

**THE
PARLIAMENTARY DEBATES**

OFFICIAL REPORT

IN THE SECOND SESSION OF THE NINTH PARLIAMENT OF THE REPUBLIC OF
TRINIDAD AND TOBAGO WHICH OPENED ON DECEMBER 17, 2007

SESSION 2009

VOLUME 10

SENATE

Thursday, October 01, 2009

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Hon. Senators, I have granted leave of absence to Sen. Laurel Lezama and Sen. Dr. Sharon-ann Gopaul-McNicol who are both out of the country, and to Sen. Annette Nicholson-Alfred who is ill.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have received the following correspondence from His Excellency the President, Prof. George Maxwell Richards, T.C., C.M.T., Ph.D.:

“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: MR. JOEL PRIMUS

WHEREAS Senator Laurel Lezama is incapable of performing her duties as a Senator by reason of her 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

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[MR. PRESIDENT]

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Trinidad and Tobago, do hereby appoint you, JOEL PRIMUS, to be temporarily a member of the Senate, with immediate effect and continuing during the absence from Trinidad and Tobago of the said Senator Laurel Lezama.

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 1st day of October, 2009."

"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: MR. RAPHAEL CUMBERBATCH

WHEREAS Senator Dr. Sharon-ann Gopaul-McNicol is incapable of performing her duties as a Senator by reason of her absence from Trinidad and Tobago:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, acting in accordance with the advice of the Leader of the Opposition, 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, RAPHAEL CUMBERBATCH, to be temporarily a member of the Senate, with effect from October 01, 2009 and continuing during the absence from Trinidad and Tobago of the said Senator Dr. Sharon-ann Gopaul-McNicol.

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 29th day of September, 2009."

"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.

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/s/ G. Richards
President.

TO: MS. ALTHEA ROCKE

WHEREAS Senator Annette Alfred is incapable of performing her duties as a Senator by reason of illness:

NOW, THEREFORE, I, GEORGE MAXWELL RICHARDS, President as aforesaid, in exercise of the power vested in me by section 40(2)(c) and section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, ALTHEA ROCKE, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Annette Alfred.

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 1st day of October, 2009."

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law:

Joel Primus, Raphael Cumberbatch, Althea Rocke.

**FINANCIAL INTELLIGENCE UNIT
OF TRINIDAD AND TOBAGO BILL**

Bill to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the anti-money laundering policies of the Financial Action Task Force, brought from the House of Representatives [*The Minister of Trade and Industry and Minister in the Ministry of Finance*]; read the first time.

Motion made, That the next stage be taken on Tuesday, October 06, 2009.
[*Hon. M. Browne*]

Question put and agreed to.

Mr. President: Hon. Senators, the Financial Intelligence Unit of Trinidad and Tobago Bill is not yet ready to be circulated, so we will take this item later in the proceedings.

PAPERS LAID

1. The Administrative Report of the Ministry of Tourism for fiscal year 2008.
[*The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill)*]

2. The Administrative Report of the Zoological Society of Trinidad and Tobago for fiscal year 2008. [*Sen. The Hon. C. Enill*]
3. The annual audited financial statements of the Rum Distillers of Trinidad and Tobago for the year ended December 31, 2004. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne)*]
4. The annual audited financial statements of the Rum Distillers of Trinidad and Tobago for the year ended December 31, 2005. [*Sen. The Hon. M. Browne*]
5. The annual audited financial statements of the Rum Distillers of Trinidad and Tobago for the year ended December 31, 2006. [*Sen. The Hon. M. Browne*]

ORAL ANSWERS TO QUESTIONS

Gang Violence (Details of)

150. Sen. Dr. Sharon-ann Gopaul-McNicol asked the hon. Minister of National Security:

- A. With respect to gang violence in Trinidad and Tobago, could the Minister provide the Senate with the details of the model being used to combat the problem; and
- B. Could the Minister also provide the Senate with any evidence of the success of the model being used in other countries, particularly in the Caribbean, Britain, United States of America and Canada?

Mr. President: Question 150 was to be asked by Sen. Dr. Gopaul-McNicol. Will you deal with it?

Sen. Mark: Mr. President, I ask that we defer that until next Tuesday.

Question, by leave, deferred.

System of Justice Service (Greater Efficiency and Effectiveness)

170. Sen. Gail Merhair asked the hon. Attorney General:

Could the Attorney General advise the Senate of the steps taken by Government in the last five years to ensure greater efficiency and effectiveness of the justice system in Trinidad and Tobago?

The Attorney General (Sen. The Hon. John Jeremie SC): Thank you, Mr. President. Mr. President, over the past five years, the Government has taken a

number of steps to ensure greater efficiency and effectiveness of the justice system in Trinidad and Tobago. These steps have included legislative as well as institutional development and training.

I deal first with the legislative steps. The legislative measures taken to improve the delivery of justice are contained in several pieces of legislation. I identify these as follows:

The Summary Courts (Amdt.) Act, No. 15 of 2005, the purpose of which was to amend the Summary Courts Act to provide for the admissibility of written statements, that is statements in writing by witnesses of matters that are not in dispute, as well as to allow formal admissions as proof of a fact that is not in dispute in a summary trial.

The admissibility of written statements in the Magistrates' Court has shortened the length of some summary trials because this has had the effect of reducing the time spent by the note taker in the recording of evidence in chief, as well as cross-examination. Where the parties agree to the admission of matters not in dispute and the statement of the witness is admitted into evidence by agreement, there is little or no time spent on cross-examination or even evidence in chief.

This measure has ensured that judicial time is saved and matters are completed more expeditiously.

The second amendment is the Criminal Procedure (Amdt.) Act, No. 16 of 2005. This Act sought to provide for the use of formal admissions in criminal proceedings in the High Court. The critical importance of a formal admission, is that the prosecution is relieved of the burden of having to prove the matter which is not in dispute, by way of example, narcotic cases. If the nature of the substance is admitted, the prosecution will no longer be required to send their exhibits to the Forensic Science Centre for analysis as was previously done. Time was again saved by the introduction and adoption of this procedure.

The DNA Act, No. 24 of 2007. The purpose of this Act was to remedy the deficiencies in the DNA Act of 2000 and to replace it with an Act which will be used for forensic purposes only.

There were significant difficulties regarding the operations and effectiveness of a substantial number of provisions within the Act of 2000, which was assented to in that year. This related to the following:

- there was inadequate definition of samples to be taken;
- the procedure for obtaining the samples was not properly articulated;
- the establishment of data basis was not provided for;
- statutory limitations for the destruction of samples and the management of the Forensic DNA databank were not properly identified.

The Act of 2007 cured these deficiencies and allowed for the use of the important modern tool of DNA evidence for forensic purposes.

The Anti-Terrorism Act, No. 26 of 2005, is another piece of legislation which the Government passed. That Act sought to criminalize and provide for the detection, prevention, prosecution, conviction and punishment of terrorist activities. The Act provided for the confiscation, forfeiture and seizure of terrorists' assets. The Bill sought to give effect to Trinidad and Tobago's international obligations, to implement the United Nations Security Council's Resolution 1373 that was adopted in the aftermath of the terrorist attacks on the United States of America on September 11, 2001. The anti-terrorism legislation provided a tool to law enforcement to treat with potential terrorist threats in this country.

The Firearms Act, No. 3 of 2004, was also enacted. The purpose of that Act was two-fold; it sought to increase penalties and to create new offences. The intent of the legislation was to discourage and diminish the unlawful use, possession and manufacture of firearms and ammunition in Trinidad and Tobago by having more stringent restrictions and registry controls of firearms and ammunitions.

Mr. President, the Legislature also passed the Offences Against the Person (Amdt.) (Harassment) Act, No. 11 of 2005. That Act amended the Offences Against the Person Act to address the phenomenon of stalking by creating two new offences: the offence of harassment and relatedly, the offence of putting a person in fear of violence. The amending Act allowed the victim of an offence under the amended Act to obtain a court order for the purpose of protecting or compensating a victim, or any other person mentioned in the Order.

1.45 p.m.

This Act modernized the substantive law on assault in Trinidad and Tobago. The Legislature also passed the Indictable Offences (Preliminary Enquiry) (Amdt.) Act, No. 23 of 2005. The central objective of this Act was to help fight crime by reducing the delays which are associated with preliminary enquiries and

to promote speedier trials. The Act sought to provide the conditions upon which a written statement by either party, that is the prosecution, the defence or accused person to a preliminary enquiry, may be admitted into evidence. The Act sought to reform the system of paper committals.

Preliminary enquiries could be by way of written statements from the prosecution witnesses with no cross-examination. The Act has made it possible to record evidence electronically and to bring the recording of the proceedings of evidence in a preliminary enquiry in line with what is contemplated in the Recording of Court Proceedings Act, 1991, thereby shortening trial times.

The Legislature also enacted the Administration of Justice (Miscellaneous Provisions) Act, No. 19 of 2005. The main purpose of that Act was to amend certain pieces of substantive and procedural law. The Act amended the Evidence Act, Chap. 7:02 to provide for use of a sample in evidence from evidence in bulk. For example, samples taken from large quantities of dangerous drugs to allow administrative and non-scientific staff at the Trinidad and Tobago Forensic Science Centre to receive any substance or thing for examination or analysis and to extend the list of categories of government expert to include a fingerprint technician from the criminal records office of the police service.

The Act also amended the Larceny Act, Chap. 11:12 to extend the limitation period of certain summary offences under that Act, that is the time limit during which a complaint could have been laid, and to change the offence of receiving under section 35 from an indictable to a summary offence.

The Act also amended the Bail Act, 1994, to provide that if the High Court refuses or grants bail to a person convicted of a summary offence punishable with imprisonment, that person or the police may appeal that decision to the Court of Appeal. The Administration of Justice (Amdt.) Act modernized aspects of the substantive and procedural criminal law. The Legislature also enacted the bail legislation which was amended in 2005, 2006, 2007 and 2008 in order to make it difficult for persons to re-offend whilst out on bail. The amendment sought:

- (a) to make the offence of kidnapping for ransom a non bailable offence for a period of 60 days; and
- (b) to make certain violent crimes, including possession of a firearm or ammunition without a licence (that was captured within the definition of violent crime) non bailable offences where a person has been convicted on two prior occasions for any or a combination of those offences arising from a single incident.

These amendments were made during a period of high levels of public concern of the frequent occurrences of kidnapping and gun violence. The amendments to the bail law, in particular, served to diminish the levels of kidnapping.

The legislative reforms also included a complete reform of the Police Service Act and related constitutional provisions. In order to ensure the more efficient and transparent management of the police service, the Police Service Act, No. 7 of 2006, and the Police Service (Amdt.) Act, No. 13 of 2007, revised the laws relating to the operations of the police service. These Acts included provisions regarding discipline, promotion and improved remuneration.

The Police Service Commission is now a body that will make certain appointments and will also act as an appeals body in relation to the disciplinary procedures that have been established in the law. Discipline has been decentralized and put in the hands of the Commissioner of Police.

A new Police Complaints Authority Act, No. 8 of 2006 established an independent body and gave it the power to investigate serious police misconduct, police corruption, criminal offences committed by police officers and the conduct of any person connected with such matters and to refer the findings to the DPP, the Police Service Commission or the Commissioner of Police for appropriate action as it thinks fit.

The Constitution (Amdt.) Act, No. 6 of 2006 was enacted as part of the legislative effort to overhaul the police service. That Act sought to amend the Constitution to transfer most of the power of the Police Service Commission to the Commissioner of Police, except the power to appoint, discipline and remove the Commissioner and the Deputy Commissioner of Police. The Act also conferred on the Commissioner of Police, control and management of the police service and other related powers.

In terms of institutional development and training, the Ministry of the Attorney General has conducted training sessions, employed mentors and facilitated the training of prosecutors. The Attorney General has advised that continuous training of judges, magistrates and police officers who are the other stakeholders in the criminal justice system is being undertaken on an ongoing basis.

Thank you, Mr. President.

**Trinity Cross
(Status of)**

172. Sen. Gail Merhair asked the hon. Prime Minister:

Could the Prime Minister state whether persons who have refused the award of the Trinity Cross in the past been conferred with the new award of the Order of the Republic of Trinidad and Tobago?

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I could answer that question on behalf of the Prime Minister. It is well known that by Legal Notice dated July 08, 2008 and signed by his Excellency the President of the Republic of Trinidad and Tobago, the letters patent establishing and constituting the society of honour in Trinidad and Tobago, known as the Order of the Trinity, were amended by substituting for the words, "Order of the Trinity", the words, "The Distinguished Society of Trinidad and Tobago".

Further, the said amendment provided that the Trinity Cross or the Order of the Trinity be henceforth known as the "Order of the Republic of Trinidad and Tobago". There was no retroactivity to the amendment and accordingly, no conferment with the new award on anyone who refused the award of the Trinity Cross arises.

**Indecent Acts to School Property
(Steps Taken to Reduce)**

173. Sen. Gail Merhair asked the Hon. Minister of Education:

Could the Minister outline to the Senate the steps taken by the Ministry of Education to reduce the incidence of indecent acts on school property by students?

The Minister of Education (Hon. Esther Le Gendre): Mr. President, the Ministry of Education deems indecent acts on school property as any physical, written or verbal disturbance, communication or activity within the school setting or during related activities which may interrupt or interfere with teaching and the orderly conduct of school activities.

The ministry has therefore developed several strategies and taken actions at various levels of the education system. These include, from the head office: the establishment and distribution of a school code of conduct which outlines the

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principles, standards of behaviours, responsibilities, student and staff expectations, role of school personnel, consequences for violation, as well as prevention of, and intervention strategies.

Under the school code of conduct, the following steps must be taken in cases of indecent behaviour, disorderly conduct or disruptive behaviour:

- (a) a student conference;
- (b) parent contact;
- (c) conference with parent;
- (d) support services intervention.
- (e) detention;
- (f) suspension up to seven days;
- (g) law enforcement agencies;
- (h) confiscation;
- (i) school community service;
- (j) removal of privileges.

In addition, there has been the establishment of a Violence Prevention Academy. Under this initiative the school develops programmes or strategies aimed at preempting indiscipline and indecent behaviour based on their unique circumstances. The ministry has also set up a joint task force on school discipline comprising the Minister of National Security and the Ministry of Education in order to develop strategies for dealing with indecent behaviour and indiscipline in and outside of the school.

There has been the expansion of services provided by the Student Support Services Division to provide guidance and counselling. There has been the introduction of School Safety Officers in 100 per cent of government secondary schools to monitor the activities of students and support the maintenance of discipline in schools.

At the school level, there has been the introduction of school-based management, the establishment of student councils in all Government secondary schools and these councils establish links between students and the school

management, thereby getting students more involved in the decision-making process and school activities. This fosters a sense of belonging and thereby reduces the level of indecent behaviour in the school.

