discretion under 77(3) of chapter 4:20.

**Sen. Mark:** Is the Attorney General saying, if someone wins a matter under this Act, the magistrate would have discretionary powers to determine the extent of the compensation, taking into account section 30E in terms of the element that would be computed in terms of compensation?

**Sen. Jeremie:** Yes. Because there is no limit set out in this Act. The Summary Courts Act, because this is a summary offence, says if there is no limit set out then it is up to the magistrate’s discretion.

*Question put and agreed to.*

*Clause 2 ordered to stand part of the Bill.*

*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.*

#### PRESIDENT’S RULING

**Madam President:** Hon. Members, before we proceed, I just want to draw this Senate’s attention to Standing Order 43, and to let Senators know that if the kind of behaviour that went on earlier in Committee, and the kind of insulting language that was used, if that happens again and the person involved refuses to apologize, I would be forced to suspend and put the person out of the Senate.

*Adjournment*

*Tuesday, February 15, 2005*

**ADJOURNMENT**

**The Minister of Public Administration and Information (Sen. The Hon. Dr. Lenny Saith):** Madam President, I beg to move that the Senate be now adjourned to Tuesday, March 01, 2005 at 1.30 p.m.

Madam President, as you know there is a Heads of Commonwealth Parliamentary Conference taking place on February 21, 22 and 23 with you and all parliamentary staff, so we will resume on March 01 at 1.30 p.m.

There are two Motions on the Adjournment and we will do them at that time. We will not be doing CCJ because the 15 days would not have expired. We will be doing first the Tourism Development Act, followed by the Functions of the Director of Surveys (Validation) Bill and the National Lotteries (Amdt.) Bill, in that order.

**Madam President:** Hon. Senators, there are matters to be raised, a Motion on the Adjournment. I think Sen. Mark has one that is outstanding.

**Sen. Mark:** Madam President, the Hon. Camille Robinson-Regis and I have agreed that we would raise it on Private Members' Day, but, as Sen. Dr. Saith has indicated, we will not be having Private Members' Day next week because of the parliamentary conference. I wanted to ask the hon. Minister, in light of that development, whether we could not agree that when we return, we allocate that day to Private Members. I wonder if Sen. Dr. Saith wants to give it some consideration, having regard to this development.

**Sen. Dr. Saith:** Madam President, you know the Government has a heavy agenda. We have lost today. Perhaps, if Sen. Mark had contacted me earlier, I would have rescheduled. We have a lot to do and the fact that we could not do it today, I really cannot lose another day.

**Madam President:** Which matter are we going to take?

**Sen. Mark:** Madam President, I have agreed with Sen. Dr. Saith. I have two Motions on the Adjournment. A fourth is the outstanding one and this deals with Motion No. 1 on the last one you approved. Sen. Dr. Saith has agreed that we should pursue that matter.

**Sen. Dr. Saith:** I have spoken to the Minister of National Security and he has the ability to respond to Motion No. 2, of the three motions. There are three motions you wanted to raise.

**Sen. Mark:** Could I ask for a deferment of this one? I was prepared for (i), but seeing that the hon. Minister is prepared to do (ii), I am not prepared for (ii) at this time. I will ask that at the next sitting I will deal with (i), (ii) and (iii).

**Status of Road Improvement  
(Point Fortin to Icacos)**

**Sen. Sadiq Baksh:** Madam President, thank you very much for allowing me the opportunity to raise this particular matter on the adjournment—the state of the road between Point Fortin and Icacos. Madam President, this part of the country, Cedros and Icacos is a rural community in which the need for the improvement of this particular roadway has long been recognized.

During the administration of the United National Congress, we laid the groundwork for this particular contract in terms of the construction of all bridges between Point Fortin and Cedros with one outstanding bridge. When it finally got going, the road became almost impassible and the project management for this particular roadway left a lot to be desired, in that there were certain sections of the roadway between Point Fortin and Icacos that were extremely bad and were almost impassable. Certain areas in Chatham, Coromandel, Bamboo straight down into Cedros. And what happened when they awarded the contract? The contractor dug up all the good areas first, thus making the entire roadway impossible to drive on. So a bad situation in a rural community became worse because of poor contract management.

I am certain that the Minister did not tell the contractor to dig up the good part of the road first. I am sure about that, but be that as it may, they did, and the members of that community continue to suffer with the completion date extending from time to time.

This is a community that contributes towards the national Treasury in terms of amounts dissimilar to all other areas in Trinidad and Tobago. This was the first offshore exploited hydrocarbon resource in the country off Soldado. Also, this is a community that contributed over US\$20 billion in terms of seafood exported since 1965 to today. In addition to that, this is a community in which coconut—although coconut is no longer king in Cedros—contributed towards the economy of Trinidad and Tobago.

**4.00 p.m.**

Madam President, I bring this matter to the attention of the honourable Senate and the hon. Minister, so that we would now be able to set some time frames and

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so that the people would know when they could expect—the last communication from the Ministry said that it would be February 2005. During my recent visit to the area, it does not appear that it would be completed in 2005.

I ask the Minister to say, through this Senate, to the communities of Cedros, Icacos, Coromandel, Chatham, Cap-de-Ville and all the other areas and to the citizens who use that roadway, when they could expect some relief by the completion of the improvement work in that area. There are other areas that come to our attention, including Guaracara, Tabaquite and areas in which we have the same sort of project management problems. Would the Minister take the necessary steps to ensure that other communities do not continue like the people of Cedros; more importantly, when we have additional projects, that these matters be taken into consideration?