There has been the establishment of 91 local school boards in all government secondary schools in Trinidad and Tobago, that is to say, 85 in Trinidad and six in Tobago. We have also introduced a character building programme, such as: "Together We Light The Way"; the "Peace Programme" and "Creative Parenting for a New Era", all of these in partnership with non-governmental organizations and designed to help and develop students.

There has also been the establishment of PTAs to encourage dialogue between parents and teachers in the interest of students. There has been direct teaching and socializing through the social studies, health and family life education and other curricula.

In conclusion, at the community level, there has been the creation of links with the community by embracing NGOs, sporting and other organizations. These links foster a sense of responsibility for, and support of, the school. Finally, there is the facilitation of the use of school property by community groups to create a sense of ownership and identity with the school and so reduce incidences of indecent acts on school property.

Thank you.

Sex Education in Schools (Policy Towards)

174. Sen. Gail Merhair asked the hon. Minister of Education:

Could the Minister advise the Senate what is the Ministry's policy towards sex education in schools?

The Minister of Education (Hon. Esther Le Gendre): Mr. President, sexuality and sexual health is one component of health and family life education which is infused into the Social Studies curriculum and which has been recommended by our international partners, among them UNESCO, PAHO, the EDC and Caricom. The Social Studies curriculum is taught at both primary and secondary levels and includes the following themes:

- Choosing a partner
- Good parenting

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- Gender roles
- Family life
- Family planning

At the primary level the two major areas of focus are learning social skills and developing a sense of social and moral responsibility. The primary curriculum also includes the strand which addresses health education and focuses on the following: learning basic skills for keeping oneself healthy and safe and identifying healthy and socially desirable and undesirable practices pertaining to self, family and the community.

At the secondary level, the focus of health and family life education is the teaching of life skills. Students are guided to, among other things: demonstrate skills in dealing with the changes associated with puberty; the impact of sexually transmitted diseases on behaviour and lifestyle; factors underlying one's sexuality; care of the reproductive organs, and the application of life skills to promote healthy, responsible, sexual behaviours and socially acceptable lifestyle choices.

In addition, at the secondary level, the HFLA programme focuses on teaching students to exhibit the coping skills necessary to avoid high risk behaviours; situations leading to charges of sexual harassment; stereotyping and stigmatization. There is also the focus on exploring in order to conduct research on the role of the media in influencing sexual expression and behaviours; the role of technology in changing sexual attitudes and behaviours and the risks involved in unwise use of Internet facilities.

The curriculum also allows students to analyze and give opinions on the impact of abortion on the individuals concerned, such factors as sexuality, the impact of pornography on the individual's psyche and the economic and psychological impact of raising a child.

2.00 p.m.

In conclusion, the Ministry also encourages the philosophy of abstinence and has promoted the formation of abstinence clubs in schools. There are 65 such clubs active in schools including Naparima Girls, Point Fortin College and St. George's College.

Sen. Dr. Nanan: We heard in your contribution about the Social Studies curriculum and the extensive Social Studies curriculum dealing with the subject. With respect to the Social Studies curriculum, is it going to be introduced into the SEA and if it is, do you have a time frame?

Hon. E. Le Gendre: The answer to that is no.

**Insurance Companies
(Central Bank Monitoring)**

183. Sen. Lyndira Oudit asked the Minister of Finance:

Could the hon. Minister inform the Senate, how the Central Bank is able to ensure internal and external monitoring of insurance companies, with particular reference to:

- (a) claims filed; and
- (b) disbursement of pension funds?

The Minister of Trade and Industry and Minister in the Ministry of Finance (Sen. The Hon. Mariano Browne): Mr. President, the insurance companies' claims processing function is a standard procedure for all on site examinations. Insurance companies are required to have a board approved policy for the processing of claims. In addition, the Central Bank issued a Claims Guideline to the insurance industry in September 2008 which outlined regulatory requirements for market conduct; claims processing and claims reserving. When it is observed that insurance companies are not complying with their policies and Central Bank's guidelines, these instances of non-compliance are brought to the attention of the company's senior management team.

This is then formally followed by means of the Central Bank's standard management letter. Companies are monitored to see how they are progressing with regard to implementing the required actions. Where companies fail to follow the recommendations of the Central Bank further regulatory action is taken. This includes the issuance of compliance directives which provide for monetary fines to be levied. The Central Bank's Market Conduct Unit and the Office of the Financial Service Ombudsman are also responsible for mediating disputes between the insurance company and the policy holder.

Insurance companies assume obligation for payment of pension payments through the issuance of annuity contracts. The pension liabilities resulting from these annuity contracts form part of the requirements of the statutory funds of insurance companies. Insurance companies in turn are required to place suitable assets in a statutory fund to cover the liabilities.

The monitoring of the performance of the statutory fund is the responsibility of a company's management and supported by reviews of internal and external auditors. The Central Bank also monitors the performance of the statutory fund and this effort has been strengthened by the amendments to the Insurance Act which were enacted earlier in 2009.

These amendments now require insurance companies to monitor their statutory funds position on a quarterly basis and to submit their findings to the Central Bank. Previously this was done on an annual basis.

Sen. Dr. Nanan: Could the Minister say what is the percentage with respect to the statutory fund and the insurance companies, in terms of the assets?

Sen. The Hon. M. Browne: Could you be a little clearer? What is the required percentage of the liabilities? That does not come to mind readily. I do not know the percentage off the top of my head. The amendments to the Banking Act and the Insurance Act would have set out to say what the items were. If my memory serves me correctly, the liabilities are meant to be covered by the reserve assets, the statutory funds which are meant to be held. I do not know the ratio but I think that it is meant to be 100 per cent cover. I am not certain about the number. I cannot give you a specific answer off the top of my head. [*Interruption*] You caught me on this occasion.

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, in relation to questions Nos. 184 and 185, those answers are not now ready. They have not been received. I expect that there would be a requirement for another two weeks.

The following questions stood on the Order Paper in the name of Sen. Lyndira Oudit:

**International Organization of Migration
(Benefits of Funding and Training)**

- 184.** Could the hon. Minister of Foreign Affairs indicate to the Senate, how the Ministry of Foreign Affairs proposes to benefit from the funding and training to be made available to this country through the International Organization of Migration (IOM), as a consequence of becoming a member in June 2009?

**International Organization for Migration
(Details of Resources)**

- 185.** With respect to membership in the International Organization for Migration (IOM), could the hon. Minister of Foreign Affairs indicate to the Senate the measures presently in place to detect, gather evidence, collate data on and to counter human-trafficking in Trinidad and Tobago?

Questions, by leave, deferred.

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MOTION OF PRIVILEGE

Mr. President: Hon. Senators, I received on Tuesday September 29, a motion of privilege from Sen. Dr. Adesh Nanan against the Minister of Health regarding a statement that he made on Tuesday July 28, 2009. In view of the timing between July and now, the Motion is well out of time and therefore, fails even to be considered.

COMMISSIONS OF ENQUIRY (VALIDATION AND IMMUNITY FROM PROCEEDINGS) BILL

Order for second reading read.

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

That a Bill to validate the proceedings and the record of the proceedings of the Commission of Enquiry into the Construction Sector, which was appointed on September 09, 2008 by the President under the Commissions of Enquiry Act, Chap. 19:01, and for other related matters, be read a second time.

I begin with certain general remarks. The matter for consideration this afternoon is a Bill entitled, the Commissions of Enquiry (Validation And Immunity from Proceedings) Bill, 2009. This Bill seeks to address the invalidity of the Commission of Enquiry into the Construction Sector and the consequences of this invalidity. This commission was appointed because there were several complaints and vague allegations made by various commentators regarding the manner of operations of special purpose state enterprises and in particular, the Urban Development Corporation of Trinidad and Tobago. In particular, claims were made that processes and procedures employed by UDeCott, a company which manages construction projects, lacked transparency, did not allow for accountability and did not conform to statutory regulations.

In addition, local construction companies stated that they were being unfairly treated and overlooked for contracts in favour of foreign-owned enterprises. Several commentators called for an enquiry into these matters. The Government at first considered several options in response to these calls for an investigation. Eventually, during debate in the other place on May 23, 2008, on the suitability of one of those options, in this case the use of a Joint Select Committee of both Houses, the former Chief Whip and current Member for Tabaquite made specific and pointed allegations against the Chairman of UDeCott. As a result, the Prime Minister announced in the House on that day, that the Government would set up a commission of enquiry broadly into the construction sector.

That commission was appointed by the President on September 09, 2008 in purported reliance of section 2 of the Commissions of Enquiry Act, Chap. 19:01. Four persons were appointed as commissioners to enquire into certain matters in relation to the construction industry. By section 15 of the Act, the appointment of the commissioners was required to be published in the *Gazette*, whereupon the commission would become effective in law from that date. This publication never took place. When this information came to the attention of the commission, it terminated its proceedings on September 07, 2009.

I wish at the outset of my presentation to summarize for the benefit of my fellow Senators the objectives of the Bill which is before the Senate. The Bill seeks to achieve seven main objectives. They are:

- (1) to validate the proceedings of the commission which were held from September 09, 2008 to September 07, 2009;
- (2) to validate the record of the proceedings of the enquiry held by the commission;
- (3) to validate any matter or thing done by a commissioner as a commissioner during the proceedings of the commission. I shall return to expand on this point later.
- (4) The Bill seeks to validate the evidence given by any witness or person to the commission under the purported authority of section 12 of the Act. When I refer to Act I refer to the Commissions of Enquiry Act.
- (5) The Bill seeks to provide that the evidence given to the commission as validated can be used by the commissioners in preparing their report to the President.
- (6) To validate any publication made by a person of any evidence given to the commission. This is the media protection clause.
- (7) The Bill seeks to protect every commissioner in relation to any matter or thing done as a commissioner. Again, I shall return to this matter shortly.

The Bill also seeks to protect any person who provided information or any witness who gave evidence to the commission and any person who published any evidence or information obtained from the commission from any legal action or suit. When I spoke earlier about the validation of the actions of the commissioner, I should emphasize that the Bill does not give any warrant in respect of a blanket

immunity. By that I mean the Bill is not intended to inoculate the commissioners from anything they may have done which has breached well-established principles or public law. In other words, to be perfectly clear, it has absolutely nothing to do with the judicial review proceedings which are afoot against the commission.

The enactment of the legislation has become critical because as a consequence of occurrences still not known at this time, the appointment of the members of the commission was not published pursuant to section 15 of the Act. I say the details surrounding the issue of the non-publication of the commission in the *Gazette* have not yet been resolved for the reason that the Government has entrusted a retired Judge of Appeal to enquire and to report on this matter on its behalf. This report should be ready in the very near future.

The Bill contains nine clauses. It would be inconsistent with sections 4 and 5 of the Constitution and is therefore required to be passed by a special majority of three-fifths of the Members of each House pursuant to section 13 of the Constitution. I propose to deal at length with this constitutional issue at a later stage of my presentation.

I turn from the general to the specific. Pursuant to section 2 of the Commissions of Enquiry Act, the President purported to appoint the commission on September 09, 2008. From September 09, 2008 until September 07, 2009, the commission proceeded to conduct an enquiry in relation to the construction sector. The commission summoned persons to appear before it and numerous persons did appear to provide evidence. However, section 15 of the Act, I speak here of the Commissions of Enquiry Act, requires the appointment of the members of the commission to be published in the *Gazette*, whereupon the commission would be created in law from that date.

Section 15 provides:

"All commissions under this Act and all revocations of any such commission, shall be published in the *Gazette*, and shall take effect from the date of publication."

2.15 p.m.

In the circumstances described before, the President's Commission was never published as required by section 15 of the Act. The fact is that the commission had been published in a number of different ways. The appointment of the commissioners, their terms of reference and the proceedings of the commission were all communicated to the public via live video link, the Internet and the

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various print and electronic media. The media has attended and reported on the proceedings of the commission on a daily basis and members of the public were free to and did attend the proceedings.

The failure to act in accordance with section 15 of the Act arguably rendered the President's Commission ineffective in law. This conclusion is supported by certain obiter remarks of the Privy Council in the case of *Joachim and Another v the Attorney General of St. Vincent and The Grenadines and Another*, which is reported in (2007) UKPC at page 6, paragraph 12.

The facts of that case are that, in 2003 the Government of St. Vincent and the Grenadines decided to establish a commission of enquiry into a failed marina and shipyard project. To this end, the Governor General appointed a single commissioner by instrument dated March 10, 2003 and the instrument was published that same day in the gazette. The commissioner was appointed pursuant to section 2(1) of the Commissions of Enquiry Act, 1990. However, this section had been amended by the Commissions of Enquiry (Amdt.) Act, 2000.

The recitals in the instrument, dated March 10, 2003, erroneously referred to the original section 2(1) of the 1990 Act and not as it should have done, to the amended version which was affected by the 2002 Act. An attempt was made to correct the error by publishing an erratum. A second instrument, in precisely the same terms as the first, was also issued on April 28, 2003, but this was never published in the *Gazette*. It was the second instrument in the Vincentian case that was not published in the *Gazette*. Section 16 of the 1990 Act, as our section 15, required every commission to be published in the *Gazette*.

I now quote from paragraph 12 of the advice of the board, this is the Privy Council, as delivered by Lord Brown of Eaton-under-Heywood.

“The Board has already set out...section 16 of the 1990 Act which requires that all commissions are published in the *Gazette* and provides...that they ‘shall take effect from the date of such publication’. In these circumstances, it is well nigh impossible to argue that the Second Instrument, never having been published in the *Gazette*, has ever taken effect. The approach to be taken to this question is that now established by the House of Lords in *R v Soneji* (2006), 1 AC at 340...Essentially, the question to be asked is whether Parliament can fairly be taken to have intended the consequences of non-compliance to be total invalidity (or, in the present case, total ineffectiveness...). The answer their Lordships unhesitatingly give to that question is that Parliament must indeed be taken to have intended the

consequence of non-publication of the Commission to be total ineffectiveness. That intention is as plain as can be from the last ten words of section 16: ‘and shall take effect from the date of such publication’.”

Hon. Senators are asked to note that these remarks of the Privy Council, although obiter, may be accepted as a correct representation of the law. Thus the commission, albeit our commission, albeit acting in good faith, would not at any time have been authorized to exercise the powers which would ordinarily have been invested in them by the Act.

I also refer to two other cases which support the caution of the Government in viewing the non-publication as invalidating the commission. First, the case of *Ex parte Barbados Telephone Company Limited* from the High Court of Barbados and which is reported in (1978) 33 West Indian Report at page 45. In this case a public authority was given regulatory power to make orders, but by section 16(1) of the Interpretation Act, Chap. 1, such orders were required to be published in the *Gazette*. Section 16(1) of their legislation provides that:

“Every enactment shall be published in the *Gazette* and, unless the enactment otherwise provides, shall take effect and come into operation on the date of such publication.”

Enactment is defined, under the Interpretation Act in Barbados, to include orders. The authority made an order on June 02, 1978, but by November 1978, it had not been published. The court noted the character of the order and the formidable powers which the authority had to enforce its orders. The court also noted that section 16(1) was expressed in mandatory terms and that the language used in other related sections of the Interpretation Act must be construed as imperative. Consequently, the non-publication of the order was found to make it a nullity.

The second case that we rely on is *Gatherer v Gomez*, which is reported in (1992), 41 West Indian Report at page 68. This was an appeal from the Court of Appeal of Barbados to the Privy Council. In this case, the Director of an Anglican Church in Barbados, who had been appointed in 1957, was called upon by his bishop to resign after he had reached the age of 65. The director disputed that he was required to resign. The Privy Council held that following the disestablishment of the Anglican Church in Barbados, the Anglican Church Act, 1969 and the consequential amendments to the Pensions Act, 1947, the retirement age applicable to the clergy was a matter to be determined by regulations made by the

diocesan synod. It was also held that since the only relevant regulation had not been published in the *Gazette* as required by section 16(1) of the Interpretation Act, it was of no effect and hence there was no enforceable retirement age applicable to the rector.

From these cases, it is reasonable for us to take the view that the members of the commission were not properly constituted in law as a consequence of the failure to *Gazette* the commission. Therefore, they cannot rely on the immunity from suit provided to them under section 11 of the Act. The relevant part of section 11 states that:

“...no commissioner shall be liable to any action or suit for any matter or thing done by him as such commissioner.”

Equally, persons who gave evidence before the commission cannot rely on the privileges and immunities set out in section 12(3) of the Act, which provides:

“No person giving evidence before the commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the commission, be entitled to all privileges to which a witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.”

The likelihood is that persons who may consider themselves to have been injured by anything said or done during the proceedings of the commission may have a course of action against a member of the commission, or witness or the media, which reported in great detail on the matters which took place before the commission. It was never the intention of the Executive that persons, who chose to give of their time in the interest of the public and to report on the proceedings of the commission in reliance on the purported exercise of the President's powers, should now be faced with the possibility of legal action because of administrative error.

Hon. Senators are also asked to note that the commission has devoted a considerable amount of time to the gathering of evidence and other material relevant to its terms of reference; that vast resources have been expended from the public purse and that the citizens of this country must as a consequence expect a report and recommendations from the commission in relation to the several matters within its remit.

It would be inconceivable in these circumstances for the commission to start all over again and to rehear all the evidence previously given before it. To do so again would be a waste of money and time. It would also be contrary to good public administration, especially when the law provides a well-established means to rectify the error.

In all these circumstances, there has arisen a duty on the part of the Government, enforceable in public law, to take steps to regularize the situation so that the commissioners may complete their assigned task. It would constitute a clear dereliction of duty not to do so.

In the interest of good public administration and for the better good of the country, the proceedings of the commission and the record of its proceedings should not be allowed to be lost. The law can, as has been done on numerous occasions in the past, provide that all that has been done so far has been validly and lawfully done. Examples of this course of action having taken place in this jurisdiction include the Leases of State Lands (Validation) Act, 2003, Act No. 11 of 2003, the Patents (Validation of International Applications) Act, 1999, which is Act No. 4 of 1999; the Validation of the Sixth Report of the Elections and Boundaries Commission (Trinidad and Tobago) Act, 1996, which is Act 31 of 1996; the Import and Excise Duties (Validation) Act, 1984, Act No. 8 of 1984, the Public Utilities Commission (Amendment and Validation) Act, 1981, which is Act No. 21 of 1981; and the Scheduled Ordinances (Re-enactment, Commencement and Validation) Act, 1980, which is Act No. 31 of 1980. This list is by no means exhaustive.

Furthermore, it would be necessary to ensure that the members of the commission and persons who have given evidence before the commission are not subjected to legal action because of administrative oversight on the part of the Executive. Again, I pause to make the point that no wider exemption is provided to the commission by the Bill than arises out of a failure to gazette the commission. If the commission has breached principles of public law, then it is not above the law. It is not the intention of this Bill to make the commission above the law. Finally, the law should expressly ensure that members of the media who reported or published any information or evidence provided to the commission should be protected from any legal proceedings or suit.

In the light of the above, the Government is of the view that this validating legislation should be enacted to, inter alia, underpin the acts of the commission and to protect all the members of the commission, witnesses and members of the

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media from possible legal action within the constraints that I have set out. The Commissions of Enquiry (Validation and Immunity from Proceedings) Bill, 2009 seeks to achieve these and other specific objectives.

Prof. Thornton in his text, *Legislative Drafting, Fourth Edition, 1996*, at pages 303 to 304, states that:

“Validating legislation should remedy the defect or irregularity which is sought to be remedied and cure the consequences of that defect or irregularity. It is important that validating legislation should not go too far.”

As I mentioned earlier in this presentation, this Bill seeks to achieve seven specific objectives and no more.

2.30 p.m.

Mr. President, I turn now to the constitutional issue. One of the main purposes of the Bill is to provide immunity from legal proceedings to members of the commission, persons who gave evidence to the commission and persons who published any evidence or obtained information from the commission. The effect of this is to immunize and not merely to indemnify the commissioners, witnesses and persons who published any such information from legal proceedings within the broad constraints that I have set out before.

A Bill which seeks to grant immunity from suit, in effect, denies access to the courts to any person who might have been injured by certain things done by the commissioners, witnesses and other persons during the proceedings of the commission. This Bill, as a consequence, will deny certain persons who might allege that certain of their rights have been infringed of the opportunity to have such an allegation determined by the courts.

Sections 4 and 5 of our Constitution provide for a number of entrenched fundamental human rights and freedoms, these include the right of the individual to liberty; security of the person; enjoyment of property and the right not to be deprived thereof, except by due process of law; the right to protection of the law is also an enshrined and protected right; and the right to respect for one’s private and family life.

Section 5(1) expressly states that:

“...no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.”

except in two circumstances, that is, a law enacted pursuant to section 13 or an amendment made pursuant to section 54 of the Constitution.

In the case of *Lasalle v the Attorney General (1971) 18 WIR 379*, the Court of Appeal of Trinidad and Tobago held, inter alia, that the concept of due process of law included adherence to the principles of trial by an independent and impartial tribunal and observance of the rules of natural justice.

The Bill, by denying any person from filing certain legal actions against a commissioner might, in effect, be contrary to aspects of the due process clause of the Constitution. For example, it would deny a person of the right to be heard in respect of a failure to gazette the enquiry. This is contrary to the natural justice principles. For such a Bill to be enacted, our advice is that a three-fifths majority vote of the Members of each House of Parliament, pursuant to section 13 of the Constitution, is required.

Furthermore, section 5(2)(e) of the Constitution provides:

“Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—

- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;”

In the case of *Alleyne-Forte v the Attorney General and Another (1997) 52 WIR 480*, the police removed the appellant’s vehicle, which was parked contrary to section 108(1)(b) of the Motor Vehicles and Road Traffic Act, Chap. 48:50 and he was required to pay a prescribed sum for the removal of the vehicle and for its custody. The Privy Council held, inter alia, that this did not constitute an infringement of his constitutional right to enjoyment of his property. The appellant also argued that the lack of opportunity immediately, to challenge the lawfulness of the removal and payment of the charges before the car was released, infringed section 5(2)(e). The Privy Council ruled that the Motor Vehicles and Road Traffic Act did not deprive the car or owner of his recourse to the courts to challenge the lawfulness of the removal of his car and recover the charges paid and obtain damages for any unauthorized interference with his car.

On the other hand, it is the clear intent of this Bill, at clause 9, to deny a person access to the courts in limited respects, to purview rights gained as a consequence of a failure to gazette the commission.

Section 13(1) of the Constitution provides:

“An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act

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does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.”

The question for consideration is: How would our courts interpret the words "reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual”, which are stated in section 13(1) of the Constitution?

Section 13(2) of the Constitution provides:

"An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the Members of that House.”

It is to be noted that the Scheduled Ordinances (Re-enactment, Commencement and Validation) Act, 1980 (Act No. 31 of 1980), which validated the Narcotics Control Ordinance, 1961 and which obviously carried retroactive and penal consequences, was enacted with a three-fifths majority in both Houses of Parliament.

However, it is to be noted that the Public Utilities Commission (Amendment and Validation) Act, 1981 (Act No. 29 of 1981), which validated all acts done by the Chairman designate of the Public Utilities Commission, purported an exercise of the functions conferred on the Chairman of the Commission, under the Public Utilities Commission Act, 1966. It was enacted by a simple majority. This Amendment and Validation Act also came into force retroactively.

It is to be further noted that the Caribbean Food Corporation (Validation and Commencement) Act, 1981 (Act No. 30 of 1981), which validated all acts and things purported to be done by any person or authority under the powers of the Caribbean Food Corporation Act, 1979, when this 1979 Act was not brought into force by proclamation, was enacted by a simple majority and was also given retroactive effect.

An Act may be passed with a special majority under section 13(2) of the Constitution, that is, by the votes of not less than three-fifths of all Members of each House, but it may still be challenged, as was done in the case of *Morgan v the Attorney General of Trinidad and Tobago*, as being unconstitutional, because:

“the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.”

The question which constitutional courts have grappled with is the meaning of the constitutional words or such similar words "reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual". The corresponding words used in section 36(1) of the 1996 Constitution of South Africa are:

"reasonable and justifiable in an open and democratic society based on human equality and freedom."

[MR. VICE-PRESIDENT *in the Chair*]

Mr. President, in both—sorry, Mr. Vice-President, that shift that occurred so quickly—*Morgan v the Attorney General of Trinidad and Tobago* and *de Freitas v the Permanent Secretary of the Ministry of Agriculture, Lands and Housing and Others (1998) 53 WIR*, the courts interpreted that clause. We are confident on this side that what is required is that the clause should satisfy a balancing act. That contention is supported by remarks made by the Chief Justice in *Re Fraser and Public Service Staff Relations Board (1985) 23 DLR*. In that case, the Chief Justice said:

"The act of balancing must start with the proposition..."

This is a case dealing with freedom of speech and freedom of expression.

"that some speech by public servants concerning public issues is permitted. Public servants cannot be... 'silent members of society'. I say this for three reasons.

First, our democratic system is deeply rooted in, and thrives on, free and robust discussions of public issues... Secondly, account must be taken of the growth in recent decades of the public sector... as an employer. A blanket prohibition against all public discussion of all public issues by all public servants would, quite simply, deny fundamental democratic rights to far too many people. Thirdly, common sense comes into play here. An absolute rule prohibiting all public participation and discussion by all public servants would prohibit activities which no sensible person in a democratic society would want to prohibit."

The court said, in that case:

"It cannot be that all expressions critical of the conduct of a politician are to be forbidden. It is a fundamental principle of a democratic society..."

This is where I come back to the interpretation of our clause.

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"that citizens should be entitled to express their views about politicians, and while there may be legitimate restraints upon that freedom in the case of some civil servants, that restraint cannot be made absolute and universal."

Mr. Vice-President, what is required therefore is a balancing act. We are confident that this legislation is reasonably justifiable in a democratic society.

I should ask hon. Senators to note that the commission has spent a great amount of time to gather evidence; this is by way of repetition. It reinforces the point that this is a necessary exercise that we are embarked on. It has spent a great amount of time to gather evidence and other material relevant to its mandate, that a substantial amount of money has been expended from the national purse and that the public awaits a report with, perhaps, recommendation for reform from the commission in relation to the several matters within its terms of reference. It would, therefore, be inconceivable in these circumstances for the Government to allow this commission to start all over again. The Government is therefore of the view, in the light of these facts, that this Bill, once enacted with the requisite majority vote, would be one which is reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.

If I can turn to the Bill and examine it, there are nine clauses. [*Interruption*]

Sen. Dr. Nanan: We have heard of your various analyses of the various reasons. I was considering, you left out the doctrine of precedence. Was it considered?

Sen. The Hon. J. Jeremie SC: I am sorry; I do not understand the question.

Sen. Dr. Nanan: When you gave us the reason we are bringing the Bill and the history of the Privy Council and the various cases, you did not tell us about the doctrine of precedence and common law territories. I do not know why, if that was not part of your contribution.

Sen. The Hon. J. Jeremie SC: I am sorry, but that is precisely what I was embarked on for the last 45 minutes or so. I referred to other cases. Those cases are precedent for something and it was in that context that I referred to the Vincentian case and other cases. There are authorities for various propositions. Insofar as I referred to the other pieces of validating legislation, those are precedence for the validating legislation; legislative precedence for the action which we take this afternoon. You have two types of precedence, but this is not a law lecture, so if you would allow me to just complete my—[*Interruption*]

Sen. Mark: Would you care to share with us the cost of the Commission of Enquiry? We have been hearing of some \$50 million so far. We do not want to be speculative. Could you give us an idea?

2.45 p.m.

Sen. The Hon. J. Jeremie SC: Surely. Sen. Mark, you are being mischievous. I know you well enough to know that you are being mischievous. I would not know the cost of the commission. I have no knowledge of the cost of the commission. That is not relevant to the matter that is before us this afternoon. We are validating the commission of enquiry. We are not at the debate stage as yet. Hold your file.

Mr. Vice-President, if I can go through the Bill clause by clause, there is nothing in here about the cost of the commission. Clause 1 has nothing to do with the cost of the commission, but it provides the short title of the proposed Act.

[MR. PRESIDENT *in the Chair*]

Clause 2 states that this Act shall have effect even though inconsistent with sections 13(1) of the Constitution, for the reasons I have discussed before. This is a Bill which requires a special majority. It is inconsistent with sections 4 and 5 of the Constitution.

This constitutional clause, together with the Preamble and the special parliamentary certificate at the end of the Bill ensures from a procedural perspective that the Bill is constitutional. Of course, it is for our courts, as guardians of the Constitution, to determine finally whether or not the Act is constitutional.

Clause 3 of the Bill is the interpretation provision. I would ask hon. Senators to note the wide definition given to the word “evidence” and the specific meaning given to the word “proceedings”.

Clause 4 seeks to achieve two distinct objectives: it seeks to validate the proceedings of the commission during the period September 09, 2008 to September 07, 2009, and it seeks to validate the record of the proceedings of the commission during that period. Hon. Senators must have noted how specific the intent of this clause is as opposed to a general purpose clause. Mr. President, it is a general rule that validating legislation should achieve its objective in a straightforward and apparent manner rather than by implication. That is why I have spent time to tell you exactly what you are doing here this afternoon.

Clause 5 seeks to validate any matter within the confines of the meaning—I have ascribed to that before—thing or act done by the commission or a commissioner during the period of the proceedings of the commission and which was done under the purported authority of the Act, notwithstanding the failure to comply with section 15 of the Act. Again, this clause seeks to ensure that the proposed validation is specific.

Mr. President, Prof. Thornton, at page 303 of his drafting text, to which I referred earlier, has warned us that:

"...validation should not be effected absolutely without due thought as to the consequences, but should be restricted to remedying the acts or omissions which have caused the illegality and the consequences of those acts and omissions."