**The Minister of Works and Transport (Hon. Franklin Khan):** Madam President, I thank you. As usual, it is a pleasure for me to visit this honourable Senate to be a part of the deliberations.

Sen. Baksh, when he speaks about rural areas, is obviously pushing against an open door. I myself feel strongly that rural Trinidad and Tobago has been left behind in many instances. As a Member of Parliament who represents probably the most rural of constituencies, I, obviously, share some of this sentiment.

This contract is one of five national highways, IDB/GOTT-funded contracts currently being conducted throughout Trinidad and Tobago. In fact, one of those contracts is on the Mayaro-Guayaguayare Road, from Mayaro Junction straight into Guayaguayare Village. You obviously know where that resides. The other contract is from the intersection of the Moruga Road with the Naparima-Mayaro Road at Petit Pathway Junction to St. Mary's Village. That is also in progress. The third contract is really two contracts—3 and 4—conducted by Seereeram Brothers, which is on the Guaracara-Tabaquite Road, Cedar Hill Road and the Couva Main Road from the highway straight to Gran Couva. The final contract is one which is split into two parts: one for the rehabilitation of the Naparima-Mayaro Road in the Palmyra area between Palmyra and Princes Town, a distance of 11.2 kilometers; and the other for the Southern Main Road, in Cap-de-Ville/Chatham going down to Cedros, as outlined by the Senator, a distance of approximately nine kilometres.

This contract commenced in June 2003 at a price of \$30.689 million and the contractor is Super Industries Services (SIS) Limited. The consultant is a joint venture between WSP (International) of the United Kingdom and BBFL Limited of Trinidad and Tobago.

Madam President, these IDB contracts are probably the best thing that have happened to this country in terms of road construction in the last several decades. For the first time, we have gotten away from blackening the surface of the road and going on this frenzy of road paving. Proper engineering design work was done to deal with all the issues of the base, the sub-base, the road pavement itself and probably, most importantly, the issue of drainage and slope stability.

Senators will see that the cost of these contracts is extremely high. They range from \$30 million to \$45 million and, for the first time, we are dealing with the road in its entirety. We are dealing with foundation, pavement—meaning the surface of the road—drainage and landslips.

Because international standards were placed on the design criteria of the roads, the quality control was very stringent. One of the early hitches in the contract, apart from problems of contract management, was that the local aggregate industry failed to meet the required standard for material. Under normal circumstances, the quality placed on local contracts was not as high as those demanded by the IDB. For several months in the early part of the contract, we had many problems with the quarrying industry in Trinidad to bring the aggregate to the required standard. Initially, that problem has been solved and most of the contracts are moving apace.

The contracts that are most advanced are the contracts on the Guaracara-Tabaquite Road, the Cedar Hill Road and the Couva Road, which is being done by Seereeram Brothers, which is a large, reputable contracting firm.

I am not here to bash individual contractors, but with the criteria the IDB set for the prequalification, many contractors probably did not have sufficient experience in road construction and building but were allowed to enter the prequalification phase, so that when we went to the second stage of the tender process, once they became the lowest bidder, it was very difficult to disqualify them for the award of contract. Most of them have the learning on the ground, and I am pleased to say that, even though there were hitches at the beginning, the Seereeram contracts are about 70 to 80 per cent completed and the other three within 50 to 60 per cent completed.

In specific terms, the works on the Southern Main Road include construction of drainage channels, repairs of landslips, pavement patching and overlaying and road reconstruction. With respect to drainage work, construction of reinforced concrete box drains, cascaded box drains and reinforced concrete culverts are all completed. In this contract, 10 landslips along the road segment needed to be

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repaired and these have also all been completed. The retaining walls used for repair were a mixture of eight reinforced concrete walls, ranging from 2.5 metres to 4 metres high, one reinforced early retaining wall and a gabion basket wall two metres high. Overall the retaining walls cover a total linear distance of 422 metres.

The road works to be carried out are a combination of pavement patching in selected areas and road reconstruction in other areas. To date, some three kilometres of road rehabilitation including installation of capping layer, sub-base, base-course and final wearing surface has been completed. At the present time, about 12 per cent of pavement patching and 43 per cent of asphalt overlay has been completed. Construction of kerb and slipper drains, which follows the laying of the final wearing surface is about 20 per cent complete.

As you are aware, Madam President, there has been an inordinate amount of rain in December and January and this led to the waterlogging of the stockpiles on site, leading to saturation for road repair. This has hindered progress at a time when one might normally expect acceleration in the rate of roadworks. The contractor has also been limited to carrying out kerb and slipper drain construction during this period. It seems that the weather conditions have now become more favourable and road construction will continue apace.

Madam President, the estimates I have from the project managers and engineers at the Ministry of Works and Transport indicate that these works should be completed by the end of April 2005. We have lovely weather. We think we have gotten around some of the project management and supervision issues, but more importantly, we have dealt with the quality control issues.

Probably I should publicly apologize to the people of Cedros, Icacos, Point Fortin and surrounding areas for all the hardships they have all undergone, especially in 2004. However, as the saying goes: "All is well that ends well". This contract will be well finished and in a proper condition, come the end of April 2005.

I recognize Sen. Prof. Kenneth Ramchand. He is down from Cedros and Icacos. Sen. Prof. Ramchand, I guarantee you that when you next visit home, post April, you will have a smooth ride.

*Question put and agreed.*

*Senate adjourned accordingly*

*Adjourned at 4.08 p.m.*