Clause 6 of the Bill seeks to validate the evidence given by any person to the commission. Mr. President, you would recall that I had indicated earlier in my presentation that it would be unnecessarily costly and a time wasting exercise for the commission to restart the proceedings. It is, therefore, necessary to ensure that this Bill is enacted so that the commission is validated—costs are kept to a minimum.

Clause 7 provides that the commissioners can use the evidence validated under clause 6 in the conduct of the commission and in their report to the President.

Clause 8 seeks to provide that any evidence, which would include all information, books, plans and other documents given to the commission and obtained and published by any person, is validly and lawfully published. The intent of this provision is to ensure that members of the media published extensively the proceedings of the commission, on the basis that the commission was a lawful and properly appointed body, should not now be faced with the possibility that they may have acted unlawfully.

Clause 9 seeks to ensure that the commission, a commissioner, a witness—all categories of persons—or any person who published any evidence obtained from the commission shall not be subject to legal proceedings or any other legal action in relation to the proceedings of the commission, again, within the specific confines that I have stated before. Clause 9 of the Bill ensures that the commissioners, witnesses or members of the media are immune from legal action, notwithstanding the failure to gazette the commission as required by section 15 of

the Act. As I mentioned earlier, it is clause 9 which requires that the Bill be enacted with the special majority vote, because it is seeking to deny a person access to the courts to have an alleged breach of his constitutional right determined.

Mr. President, the Government, by the Commissions of Enquiry (Validation and Immunity from Proceedings) Bill, 2009, has sought to identify the nature and extent of the actions and omissions which have been produced as a result of the failure to comply with section 15 of the Commissions of Enquiry Act and which are to be cured; the extent of the illegality caused by those actions and omissions; and the remedy to cure those acts and omissions and any other consequences of the invalidity. The Government is of the strong view that this step is necessary to correct the administrative mishap of non-publication and, consequently, allow the commissioners to complete their national mandate.

Mr. President. I wish to inform hon. Senators that the Government has taken the steps to comply with section 15 of the Act. The commission has now been published in the *Gazette* on various days, I believe, beginning on September 11, 2009.

No one would regard a commission of enquiry into a specific allegation as being for the public good, unless the allegation was also of sufficient public importance to justify conducting an enquiry into the matter. An enquiry was conducted and there is absolutely no reason now to repeat the process. It is as simple as that.

In the interest of good governance and for the better good of the country, I call on my fellow Senators to support the Government in ensuring that this proposed legislation is enacted so that any question surrounding the legality of the Commission of Enquiry into the Construction Sector may be laid to rest and the commissioners may complete their mandate.

Question proposed.

Sen. Wade Mark: Mr. President, thank you very much. The Bill before us seeks to validate the proceedings and the record of the proceedings of the Commission of Enquiry into the Construction Sector appointed on September 09, 2008 by His Excellency the President under the Commissions of Enquiry Act, Chap. 19:01 and for other related matters. I know that the Attorney General—I have some things to say about the struggles I understand he encountered and he had to wage—I am going to talk about that a little later on in the proceedings.

Sen. Jeremie SC: Sen. Mark, I hate to interrupt, but the Attorney General had to wage no struggles in respect of any of these matters.

Sen. W. Mark: Well, you know there are different sources. We have different sources. Mr. President, this is a case of the horse having bolted. The Government is now seeking, through legislation, to lock or to close the stable. So, the question that the ordinary people on the streets of this country are asking is whether this is all part of a scam or all part of a pappy show on the part of this administration. To the ordinary people in this country, it appears to be a huge and gigantic conspiracy. It is like a put-up job. That is what the ordinary people are saying out there.

Sen. Piggott: You use the word “conspiracy” all the time.

Sen. W. Mark: Mr. President, it is now more or less an established fact in this country that the Government of Trinidad and Tobago never wanted—they fought vigorously against the establishment of the Commission of Enquiry into the Construction Sector and, in particular, as the Attorney General has said, UDeCott.

The Bill before us today raises a number of questions that I am hopeful I would try to answer them, and I hope that the Attorney General would also help to answer and clarify some of these questions before the debate ends later on today. For example, I would like to ask from the very outset: What role, if any, did Mr. Israel Khan SC play in this whole scenario having regard to the information I have about his close relationship with the Government?

Another question I would like to ask is: What was the role of the counsel with responsibility for the commission, one Mr. Seenath Jairam SC, who I understand is the attorney for the Minister of Works and Transport in a number of matters which I am going to share with you shortly?

Mr. President, you and I have been around for a long time and it is the first time that I am hearing that a commission of enquiry has been established and it has not been gazetted in accordance with section 15 of the Commissions of Enquiry Act. This is unprecedented. If I am wrong, I stand corrected, but it appears that it is unprecedented in the history of an independent Trinidad and Tobago.

There was a recently concluded commission of enquiry in St. Lucia and we had a Trinidadian senior counsel in charge, Mr. Reginald Armour SC, and from information that I have he was thorough, he was comprehensive and he was a model.

3.00 p.m.

Reginald Amour was the counsel; he did not make the mistake of this counsel, Seenath Jairam SC. So, I ask the question: What was the role of this counsel in charge of the Commission? Was he a mole? Was he set up? Why was he not sufficiently alerted on the issue of the non-gazetting of the commission of enquiry? Reginald Amour in St. Lucia, as he issued the instruments through the governor, sent the gazetted publication, so that every man who is a member of that commission got the gazetted publication.

Why did Mr. Seenath Jairam SC not do so? I will tell you why. I believe this is a gigantic conspiracy, [*Desk thumping*] and we are here playing catch up; horse gone, but we now trying to bolt the stable. The gazetting of a commission of enquiry is an elementary matter. You do not have to employ His Excellency Justice Anthony Lucky to probe as to why this did not take place. You just only have to look at the Commissions of Enquiry Act, section 15, that tells you that you have to do it, that you must do it but we have to pay—well, luckily I understand he has not charged; he said he is doing it for free, that is what we understand.

Was not this counsel, this man who is in charge of the commission's legal team, not aware? Did he not read the Act? After all he is a Senior Counsel; he is not an ordinary lawyer. Why he did not read the Act? Mr. President, you are aware that there were several changes to the original mandate of this commission. Yet, in spite of all the changes, terms and conditions, at no point in time did the head of the commission's legal team, Seenath Jairam SC, an attorney-at-law, ever discover that this particular Commission was gazetted.

Mr. President, I will point out to you and this honourable Senate, the three occasions that the terms of reference of the commission were changed. It was not until Margaret Rose, an attorney-at-law, wrote to the secretary, one Judith Gonzalez, on a matter or several matters, that it was discovered by that particular individual that the commission of enquiry was not gazetted.

If, for instance, Margaret Rose did not write, we would have never known. We are very, very concerned, we are worried, and that is why we will make certain demands here today, and if they are not satisfied, this side, by the Government, we will then determine our position at the end of the day. This was a clear case of criminal negligence and there can be no doubt about it. It was a clear case of incompetence and for the ordinary people of this country; it was premeditated, calculated, and deliberate to sabotage the Commission of Enquiry into the Construction Industry.

The question that we also have to ask: Who will benefit from the derailment or the derailing of this particular commission of enquiry? Who are the persons to benefit if for instance, there is a complete sabotage of this Commission? I know why the Attorney General is so upset too, about this matter, and that is why he has brought this piece of legislation. I do not know, he might be able to share it with us, whether he was the one, whilst High Commissioner in London, who was contacted by the Prime Minister and was asked to find somebody in Keaton's Chambers in London. I do not know; I am just asking.

Sen. Jeremie SC: Let me answer the question. The Prime Minister did not contact me while I was in London, to find anyone to do anything in connection with this commission of enquiry, in Keaton's Chambers or anywhere else.

Sen. W. Mark: Well, Mr. President, I am corrected. It was not him. But did you threaten to resign? Let me go back to the point I made earlier about the three occasions that the terms of reference of this commission would change. You would know under section 2 of the Commissions of Enquiry Act, how a commission is appointed. The instruments for the commission of enquiry were given to the commissioners on September 11, 2008. So, that was the first occasion when the commission of enquiry was supposed to be gazetted.

Terms of reference for the commission of enquiry were altered on December 10, 2008, when they were asked to enquire into the procedures, practices and procurement processes, employed by the Trinidad and Tobago Housing Development Corporation, in the award of a contract to NH International, to develop the land and infrastructure to build 408 homes at Cleaver Heights. That development project came under scrutiny on December 10, 2008. So, that was the second occasion that the terms of reference, having been expanded, that this particular preamble to the legislation that we have before us:

“...whereas under section 15 of the Act it is provided, *inter alia*, that all commissions under this Act shall be published in the *Gazette* and shall take effect from the date of publication.”

So, on two occasions we have the possibility of this thing being gazetted; it was not. On May 22, 2009, when the commissioners announced their fourth hearing of evidence relating to the Cleaver Heights project, there was another expansion and extension.

Sen. Rahman: What is that date?

Sen. W. Mark: May 22, 2009, when the Government further expanded the terms of reference. The Government has plenty to answer for in this particular matter. Why after these efforts where the Commission's terms of reference were expanded, we still had the non-publication of this enquiry in the *Gazette*? Was it a deliberate plot, ploy or conspiracy on the part of the Government?

I want to outline for you, the counsel for the commission. You have one Seenath Jairam SC lead counsel; you have another person called Mr. Ian Roach; then you have one called Kerwyn Garcia—I understand he has some relationship with somebody in the Parliament. He is also a director on the board of TSTT. So, this is a PNM "fella". You have Seenath Jairam SC, who is involved in several issues as defence attorney for the Minister of Works and Transport. He was involved and still is involved in the ICS (Grenada) Limited, a company owned by this Minister, but now the shares are in the name of his wife.

In a matter involving Case No. 3400 of 1999, between *NH International (Caribbean) Limited and Clico Investment Bank Limited, ISC (Grenada) Limited, a National Stadium Project (Grenada) Limited*, the defendants are represented by Mr. Seenath Jairam SC. You have a situation where the senior counsel for the commission is the defence attorney for the Minister of Works and Transport, as we speak now. He is defending him in several cases in the court, including arbitration.

You know what is also important, Mr. President? The gentleman is also involved in industrial relations issues on behalf of the Ministry of Works and Transport involving the PTSC. There are matters right now in the Industrial Court, in which this gentleman is defending the PTSC management on behalf of the Ministry of Works and Transport. There is one called Garvin Simonette, and Marvo Harper. These are the people who make up the counsel.

We have concerns; you cannot just bring legislation here today and try to give the country the impression that—You know, something has happened, as the preamble said:

"And whereas due to administrative oversight the publication of the appointment of the Commission was not done pursuant to section 15 of the Act:"

Administrative oversight? Can we be serious? Is this administrative oversight or administrative sabotage? What is it really? Is it something engineered? Mr. President, you and I are aware that this Mr. Israel Khan SC went out in public and

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said he is a supporter of the Prime Minister; that was before he was appointed as a commissioner. He was all over the place saying that he supports the PNM; he is loyal to the PNM, and yet still he was appointed as a commissioner.

I looked at some of these live proceedings and I looked at the kind of questions that man was putting to the witnesses, including Mr. Calder Hart, and it looked like it was all part of a set-up. So, that at the end of day he would be so vitriolic in his comments that they would accuse him of bias. And what happened at the end of the day? Exactly that; they accused him of bias and he had to walk out.

The Attorney General must tell us more about this thing. What is the relationship between you, Attorney General, and this gentleman?

Sen. Jeremie SC: Would you like to sit? I would clarify that.

Sen. W. Mark: No, take a note.

Sen. Jeremie SC: He is just being mischievous.

3.15 p.m.

Sen. W. Mark: No, I am not imputing, I am just asking. I am asking what, if any, is the relationship between the Attorney General and Mr. Israel Khan SC? That is all I am asking. I am not imputing any improper motive. I just want to know if there is a relationship and how close is it. [*Interruption*] That is all I ask you.

Sen. Jeremie SC: I could answer you.

Sen. W. Mark: Yes, well take a note, we are here for a long time. Another individual who they sought to get rid of is a chap call Mr. Kenneth Sirju, another member of the commission. A gentleman, who I understand from reports I have here, worked for both NHIC and the Minister of Works and Transport and they wanted to get rid of this individual so that they could have—UDeCott, that runaway horse.

Mr. President, they wanted to get rid of Mr. Kenneth Sirju in order to further sabotage—so the theory of the poor people out there is that the PNM set up Israel Khan SC to be on the commission. The people outside there are saying they set another “fella” called Kenneth Sirju to be on this commission and at the end of the day the whole plot was at the appropriate time, take the rug under their legs.

Hon. Senator: Pull.

Sen. W. Mark: Pull the rug under their feet and collapse the commission. As if for instance the PNM is of the view that the citizens of this country are a bunch of fools and they alone have sense in this country; nobody else has any sense, the PNM alone. Therefore, the question must be posed, what was the role of the Minister of Works and Transport in this whole conspiracy? What was his role?

I raised in a budget debate a company called Bolt—B-O-L-T—Trinidad Limited owned by the wife of the Minister of Works and Transport that got prequalification via UDeCott; I understand they got work from UDeCott too. So, was this gentleman called Seenath Jairam SC planted there on the commission as the counsel by the Minister of Works and Transport? I cast no aspersions. I ask the question because the population is concerned whether this thing was a “cookup”. It was a “pelau”. They put it together knowing full well it would not last; it would not work; it was like Humpty-Dumpty—fall apart. Now it has fallen apart we have the hon. Attorney General having to wipe up and pick up the mess and he comes here in a most pitiful manner looking for sympathy.

There must be answers. We need answers to this particular matter. We cannot afford—Kerwyn Garcia, another PNM on the counsel team, the husband of a Minister in this Government; a Minister of Science, Technology and Tertiary Education. He is a director on the board of TSTT appointed by the Government of Trinidad and Tobago.

Sen. Jeremie SC: Sen. Mark, would you give way, please?

Sen. W. Mark: No, take notes. [*Laughter*] When I speak here I “ain’t” speaking for myself you know. The ordinary people, the people who are dying and suffering out there they are asking questions. It is our responsibility, as Members of Parliament, to get answers on behalf of the people. We need answers. So, if Kerwyn Garcia, an attorney-at-law is the husband of a Minister and he is a member of the team, then is this part of a conspiracy? You have Israel Khan SC, you have Seenath Jairam SC and now you have Kerwyn Garcia. All part of a conspiracy!

I am just asking whether that is in fact a truth. Then you have all kinds of contradictory statements coming from the Minister of Planning, Housing and the Environment, saying that UDeCott is right to go and appeal and then you have the hon. Leader of Government Business saying he is puzzled about this whole confusion. Why must taxpayers' money be used to finance and fund UDeCott directors in fighting against the Government and the people of this country? But he is a very smart “fella”. The Leader of Government Business and Minister of

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Energy and Energy Industries is a very smart colleague of mine; he said, "You see me, I cannot answer that, go to the Minister of Planning, Housing and the Environment"—

Hon. Senator: The line Minister.

Sen. W. Mark:—"the line Minister, let the line Minister answer". [Interruption] I am puzzled. In the meantime the Prime Minister is quiet, saying nothing.

Hon. Senator: He is at the UN.

Sen. W. Mark: He is at the UN talking about crime. [Interruption]

Then you had a situation, Mr. President, Gerry McCaffrey, a Quantity Surveyor retained by the Uff Commission to deal with some matters that they were engaged in, and the way how the Minister of Works and Transport ripped these people apart you would believe that he was in charge. The Minister of Works and Transport was in charge of the commission of enquiry. I would like to know, and I would like the Minister or the Attorney General to tell us the names of the Members of the Cabinet committee that was set up by the Cabinet to look over, to supervise and manage the affairs of the commission of enquiry. Was it the Minister of Works and Transport; a Member of that committee?

I would like the Attorney General when he is winding up to tell this honourable Senate the names of the Members of the Cabinet appointed committee that was established to supervise and to manage the affairs of that particular commission of enquiry.

Mr. President, they delayed the payment of the chap, Mr. McCaffrey. They said the payment was too much, it was \$50,000; it went to \$2.5—and the Minister of Works and Transport was carrying on as though he knows everything; who was going to pay and who was not going to pay. It was a lot of confusion at the end of the day. Therefore, people are asking questions. People are concerned. Who is in charge? When Dr. Rowley said there were problems with the oversight of that particular organization called UDeCott and he wanted to get the Cabinet to give him the power and support to bring that runaway horse back into a stable, what was the response? He was dismissed and called a "wajang"; said he was engaged in "wajang" behavior. But the chickens are coming home to roost now, because we now realize what Dr. Rowley was saying is true. The real Prime Minister of

the Republic of Trinidad and Tobago is not the hon. Patrick Manning. The real Prime Minister of the Republic of Trinidad and Tobago is Mr. Calder Hart. That is the big man. That is the man who is calling all the shots. He tells the Minister of Planning, Housing and the Environment what to do and what not to do.

You have the Attorney General saying today very, cleverly in his presentation, you see what we are dealing with here today; you see this thing about bias and rights of people; no, that is not involved here you know. If these “fellas” violated anybody's rights and so on, you have a right to take them to court. The Attorney General who was breathing brimstone and fire at one stage, giving the impression to the country, he is out to protect the rights of the people; he is out to protect the people's interest. Here it is you have a gentleman out of Canada, very dubious credentials, telling this country of 1.3 million people, telling the Government and the Attorney General, “I am the boss”.

I want the Attorney General when he is winding up to tell this country the amount of our taxpayers' money UDeCott and its board of directors are spending in defending itself against the people of the Republic of Trinidad and Tobago. I would like to know the amount of money they are spending? [*Desk thumping*] The Cabinet of this country sits there like some—Mr. Kenneth Valley used to talk about “mooks”, a bunch of “mooks”. They allow Mr. Calder Hart to do whatever he wants in this country.

I ask the Attorney General, do we really need this Bill? I ask the Attorney General if this Bill is really important. There is evidence in the public domain already showing that there are white-collar criminals—you do not have to bring the Financial Intelligence Unit Bill here on Monday. [*Interruption*] There are already white-collar criminals out there seeing you; you are seeing them and you are feeling them, and this Government has done nothing about it. I want to challenge the Attorney General, if he is serious, take the evidence that has come out so far from the commission of enquiry and send it to your favourite, the DPP. You like the DPP. Send it to the DPP; send it to the Commissioner of Police and let them begin an investigation into these criminals who have in fact laundered our moneys. [*Desk thumping*] They laundered our moneys!

Mr. President, I do not know if the hon. Attorney General is aware, but he ought to be aware. He must be aware of Sunway Construction Caribbean Limited. He must be aware, and if he is not aware, I will give him a letter today signed by the one of the directors of Sunway Construction Caribbean Limited.

Mr. President: Senator, before you go there. Before you bring any evidence that has anything to do with the enquiry itself, do not go there. Let me caution you and deal only with the issue of the validation of the actions of the commission of enquiry.

Sen. W. Mark: I thought this enquiry dead? I thought, Mr. President, and you must guide me; I heard a gentleman who is the chairman say that the commission of enquiry is dead. There will be no more hearings. All he is going to do is to submit his report, so, as far as I am concerned and the ordinary people are concerned, the commission is dead. We are trying to revive it today, Sir.

Mr. President: Senator, two things: First of all I made a ruling and I do not expect you to debate my ruling in the Parliament. Secondly, I can explain the fact very simply and that is out of an abundance of caution we are not going to go there and you would abide by my ruling. Thank you.

Sen. W. Mark: Mr. President, all I ask is whether the Attorney General is to wait until the completion of the report which is to be submitted to His Excellency, for him to take action against certain persons, where in the public domain—you saw it on television, I saw it on television and it is in the public domain. You can read the newspapers, you can see; I saw it. I am sure everybody saw it. It was in the Parliament here. I am asking the Attorney General, why it is—

Mr. President: Even that is not an issue. As far as I am concerned, the issue here is whether or not we validate the actions of the enquiry thus far. What further action the Attorney General takes, really, is not a matter for debate in this Senate at this time.

3.30 p.m.

Sen. W. Mark: Well Mr. President, if I may go to the preamble, the preamble says what we are debating here today.

"And whereas it is desirable to remedy the consequence of the failure to comply with section 15 of the Act so that prior to the commencement of this Act—

- (a) the proceedings and the record of the proceedings of the enquiry are deemed not to be invalid;"

We have it here, the proceedings and the record. [*Desk thumping*]

- "(b) the evidence given to the Commission is deemed valid and can be used by the Commission in its report..."

So, Mr. President, it is here, the evidence. It was in the public domain. I am not querying you, Sir. I have the greatest respect for my President. But all I am saying is, Mr. President, the evidence is in the Bill and all I am asking, is about the evidence. I am asking—

Mr. President: Senator, with the greatest of respect, I am being as flexible as I can be at this point, the evidence does not form part of this Bill. This Bill is expected to be a piece of legislation. Please deal with the Bill as it is drafted. Okay?

Sen. W. Mark: Mr. President, I want to look at the *Trinidad Guardian* of Saturday, September 26. The headline is "Court grants leave as UDeCott moves on UFF" and I will read two paragraphs of it for you, and for this honourable Senate. If UDeCott succeeds in its application and it has already done so—there is a hearing on Friday for the reliefs that they seek on an interim basis. Hear what are some of the reliefs that they are seeking, according to this story on page 3 of the *Trinidad Guardian*:

"Among the interim reliefs"—being sought—"UDeCott is asking for the commissioners not to proceed any further with the inquiry until the determination of the substantive matter."

That is the first thing.

UDeCott—"also wants the commissioners prohibited from drafting any report until the judicial review case is determined.

In the substantive matter, UDeCott will challenge the validity of the commission on the basis of it not being gazetted for the duration of its hearings."

Well, we are dealing with that here now.

"The state enterprise is also claiming bias against former commissioner Israel Khan and current commissioner Sirju."

What I am saying, Mr. President, the Bill that we are dealing with here now, what is its efficacy at the end of the day? If UDeCott is successful and being granted reliefs at the level of the courts of this country, it will take us two years, including the Privy Council, before this commission could really get going in terms of the Government's intention and the will of this piece of legislation. All I am asking, all I am saying to the Government, do not fool us, do not mamaguy us, do not try

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to pull wool over the eyes of the population. The Government of this country is aware of all that is taking place in UDeCott. Yesterday, the attorneys belonging to UDeCott came to this Parliament, and they had an audience with the Attorney General. The Attorney General must tell this country what were the contents of that discussion with UDeCott lawyers that took place right here in this Parliament yesterday, when he is winding up and so on.

So, the reality is that UDeCott is not alone, and you get the impression as if the Government is on this side, and UDeCott is on that side. [*Points to Government Bench*] UDeCott and the Government with a clenched fist, one united force, with one clear objective, to deny the people of this country the right to know the thievery that took place in that place, the money laundering that went on. I want the Attorney General—he likes to investigate UNC. Mr. President, "Hart buys \$5 million luxurious apartment in Fort Lauderdale". This could be money laundering and I would like you to investigate this. I would like you to investigate this.

Sen. Dr. Saith: That is a Monday Bill.

Sen. W. Mark: Monday Bill? "Oh, yeah, well I have more to say about Monday Bill, man. I have it piled up for the Attorney General. This is just ah taste. Want him to just get on and understand what is at stake here." This is not a laughing matter.

Mr. President, UDeCott may have spent—either via borrowing or through subvention—in the last seven years over \$50 billion to \$60 billion of our money, if not more. Sixty billion TT dollars and above. One state enterprise and every project that they were involved in had a cost overrun. I want to ask the Attorney General to investigate a particular matter. You see, the Bank of Belize is coming here and the man who owns that bank is a "fella" called Lord Ashcroft. He is the owner of that bank.

Mr. President: Senator, in your enthusiasm which is understandable and commendable, you are turning your back from the Chair.

Sen. W. Mark: Sorry. Sorry.

Mr. President: So I would ask you not to do so.

Sen. W. Mark: Sorry. Sorry. My apologies, Sir.

Mr. President: Thank you.

Sen. Piggott: Photos. Front page photos.

Sen. W. Mark: My apologies, sir. My apologies. You see the hon. Arnold Piggott always looks at me, so I have to look at him. [*Laughter*] But I agree with you, Sir. I have to look at my President. Thank you very much.

Mr. President, I understand that the Bank of Belize is opening shop here. Lord Ashcroft "does" buy political parties. He bought some in Australia and in England. There is a "fella" called Mr. Forrester who is the general manager of that group, and he was a director of a company called Johnston Construction Limited. They got a tender, without any competition, from Mr. Calder Hart and UDeCott for \$130 million to build the Chancery Lane project. Do you know how much it is right now, Mr. President? Over \$735 million, or thereabout and counting.

We understand in Turks and Caicos—I want the Attorney General to answer that and investigate it—Mr. Calder Hart has properties in Turks and Caicos and next to him in Turks and Caicos, you have a "fella" called Mr. Forrester who is the big man in charge of Johnston Construction Trinidad and Tobago Limited, who got a contract without tender. They got it free from Calder Hart, the same way how Calder Hart formed his own company called Calder Hart Development Limited (CH Development Limited).

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Mr. President: Before you resume, Senator, just answer me this. This information which you just released about properties in the Cayman Islands—

Sen. W. Mark: I have been informed. I do not have the evidence. I have been informed and I have asked the Attorney General to investigate it for me.

Sen. Dr. Saith: Why do you not send it to him?

Sen. W. Mark: No, that is my point of view. I have asked him to investigate it for me.

Mr. President: Have you done anything about this? Have you written to the Commissioner of Police or the—

Sen. W. Mark: No, I am going to write the Attorney General now about it, the hon. Attorney General. That is my Attorney General. I have to write him about it because I only get the information today, so I could not take any action until—

Mr. President: Senator, let me just caution you. You are a Senator; Senator is a very high office. With great authority and rank comes great responsibility, and I would ask you to act in as responsible a manner as possible. If you have not, and have not yet stood by the strength of your allegations, by making reports to the competent authorities—

Sen. W. Mark: But I asked my colleague to investigate it for me.

Mr. President:—then I ask you only, to be cautious about how you make these statements.

Sen. W. Mark: All right. Yes. Okay, Mr. President. I thank you very much, but I think it is my duty and my responsibility to ask the Attorney General of this country that in the Turks and Caicos, this gentleman has properties, and next to the property, you have a "fella" called Forrester who also has property there. So Mr. Calder Hart has a property and this chap has a property, so they are good friends. Do you know what the end result is, hon. Attorney General, through you, Mr. President? They got a tender, an award of a contract, worth \$124 million, it is now running over \$700 million and counting. I believe that is what is called "money laundering", but we will talk about that on Monday.

Mr. President, all I ask, whilst all these things are taking place here in this country, poor people cannot get hospital care, they cannot get beds to sleep in at the hospital, they cannot get water, they cannot get road, they cannot get transport, food is out of control in terms of prices in this country, and you have "fellas" and so on, in high office committing white-collar criminal offences and you know what is happening? The Government folds its arms, does nothing about it. We have to defend the national interest. We have to defend the national purse against predators, bandits and thieves. That is our responsibility. Therefore, I call on our Attorney General to investigate without tender, not only that Chancery Lane project involving close to \$700 million now, but a contract that was awarded to a company called CH Development, and then they gave it two weeks later to Sunway for \$368 million and right now it is over \$550 million and counting. I just want the Attorney General to investigate that for me.

Mr. President, in today's newspaper, *Business Guardian*, one, Afra Raymond writes an article on page 15. I just want to share with you some points that he made. This is a very important gentleman in the country and he writes every week for this newspaper. Here is what this gentleman is saying:

"It is clear for all to see that this important enquiry is being willfully"—I want to repeat, willfully—"undermined. The damage to the credibility of the Members of the Cabinet is immense."

I want the Cabinet Members to take note.

"Even docile and obedient party members are now asking: who really in charge here?"

UDeCott board members are acting in defiance of stated government policy"—according to this article—"Or are they, in fact, following a policy of concealment? A board which was acting in defiance of the PM would have been dismissed already."

He goes on to say:

"Only swift, direct and unambiguous action by the PM can retrieve this fiasco. The confusing antics by the others are fooling less and less people."

I want the Minister of Planning, Housing and the Environment to understand, and also the Attorney General and the Leader of Government Business, all of you are not fooling anybody in this country.

Mr. President, you know the MORI poll just revealed that 74 per cent of the people are totally dissatisfied with this arrangement, we call the PNM. People are fed up with them. They do not believe them. They have no credibility. So, I want to indicate to this honourable Senate, that UDeCott has been on the loose since 2002 and the Minister of Finance and Corporation Sole, the hon. Prime Minister, Patrick Augustus Mervyn Manning, was the Minister of Finance during the period 2002 to 2007, and he held the position under the Corporation Sole Act as Corporation Sole.

3.45 p.m.

He gave UDeCott a virtual blank cheque; they could do what they wanted, when they wanted, how they wanted. So the Prime Minister of this country—and I cast no aspersions on the character of the goodly Prime Minister—according to the fact that he was the Minister of Finance during that period, must take responsibility for what has happened with UDeCott between the period 2002 to the present time, and the new Minister of Finance, between 2007 and 2008, to the present time. The hon. Karen Nunez-Tesheira, along with the Minister in the Ministry of Finance, must take responsibility for what has happened after 2007.

In fact, I must quote my good friend Michael Annisette; the hon. Independent Senator. [*Interruption*] It was a good article; he made a very good point, that is why I am quoting him. Hear what my honourable colleague said in this article:

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“If regulation is not followed through on a timely basis government must clamp on down on those entities.

I agree that monitoring must be exercised in a timely fashion. There must be oversight and superintending of the accounts in a sustainable and fundamental way, that's the only way we can have checks and balances on these institutions.

There are cases where action starts after the fact and not before. The action must be preventative and not reactive. People who are given responsibility are not always accountable. Accountability demands a responsibility if you don't account you pay the price. There must be a deterrent mechanism in place. The state enterprises are simply ignoring these regulations and no one is following up to ensure compliance...”

This is what Sen. Michael Annisette said, as a member of the board of directors: UDeCott is a runaway horse; no regulations; no monitoring of the operation, and he was calling for mechanisms to regulate that institution on which he has the honour to serve at this time.

This is a Good Friday joke; this is an April Fools, the 1st, joke. "Doh come in this Parliament to fool anybody, Mr. Attorney General; do not do that." You know what is going on here.

Mr. President, is Davenand Ramlal still a member of that board or has he slipped out? I do not know; I am asking. [*Interruption*] No, he is also a member of that board, I understand; I do not know if he is still there; but it looks like birds of a feather flock together. I am anxiously looking forward for the Attorney General to take the necessary action, through the Director of Public Prosecutions (DPP) and the police, on the criminal activities that took place under his watch at T&TEC.

It seems to me that when people do wrong in the PNM, you give them a little handshake and send them home, but when the UNC does wrong, you say "is jail for dem and jail eh nice". You seem to be one sided in how you do your business. "Ah" looking forward, you know; "de" day you jail Calder Hart or give instructions to the police and the DPP, like you gave instructions to the DPP to arrest Lawrence Duprey and Basdeo Panday, and they were not taking you on, I hope the day would come when the Attorney General of this country, based on the hard facts before him, would give the instructions to the DPP to arrest that man called Calder Hart, and all of them. Not you, Sir; you "cyar" arrest, but you will do what you have to do.

Mr. President: Senator, I have given you a lot of latitude. You have been speaking directly to the Attorney General, suggesting that he gives instruction to the DPP; you know that does not happen, and we do not need to debate that. If you are going to apologize in your chair, on your legs would be better.

Sen. W. Mark: I apologize to my dear President and the honourable House. But you know what, Mr. President? These are some very important points I am about to make, because my time is coming close.

We demand, "we eh asking", that the Attorney General gives a clear written undertaking to this Parliament and the people, that when the Uff Commission of Enquiry submits its report to the President, and through the President to the Prime Minister and the Cabinet of this country, that report would be formally tabled in the two Houses of Parliament. We make a demand on the Attorney General today. We want the Attorney General to give us an undertaking today that when that report is submitted it would be tabled in the both Houses of Parliament.

The second demand that we make of the Attorney General today, is that the recommendations, whatever they may be, be implemented by the Government, through its various authorities and agencies, and, if it becomes necessary, have it referred to the Director of Public Prosecutions and the Commissioner of Police. That is a demand we make here today.

Mr. President, my final demand to the hon. Attorney General: You do not have to wait on the report; there is enough evidence in the public domain to take action. We would like him to give us the undertaking today, that based on the evidence put out so far, he intends to pursue this matter with vigour, in order to take action in defence of the national interest. We wait, with bated breath, to get from the Attorney General and this Government, their commitment and undertaking to these requests that we are making today. Depending on how these things are handled, we would determine our position on the matter that is before us.

I think I have one minute again. I ask my colleague—

Sen. Jeremie SC: Just on the last point, with respect to evidence being in the public domain; I can assure you that the Government is a responsible government and it is acting responsibly with respect to whatever information is in the public domain. That is all I would say.

Sen. W. Mark: Mr. President, I want to believe. If the Government comes to the Parliament with clean hands, I would like to believe them; but until I see, I feel, I smell, I hear, I say that the jury is still out on this matter. [*Interruption*]

I thank you, Mr. President, for allowing me to make my contribution on this matter.

Mr. President: Hon. Senators, we are going to revert to item 4 on the Order Paper.

FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO BILL

Bill to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the anti-money laundering policies of the Financial Action Task Force, brought from the House of Representatives [The *Minister of Energy and Energy Resources*]; read the first time.

Motion made, That the next stage be taken on Tuesday, October 06, 2009. [*Hon. C. Enill*]

Question put and agreed to.

COMMISSION OF ENQUIRY (VALIDATION AND IMMUNITY FROM PROCEEDINGS) BILL

Sen. Dana Seetahal SC: Mr. President, before I proceed with my contribution, I would just like through you, to direct two questions to the Attorney General, arising out of his own presentation, and that is in relation to the cost of the purported enquiry so far. I say purported Commission of Enquiry because, as we know, it is not valid.

In the *Sunday Express* of October 06, 2009, under the rubric, "UDEcott enquiry is not legal", there is alleged to be a statement from Sen. Enill that as at February 28, 2009, the sum of \$3,096,723.05 was expended in respect of the functioning of the commission, but he added that the sum did not include moneys to be paid to legal counsel. That was then, in February of this year, so it would be, I think, instructive for us and useful to know the cost of that purported enquiry so far. One of the reasons given was that it had been a costly exercise and in that vein we should validate what had gone before. Therefore, it would follow that we need to know what was expended, that we are now seeking to validate, so we would not lose it all.

The second point is in reference to a statement made by Sen. Mark in his contribution, as to judicial review proceedings in which the issue of the validation of the proceedings, and that in particular would be this Bill, was sought to be stayed. That is one issue.

There is the issue of the staying of the proceedings. Because it would seem to me, that if there has been a temporary stay, we do not know, I do not know, and we cannot trust newspaper reports. If there has been some kind of stay of the proceedings, then the purpose of this exercise might very well not be useful.

Sen. Jeremie SC: Thank you, Senator; you are well mannered. I cannot say the same for my colleague Sen. Mark, who asked a question about me meeting with UDeCott's attorneys, and refused to allow me to get up to answer it. Thank you for allowing me the opportunity to answer that question.

I met with UDeCott's attorneys yesterday, while I was in the House of Representatives, for two reasons; first of all, for the purpose of ensuring that their claim did not proceed in the manner in which it was crafted against the State, as a direct attack against the State and against certain actions of the President; that was one, and two, in respect of the applications which they seek for interim relief.

I expressed my view that it was unfair for them to proceed with those claims, at this time, before the commission, that is to say the Uff Commission, had a realistic opportunity to be heard, in respect of the application for interim relief. So the point is that the proceedings have not been stayed, and my understanding is that whatever happens in court tomorrow, UDeCott would not seek to stay the proceedings of the commission, at least until such time.

Prof. Uff, I understand, is giving certain undertakings and there will be no movement with respect to that, until he has had an opportunity to be heard, in fairness, with respect of the applications for bias.

In respect of the question you asked of costs, I do not have that information. I am late to this thing, the enquiry has been beginning for a year or so before I returned to this country, and I do not have the information with respect to costs. I saw some figures, as you have seen, bandied around in the newspapers. I know the cost has been substantial.

Mr. President: Attorney General, allow me just to correct you on something. You referred to Sen. Mark as not being as well mannered as Sen. Seetahal SC; I would wish to draw your attention to the fact that Sen. Mark was perfectly well mannered. He may not have been as generous to allow you the time on his time, but he was perfectly well mannered.

I would like Senators to be very careful about the language they use. I am sure the Senator did not intend to use insulting language of Sen. Mark, but it came across that way. We must be very careful with the language we use.

4.00 p.m.

Sen. D. Seetahal SC: Thank you very much, Mr. President. Mr. President, moving on with my contribution, the Commissions of Enquiry Act under which this Bill—well I should not say under which it is now proceeding because it is not an amendment to this Act, but because of failings to act under this Act, we now have this Bill.

This is an extremely old Act, 1892 I believe it first came into effect, and a point was made and carried in the newspapers that one of the matters the Attorney General asserted in relation to the failure to comply is that this was in old times, that you needed to have it gazetted, and matters of that kind.

I make this point because it is really unusual to have something like a commission or an appointment gazetted because our appointments have effect once we are sworn in as Senators even before they are gazetted so it is not really the norm.

I also make the point, Mr. President, to point out that during the last session of Parliament, there was a Bill floating around for a couple of years called the Commissions of Enquiry (Amdt.) Bill which was never proceeded with and one would think that at that time, the Government recognized that the parent Act needed amendment and would have moved forward with it. So to say now that it is an old piece of legislation with a lot of redundant provisions is one thing, but there is an option to amend it, change the law and update it and that was not taken advantage of. In fact, it was left to go fallow. So I point that out.

Moving on to the current law which is what prompted the need for this Bill. Mr. President, I have a question that is not answered by the Bill and the question is that section 2 of the Act says:

- "2. The President may whenever he deems it advisable, issue a commission appointing one or more commissioners, and authorising such commissioners, or any quorum of them therein mentioned, to enquire into the conduct..."

So, Mr. President, section 2 really deals with, in my view, the appointment of a commission of enquiry and when we are talking about the gazetting of commissions, we are not talking so much about the particular names of the commissioners, but the gazetting of the commission of enquiry and I think that is important for the next point I am going to make.

Section 2 continues:

“Each such commission shall specify the subject of enquiry, and may, in the discretion of the President if there is more than one commissioner, direct which commissioner shall be chairman...”

And then at section 3 there is provision:

“3. In case any commissioner is or becomes unable or unwilling to act, ... the President may appoint another commissioner in his place; and any commissioner issued under this Act may be altered as the President thinks fit by any subsequent commission issued by him, or may be revoked altogether by notice in the *Gazette*.”

My question, Mr. President, and it stems from something Sen. Mark raised: There was to my certain knowledge, an alteration of the two terms of reference of the commission when three additional matters in relation to Cleaver Heights for some unknown reason, because it is a small project, were added. That is an alteration of the Commission as I see it, and that would be under section 3. If this is altered, would that not require, as well, the gazetting under section 15? And if that required the gazetting, does this Bill cover it?

I think we need to look carefully at that. It is one thing to say yes, but we need to look at the drafting of it very carefully to make sure. Sen. Mark referred to another alteration but I remembered that specific one and my reading of sections 2 and 3 together of the Commissions of Enquiry Act, what we are talking about is the appointment or the issuing I should say of a commission appointing commissioners so the commission is the issuing of a commission. It is like in the military; you have a commission which is a commission of enquiry and then the commission states the appointments and then you can alter the term of the commission because in the commission, you have the commissioners and what they are enquiring and then you have the chairman and all of that. And that is what needs to be gazetted under section 15. It says:

“15. All commissions under this Act and all revocations of any such commission, shall be published in the *Gazette*, and shall take effect from the date of publication.”

So the commission which gives life to the commission of enquiry is what must be gazetted and the commission will include the appointments of the commissioners, what the terms of reference are and so forth.

So having amended those terms of reference through the President effectively, then it would seem to me that there should have been subsequent gazetting. So that is the initial question.

Moving on to another point, the parent Act or the main Act, Chap. 19:01 states:

"The President may appoint a Secretary to attend the sittings of the commission, to record their proceedings, to keep their papers, summon and minute the testimony of witnesses..."

So there is a secretary who is not a regular secretary obviously, usually a lawyer. And I have heard people trying to cast blame on different persons and so on, and it seems to me that one really needs to look at what happened in the past.

What would normally be functions of a secretary to a commission of enquiry in terms of ensuring that all is well? People are asking is it not the Solicitor General's Office that falls under the Attorney General, if it is not the Parliamentary Counsel's Office and so on in terms of putting blame, so I think one needs to look at the Act again.

But it seems to be passing strange, Mr. President, that with all those lawyers Sen. Mark named and I have heard no one say that those were not the lawyers for the Commission that someone did not read section 16.

One would have expected that should be something to pick up easily, so I cast no stones because at different times, we can all make mistakes, but I just find that with four lawyers who are esteemed enough to be appointed to act for a commission of enquiry of this nature, but that was not picked up.

Moving on to the perception; this is the second issue I want to raise. There is a perception in the country emanating from the delay as is seen of the hearings in the enquiry emanating from the threat of judicial action and subsequent action in court and from the initial reluctance to appoint a commission of enquiry. There is a perception that it is the desire of the Government that this enquiry should fail.

I say this, not based on my own view looking out, but on what persons have said. Sometimes you have web mail in the newspapers, radio talk shows, you have call-ins on television and people talk generally and there seems to be a kind of a cynicism as to whether or not there is a desire that this commission of enquiry should be effective. So this is something that I felt that the Government needed to correct by moving swiftly towards validating the enquiry and that is why I will support the Bill. But I think that that circumstance needs to be addressed more than it has been.

People say it is just conspiracy theories, but it is not, because it is pervasive and it is based on actual happenings. People ask when was the last time you have ever heard of something like this happening, in a commission of enquiry and no one can point out to it ever happening, that there is a basic failure to gazette the appointment, or the commission. So those things lend credence to the popular or unpopular feeling that this is by design.

The appointment of Justice Lucky to enquire into the enquiry has not laid rest. In fact, while people respect Justice Lucky as a jurist as I do, it is just something to make people feel that something is happening because since that so called appointment, I think it was the September 16 or around there, we have heard nothing further. Not that an enquiry could happen overnight.

Mr. President, but the fact is here is a sole commissioner as it were, not under the Commissions of Enquiry Act, but one person enquiring into the "failure" as it were of an entire commission of enquiry. It sounds funny. I do not believe the appointment is under the commission of enquiry, it is not that kind of appointment. It is not a commission, it is just an enquiry and I believe that it is not being done for payment either which is a useful thing. But if that is meant to assuage the fears of the citizens, I do not think that it will work or it has worked.

I do not think people think that it will be of any real significance. People ask why those who are in charge do not go to the various government departments and find out. They may be very well the Attorney General's Office under which falls the Solicitor General's Office and the Chief Parliamentary Counsel and find out what is the norm; why the norm did not operate as the norm. Do you need Justice Lucky to do that? It seems not, because there are many internal enquiries, many disciplinary matters happening every day in government offices and they conduct their own enquiries.

The permanent secretary, for example, under the Public Service Commission conducts enquiries. So there you have this perception that pervades everything that comes from this commission of enquiry. Not to mention the vast sums of money you are talking about. And the fact that it was carried every day and people looked at it. The various channels showed how significant it was considered by members of the public.

Moving on to the correction; how do we correct the situation? It has happened. There were two choices as I understand it: There was the Interpretation Act provision and there was the Validation Act.

The Interpretation Act permits that appointments may have effect retrospectively from the date the person performs his functions. So one would say that these commissioners were appointed a certain day, they took an oath, and you do not need a Validation Act if they, having done so, then you look at it. You can have proper letters of appointment, but the point is we are not talking about appointments only, we are not talking about the Commissioners, we are talking about the Commission. The Commission includes the commissioners and everything else. That is why the Interpretation Act provision was not enough.

You were not talking about an appointment as a teacher, appointment as a judge, or anything and, therefore, the next step was to look at the Validation Act, and this is what the Attorney General did eventually. The Attorney General cited three instances of validation and I recall the first instance he cited that actually happened when I was recently in practice.

There was the Narcotics Ordinance at the time, 1961, and as you know there are some Acts which require proclamation, probably about 5 per cent would not come into effect unless they are proclaimed, or would come into effect on a date of proclamation and it was stated in that Ordinance. However, it was never proclaimed and 20 years afterwards, some lawyer doing research found that out and made a submission in court and the matter was adjourned out of shock. The magistrate was in shock, and I believe he succeeded.

The Government moved very quickly to validate everything that was done under the unproclaimed Ordinance as it was then called.

4.15 p.m.

But the point is, that required passage under sections 4 and 5 because it involved persons' rights because they have been convicted of offences, so there would be breaches of sections 4 and 5 and the State had to pass it as an Act which was inconsistent with sections 4 and 5 and required a special majority. Persons who had been convicted and were in jail then, they could sue because there was no law under which they had been charged, if you look at it like that; persons would have made 10, 20 years in some cases, and all of that. So, necessarily, you had to have that kind of amendment and it went through.

The other two matters are less serious; the two cited by the Attorney General. They did not require, apparently in the opinion of the lawmakers, the passage with a special majority. They are not seen as inconsistent with sections 4 and 5. I have not got it clear from the Attorney General why he feels that it is necessary to have

a special majority. In other words, why is it thought by the Government that it would breach rights of persons? What rights exactly would it breach, unlike in the situation of the Narcotics Control Ordinance?

Sen. Jeremie SC: There are protections which a commission of enquiry would enjoy if it were to be properly gazetted. Those protections this commission would not enjoy but for the Validation Act. You could validate it and simply validate the actions and provide an indemnity in respect of persons who might suffer loss. So if the commissioners, for example, are sued in respect of things that they might have done while they were not protected, then you can indemnify them. But we have gone further here, to provide an immunity. So that we have taken away the right to sue in respect of a failure to gazette, and taking away that right is a due process right and, as such, it is inconsistent with sections 4 and 5 and that is why we need a special majority.

Sen. D. Seetahal SC: Thank you very much, through you, Mr. President, to the Attorney General. But, you know, I do not see that as really breaches of section 4 in the way the Attorney General argues. I can see breaches that were envisaged when we talked about the Narcotics Control Ordinance, where the charges were laid and the sentences were issued and the people were served sentences. But, for example, if one looks at Act No. 29 of 1981 which the Attorney General mentioned, this was an Act to amend the Public Utilities Commission Act, 1966 and to provide for the validation of all Acts thereunder.

It is stated in this—this was passed without any special majority: Section 4 of the Public Utilities Commission Act is amended by repealing section 3 and replacing it:

“The President may appoint any Commissioner to be Chairman.”

Then section 3 states and I quote:

"All acts done by the Chairman-designate Dr. Selwyn Ryan or the Commission in purported exercise of the functions conferred on the Chairman and on it by the Act are deemed to have been lawfully and validly done notwithstanding the fact that the Chairman-designate was not appointed Chairman at the time when those acts were done."

What happened here, as I understand it, there was a Public Utilities Commission and the chairman designate, Dr. Selwyn Ryan and the commission were acting under the Act then on the belief that they had powers so to do, and they did not, and this legislation was passed to validate that. So it seems to me that in carrying out their functions, one could argue that they very well affected other persons'

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rights and functions as members of the Public Utilities Commission. But there was no special majority because it was not in the vein of penalties, of sufferings by the person; it was carrying out of what already operated under the Act. That is one.

And two, in relation to the Caribbean Food Corporation Act, where there was no proclamation, the law was amended in this way:

"Notwithstanding any rule of law to the contrary, including in particular section 9 of the Act, it is declared that all acts and things purported to be done by any person or authority under or in pursuance of the power conferred by the Act, are deemed to have been lawfully and validly done and no legal proceedings shall be instituted or entertained in respect or in consequence of such acts or things, by reason only of the fact that they were done before the Act came into operation."

In other words, this Act denied persons the right to engage in legal proceedings because there was a failure to comply and there was no special majority again.

Sen. Jeremie SC: Senator, to make it doubly sure, it is debatable whether or not—if it is open to debate, whether or not you can pass this with a simple majority and it will be effective. I feel, and my advice to the Government was that you are taking away persons' rights in respect of the due process rights. If it were left to a simple validation statute which in section 9 gave an indemnity to the commissioners, members of the media who might be sued and so on, then I would have no difficulty in passing it as a simple majority Bill, but if I am taking away the rights of persons to sue the media, as I have done in section 9, I think that that is a due process right and, as a consequence, I think that we need to pass it by a special majority. So that I am asking for your support and I am asking for the support of the Front Bench who seem to contradict themselves, because one minute they speak of a conspiracy and at the same time we are here trying to get the support of everyone to pass this legislation and make it as iron tight as possible. That is the reason I seek a special majority.

Sen. D. Seetahal SC: I hear what the Attorney General is saying and I could understand a desire to have exaggerated protection, as it were, but you know, through you, Mr. President, section 15 of the Act only says this:

"All commissions (that is the Commission of Enquiry) under this Act...shall be published in the *Gazette*, and shall take effect from the date of publication."

So in my view, what you want is really a simple piece of legislation saying that this commission, despite section 15, will take effect from the date of, which is the 9th of September. If it took effect from that day, then all of the protections under the Act would necessarily follow. Because the commission of enquiry enjoys all these privileges under the Commissions of Enquiry Act and those privileges include the power to summon witnesses; it includes privilege of commissioner from suit—the same thing; it includes the question of offence; it includes witnesses being summoned to produce plans and books and so on.

So the point I am making is that this Act gives a commission of enquiry all of those powers historically. You had ordinary enquiries, but you did not have the power like a court to summon witnesses and so on, to be able to charge people for offences under the regular enquiry. That is why a Commissions of Enquiry Act was passed, so you statutorily gave the commission powers to do things that they could not do.

So when the President, under section 2, issues a commission, which is a commission of enquiry, the President when he does that is saying to you, you have all of these powers which are entrenched in this Act and when it is gazetted, the commission enjoys all of those powers, which means, the commission and all of the commissioners and anyone who falls under the Act; you are now falling under the Act, it seems to me.

So, therefore, if we say in this Bill, simply put, that despite this provision it is deemed to have come into operation on a certain day, just as was done with this Caribbean Food Corporation Act, which says:

"Notwithstanding any rule of law to the contrary, including in particular section 9—"

So we would say:

"Notwithstanding any rule of law to the contrary, including in particular section 15, it is declared that all acts and things purported to be done by any person or authority under or in pursuance of the powers conferred by the Act, are deemed to have been lawfully and validly done..."

My point is, are we not making it excessively complicated? And when you make something excessively complicated and you try to detail everything, invariably you leave out something, and when you do that, then there are problems.

This provision more or less covers, in my respectful view—I do not know if you have looked at the details of it, Attorney General—everything—because it is

saying, notwithstanding section 15, this law that we are now passing is saying that this issue is valid and everything operating under it is valid and it just goes back to that date.

Now I hear what the Attorney General has said, that they want to be extra careful, but I really do not, with due respect to him, accept that because I really think that it is not necessary; it is complicated; it makes the thing much, much, more than it should be by the inclusion of everything. I was planning to finish at 4.30 but if the Attorney General wishes to say something in one minute, I will give way.

Sen. Jeremie SC: I just wanted to say that we want to make doubly sure that the legislation is ironclad. This is not the case with the Caribbean Food, whatever, or the Public Utilities Commission or whatever; I cited all those precedents. This is the Uff Commission of Enquiry; no mistakes can be made. Even with your formulation, a question of retroactively validating what was done by the commissioners and retrospectively granting them immunity, now you can argue that that takes away persons' right to sue and as a consequence we want a three-fifths majority.

Sen. D. Seetahal SC: And I said I accepted that is what the Attorney General would say. I point out that while this is the Uff Commission and we do not want to make another mistake, as distinct from no mistakes are allowed, in this same Act with the Caribbean Food Corporation which ought not to be dismissed lightly, they repealed the offending section which, I am hearing is not a good section. So it could very well be repealed in this that we have here; this Bill before us, and in that very legislation, because you validated everything that was done, you did not need to go back in time, because you are saying then, that from that date it came into operation. But I see the Government is insistent. To me it is so much simpler to merely say everything done would be just as if it had been gazetted and to also repeal the section.

I do not see the purpose of saying that the commission cannot function until gazetted. I think that it should be gazetted in the normal way by normal appointments of Ministers, for example, of Senators. I do not know why it is more important. It should be published, probably, but not that clause. It is not necessary for it to come into effect from the date of publication.

I see the time and I do not propose to go further, but to make the point that I think it is absolutely necessary to validate everything done by the purported commission of enquiry so far and I also take Sen. Mark's point that matters that

were raised in that commission, seeing that we are going to validate the evidence, which, in my view is not necessary, but anyway, that all of those matters could have already been investigated by the proper authorities, as they should have been, and the Attorney General being the head of the Anti-Corruption Bureau—or in charge of—he could take the proper action.

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

Mr. President: Hon. Senators, we will take the tea break. This sitting is now suspended until 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

[MR. VICE-PRESIDENT *in the Chair*]

Sen. Raphael Cumberbatch: Mr. Vice-President, I am joining this debate with some trepidation, mainly because I, unlike most Senators here, being a retiree from the public service, had the unfortunate experience of following the proceedings of the commission of enquiry on my television and listening to the scandalous behaviour of a special purpose state enterprise. Do you know what I saw? At every turn they sought to frustrate the work of the commission. I can understand why Sen. Mark, my colleague, may have some concerns as to whether there had been some conspiracy. I do not share those concerns because I will not ascribe improper motives to the hon. Prime Minister, the Government or the line Minister with responsibility for UDeCott. I hardly think that they will sit and try to frustrate the work of this commission of enquiry.

What amazes me is the lengths to which UDeCott has been going in this regard. There seems to be some uncertainty on the part of the Government Bench. It has already been alluded to, the differing statements of opinions by the Minister of Planning, Housing and the Environment and Sen. Conrad Enill, the Minister of Energy and Energy Industries, full of energy. My question is: How did we get to this point? Hon. Senators, how did we get to this point? Hon. Senators, how did we get to this point? This is a very, very important commission of enquiry. The history has been dealt with when the Attorney General made his opening remarks.

But I wondered, had the Government listened to the pleas of those who saw what was going wrong with UDeCott three to five years ago and had moved to remedy it, would we have been sitting here today? [*Desk thumping*] It is the negligence, almost deliberate negligence on the part of the Government in the face of all the evidence that was being mooted around, not to take action against Mr. Calder Hart and this runaway elephant that is called UDeCott.

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Do you know what bothers me? The timing of this validation. In the parliamentary process as the hon. Attorney General knows well, there is something called the sub judice rule. I am not an attorney and I would appreciate the Attorney General's views because my understanding is that there is litigation involved. There has been a filing of judicial review based on the validity of the commission of enquiry. I gather that he said that there has been a standing-down.

Sen. Jeremie SC: If you are implying that I had knowledge of the action in respect of the judicial review at the time I brought this validation Bill, let me dispel that from your mind. I obtained knowledge by way of the service at 20 to 5 a few Fridays ago of this judicial review proceedings.

Sen. R. Cumberbatch: I thank the Attorney General. I was doing no such thing. The coincidence of the events is what I was speaking to. I was not ascribing anything to the hon. Attorney General. What I am saying is that we are dealing with a matter that is before the courts. Many of the precedents that were cited—if I am not correct you can correct me—the validation did not take place while legal proceedings were taking place. There was validation for acts done and so on.

Sen. Jeremie SC: In the Vincentian case to which I referred extensively, the error was not caught. There was nothing to validate. In other words, by the time they went to court, the horse had bolted, as Sen. Mark would say. The proceedings were invalidated as a consequence of that. We have discovered this error; the proceedings are still ongoing and the validation Bill is intended to cure the administrative error.

Sen. R. Cumberbatch: I understand the Attorney General. I thank you for your information. I am not here to cast any aspersion on what the Government is doing here today. I am not here for that purpose at all. The whys and wherefors of how we got to this point, the non-publication in the *Gazette* is now the subject of an enquiry, I understand by Justice Lucky. I would not say any more on that. We would wait. We would hear what he has to say.

I congratulate the Attorney General for one thing that I have noticed, protection of the media. It is refreshing to say the least, to see the Government moving swiftly to protect the media in this country that has, for good reasons and other reasons, not always been on the side of the Government. There have been instances where they seem to have offended the ruling party and comments have been made about them. Here we are, moving very quickly to protect them. Nothing wrong with that.

The question that bothers me is: What has been our record of reports of commissions of enquiries? Many of them never see the light of day. I agree with Sen. Mark that it would do us so much good if the Attorney General could assure us—I would not go so far as to demand—that the proceedings that we are validating here today will be brought to this Senate, laid in this Senate and action would be taken on that report. If that is not going to happen, what are we engaged in today? There is absolutely nothing to validate. If we are not going to see that report in this Parliament and the Government is not going to take action on that report, why validate anything at all? Why validate it? It will be good to have an assurance as to the disposition of the report when it is completed, submitted to the President and Cabinet has had an opportunity to review it.

Those are the normal procedures. Nothing wrong with that. Bring the report to Parliament so that it can be put on the record so the scandalous information that I sat in my living room and looked at would be brought here for all posterity. I will tell you something. What we are doing is validating an illegality. There has been an illegality. Albeit, the publication in the *Gazette*, there has been an illegality. We are here today to validate that. Okay. Much cost, much energy and much time has been spent on this commission of enquiry. We must validate. I have no difficulty with validating that, but we cannot do it unless we receive some kind of assurance that something would come out of this.

The list is long about commissions of enquiry on which no action was taken. No one has ever seen them. They are locked away in a cabinet somewhere. No pun intended. We never hear anything more about them. I have a little concern because as a state enterprise, I find it a little strange that they would take action, as has been taken, to seek judicial review about the validity of the commission of enquiry without any sort of clearance from the line ministry. I wondered whether the goodly Minister of Planning, Housing and the Environment was privy to the decision by the UDeCott board before it was made, or did she only find out after?

I wonder what kind of oversight is it that one can engage in where a special purpose state enterprise using vast sums of taxpayers' money will apportion any part of it to seek to frustrate the work of a duly appointed commission of enquiry. That is contempt for the President, the Government and the people of Trinidad and Tobago. [*Desk thumping*] And before this debate is finished, I urge the line Minister to give us the benefit of her knowledge of what transpired. I am sure that she will do so. I have no reason to doubt.

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I share some of the concerns of Sen. Mark and Sen. Seetahal SC. Would the extended terms of reference of the commission of enquiry be covered here. Is Cleaver Woods part of it being remedied when we do this validation? Because that too had to be gazetted. That too needs validation but there is no mention of that. It only speaks of the generic commission of enquiry and does not go into all these things. I have a little difficulty there.

Immunity: There is a whole clause dealing with immunity. The very thing that Sen. Seetahal SC spoke to, I have a note on it here. The Act already grants immunity. It is a very interesting kind of immunity. I am quoting from Chap. 19:01, section 12(3) which states:

“No person giving evidence before the commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the commission, be entitled to all privileges to which a witness giving evidence before the High Court...”

It is the same section that was read by the Attorney General. That is what it says here. It does not give a blanket, *carte blanche* immunity. It limits and circumscribes the amount of immunity to which a witness giving evidence before the High Court is entitled in respect of such evidence given by him before that court. It might have been more appropriate to see that language appearing in here, rather than this blanket immunity that I see here.

I like to see things as they are. We are validating the commission. I do not want you to give any more immunity. There is enough immunity in the Commissions of Enquiry Act. I know the abundance of caution and so. Where does that leave us with this provision? If this provision that is in the Act is not strong enough to immunize a validated commission of enquiry, then of what use is that section in the Act? Should we then change the language? Is it the intention of the Government when it brings the Commissions of Enquiry (Amdt.) Bill to tighten up that and make it stronger. I do not know. I have not seen it. I was not party to that.

Much has been said. I do not want to waste the Senate's time going over all the gory details that have already been presented in this Senate about the work of the commission. There are one or two things. "In the interest of good public administration" were the words of the Attorney General. It is in the interest of good public administration to validate. It would also be in the interest of good public administration when we see the report and action being taking on the report.

I support the call of the Leader of the Opposition in the Senate that somebody "have to get lock up for dis". Too much money! Billions! People make jail in this country for far less than that! Cost overruns, contract peddling, influence peddling, nothing happens. I gathered that the hon. Attorney General spoke of the lethargy of the Anti-Corruption Bureau in his office and has promised in another place to strengthen that and get them working, to sort of crack the whip over them. Yes, well they have a lot of food here eh!

Promises. Well I would rather think that they are assurances rather than promises. We all know that a promise is a comfort for a fool! We do not want any promises. We want assurances.

5.15 p.m.

If we are using this language in the Bill for immunities and privileges, let us use the language of the Act. We do not want this commission of enquiry to have any more immunity or privilege than what was intended here.

Sen. Jeremie SC: What you are suggesting seems to me contradictory to what Sen. Mark suggested. Are you suggesting that we give the commission less immunity than proposed by the amending legislation?

Sen. R. Cumberbatch: I am saying give them the same immunity that the Commissions of Enquiry Act has in it. [*Interruption*] It is less? Then we have a defective Commissions of Enquiry Act. Is that it? Maybe somewhere in that explanation is the reason we have not seen the reports of some commissions of enquiry. I do not know; it may be so. I am not an attorney; I am a bureaucrat, a public officer.

You see this mistake about the gazetting, it really requires some addressing. It tells us something else. This Act was originally passed in 1882 and there is language in our law books that needs revision. This is an exercise that should be taking place in the Attorney General's Office.

Sen. Jeremie SC: Law Commission.

Sen. R. Cumberbatch: They are not in your office? I apologize, but there is a body whose responsibility is to bring these archaic laws in line. We should spend some time as a government looking at that.

Nobody reads the *Gazette*, you know. I agree with the Attorney General, and for this innocuous matter where you hear a special purpose state enterprise seeking judicial review to nullify the whole thing because it was not gazetted— [*Interruption*] That is where it started. Well it was not gazetted, so let us move. Will the Attorney General help me?

Sen. Jeremie SC: The claim is essentially, as it proceeds now, a claim in bias against the commissioners. As I understand it, they will recast their claim to take out references to state action and presidential directions and action.

Sen. R. Cumberbatch: I was paying attention to the third recital in the preamble:

“And whereas due to administrative oversight the publication of the appointment of the Commission was not done pursuant to section 15...”

That is the one I am dealing with. You want to validate, by all means let us validate, but let us not amend the Commissions of Enquiry Act by default, by putting here something that is not in the Act. That is not the way to go. I have difficulty with it. Maybe as an attorney you can tell me otherwise and I will accept it.

What else do we have? A strange precedent has been set by this special purpose state enterprise. If this body can move in this manner without the Government's approval, can any other special purpose state enterprise take it on themselves to bring litigation to court or seek judicial review of Government's actions, the very government that created them, with taxpayers' money? I think not. [*Interruption*]

This is not the place to try the case? I am legitimately asking questions. If, for some reason, the question steps out of bounds of the little blue book, let me know. I will not be browbeaten into limiting my contribution because it may be embarrassing to some. My time here is short. I do not have time to play games. That is one of the problems. People think we play too many games here. [*Interruption*]

Yes, my dear, if you look at the recital on page 5, at the very top, I will tell you something about the Bill before me.

Mr. President: Senator, please do not refer to the Minister as “my dear”. Please refer to her as Minister.

Sen. R. Cumberbatch: I apologize to you and the hon. Minister of Housing, Planning and the Environment.

When I went to school the alphabet read A, B, C, D; it did not read A, B, C, A. It is that kind of carelessness, drafting error and typographical error of which we must be careful. It is a small thing and there are some people who would rather that we not speak to some of these issues. I am sure that they feel more

comfortable. In fact, when the hon. Minister and Sen. Mark were speaking, there was a distinct sense of embarrassment on the part of some persons sitting in the Chamber. A strange silence pervaded the Chamber, which is normally very active and lively when Sen. Mark is speaking.

Sen. Dr. Dick-Forde: It is called discipline.

Sen. R. Cumberbatch: Strange that you should say that. Here we have a runaway horse with no discipline whatsoever, challenging the authority of the Government of Trinidad and Tobago. [*Interruption*] That is why I have invited the line Minister of Housing, Planning and the Environment to tell the Senate some of these things. What role did she play in the bringing of action against the Commission of Enquiry by one of her charges? [*Interruption*] I heard an aside. Maybe the Minister would like me to give way so that all hon. Members can benefit from it.

Sen. Dr. Dick-Forde: You see me standing up?

Sen. R. Cumberbatch: I was inviting. I understand; I know how these things go; how you all operate. So much has been written. There are those who will tell us of UDeCott's rights in respect of this matter. I leave that to them. I am concerned about the rights of the people of Trinidad and Tobago. I am not concerned about UDeCott's rights. The Government of this country must be concerned about the rights of the people whom it represents. It did not come here just so.

There is a procedure that puts the responsibility in the hands of the Government. You want to be careful. You want a three-fifths majority; it is neither here nor there, but we must be careful that we do not put into this Bill something that was not here. We do not want anybody having more power or less power than was intended here. It is not that I am for it. I am merely pointing to a disparity in the powers and privileges as enunciated in the Bill and what is in the Act. There is a slight misinterpretation. I would not belabour the point.

Everybody knows all the gory details. I can go on and on and we can quote "who is afraid of UDeCott" and so on, all sort of things, "puzzled by UDeCott, using state funds to take on an enquiry"; another Minister saying the board took the decision and she agrees with it because he considers it the correct process for them to take. Was that agreement post facto or given before the action was taken?

There is a lot of validation talk. Do you know what needs validating in this country? The Government of this country. They need validating. In any other self-respecting democracy in the Commonwealth, this kind of scandal would have

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caused the Government to step down, except maybe Zimbabwe, where they have a different culture of governance. However, in Trinidad and Tobago, we ought to have been facing a general election over this UDeCott scandal. We do not need a commission of enquiry validation for the kinds of money that have been wasted wantonly and given to friends and families and family of friends. This Government should step down and call a general election and we will find out whether the people will validate them.

It is all well and good. I am not afraid to say what is on my mind. When I accepted the appointment to sit here, again very temporarily, I looked at the matter and thought validation important, but how did we really get here? I think we forgot it and that is why I made the point and, at the risk of invoking the ire of some Senators, I will repeat it. If they had been carrying out their proper fiduciary responsibility to the people, we would not have been sitting here today with this runaway horse galloping all around the place and doing all sorts of things.

Mr. Vice-President, surely this will be an interesting debate, since there are many Senators on that side who appear to want to make a contribution on my time. You will get your own time. Hold your horses.

You know what beats me? The arrogance with which they defend the indefensible. The legal shenanigans—I know lawyers differ—we have an embattled Attorney General. I know he is under a lot of stress and pressure to deal with certain things and certain persons in the legal fraternity, but do not make us feel that we are doing the country a disservice by speaking to these issues. This is the place to speak about it. It is nothing about imputing improper motives and misleading the Senate. This is a debate. If I say something you do not like, get up and say otherwise; tell me where I went wrong and what you stand for.

You were quoted as standing for UDeCott's right to challenge the commission of enquiry with taxpayers' money. Your own ministerial colleague cannot understand it and has to refer you to the line Minister. There is one Minister we have not heard from and that is the Minister charged with the responsibility for commissions of enquiry. I expect we will hear from him in the other place. That is the hon. Prime Minister.

He is the person who presided, as Corporation Sole, from 2003 to 2007, long before many of these people dreamt of coming to this Parliament to look down their noses at the people's representatives. That is a problem. When people on this bench speak, they do not speak for themselves; they speak for constituencies, of interest outside and to disrespect anyone on this bench is a fraud. I agree with the

hon. President when he called on Senators to be a little more respectful to one another. We must not allow the Senate to degenerate into this kind of snapping and backbiting. It does us no good; it does the Parliament no good and it causes the people to lose confidence.

I am sure the goodly Senator is able to take care of his own stories. I will not detain you any further except to say that you should give us the assurance that the report will be brought; that action will be taken. Tell us that the provisions for immunities here in this Bill that are being afforded this particular commission of enquiry are the same as was contemplated in the Act. If it is not, we are using a Validation Bill to amend a provision in the Commissions of Enquiry Act round the corner.

[MR. PRESIDENT *in the Chair*]

We do not want to do that. I read this Bill and slept on it and read it again. My initial thinking was what was this here for and what was that here for, but I understand why it is all here. When you look at the Commissions of Enquiry Act, there is a little imbalance in the distribution of immunities. Sen. Seetahal SC made the point very nicely. All we need to do is to validate. I do not know why that may be, but let us go with what is here in the Act. [*Interruption*] I love the Attorney General's debating style.

5.30 p.m.

Sen. Jeremie SC: I am not debating; I am simply pointing out what I have pointed out before. The Commissions of Enquiry Act was passed in 1882, in specific circumstances. It was passed at a time when it was intended to give prospective effect. We are here at a time when a commission was not validated, pursuant to the Act. We need to validate the actions of the commission and in doing that we are immunizing certain persons, including the media, who you speak so highly of. If you are granting the media immunity retroactively, in my view and in the view of my advisors, we need to do this carefully, because we are taking away people's rights, which they would otherwise have to suit the media, okay. That is the short point.

Sen. R. Cumberbatch: I enjoy the Attorney General. He is quick to his feet and it enriches the debate when we speak as we go along, rather than shoot from the hip, the side and your Bench where no one can properly reply.

Mr. President, I am glad to see you back in the Chair. I need your protection. [*Interruption*] I was listening to you and your advice. There is not much more to be said. Sen. Mark is on record. I would not want to get involved in tedious

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repetition. Sen. Seetahal SC has made most of the legal points. I imagine that there are some other points that other Senators would wish to make.

You have cleared the question of the sub judge thing that bothered me because we have a Standing Order that speaks to that. Standing Order 35(2) speaks about sub judge matters pending a decision of the courts and we really should not do it. That is why I mentioned timing. Maybe we could have brought this before. When we learnt of what had happened, maybe we could have brought it. It would have prevented UDeCott from moving as they did. *[Interruption]* No, I take your point, Attorney General. Do not worry to stress your legs out too much, I understand you.

Mr. President, we will wait and hear the reply of the hon. Attorney General before decisions are made on supporting or not supporting this Bill. I am sure that the hon. Attorney General, when he winds up, will tell us that he gives us his assurance that this report is going to be brought and laid in the Parliament. I do not want it in writing, *Hansard* is good enough. Yes, he will bring the report to this Parliament, lay the report here and take the necessary action on the recommendations. There are many commissions of enquiry reports that made recommendations, but nothing is happening with them. In speaking on this validation, I seek merely to make the point that if we are going to go through all of this, surely we can get an assurance that the report will be brought, laid and that action will be taken.

I thank you very much, Mr. President, and I thank all hon. Senators for listening to me.

Sen. Helen Drayton: Thank you, Mr. President. I will be brief. Sen. Seetahal SC has already mentioned a number of the substantial matters that I had. In the Preamble, the third paragraph, it states:

“And whereas due to administrative oversight the publication of the appointment of the Commission was not done pursuant to section 15 of the Act:”

I wonder about the language “due to administrative oversight”, when in fact an investigation is on the way so as to establish exactly why the commission was not gazetted. Are we being a bit presumptuous here to say that it is an administrative oversight, when in fact you are not supposed to have that information, or at least we are not aware that you have a report of the investigation as yet? I would suggest that the words “due to administrative oversight” be deleted.

With respect to clause 9 and the immunity, I too have a concern. The concern I have has been well articulated, in that I cannot help but wonder why you have gone beyond the immunities that are already granted in the Act. Let me see if I can elaborate a bit more. I know I could never do better than Sen. Seetahal SC, but certainly sometimes with a layman's view you see it from a different point of view. In the Act, with respect to other persons, it specifically says that other persons will be entitled to all privileges to which a witness giving evidence before the High Court is entitled. That is fine. But in this Bill, the language is as such:

“Notwithstanding any law to the contrary, no legal proceedings or other action shall be filed or maintained against—

(b) any person who gave evidence to the Commission;...

as a consequence of the failure to gazette the Commission on 9th September, 2008, and in relation to the proceedings...”

First, is that “and” conjunctive or is it disjunctive? Because, in the Bill—in giving privileges consistent with what is granted in the High Court; in the High Court, if you perjure yourself there are consequences—are you saying that, in the proceedings between September 09, 2008 and September 07, 2009, by virtue of the immunities in this Bill, if someone had perjured himself or herself in a substantial way that it affected the outcome, or the views of the Commission of Enquiry, are you saying that you are granting that person more immunity than was in the Act? [*Interruption*]

Sen. Jeremie SC: No, the governing expression is “as a consequence of the failure to gazette”. “And” there would tie, it would be conjunctive, what took place between September 09, 2008 and September 07, 2009. That is the time period, but your immunity is only in respect of the failure to gazette the Commission of Enquiry. That is it. I made it quite clear, according to *Pepper v Hart*, what I say in piloting the Bill; it can be used to interpret the subsections if there is ambiguity. I think on a true construction, there is no ambiguity, but if there were any ambiguity, I made it quite clear that the immunity was not intended to take the commission above the law.

Sen. H. Drayton: I would leave it for now. Probably we might have to address it in the committee stage, because I wondered whether “and” should be there at all, because it is confusing.

Be that as it may, I would move on. The substance of this Bill is to give legal effect to the work of the Commission of Enquiry into the Construction Sector. The question has been asked about why it was not gazetted and who is

responsible. I think, really the major question is whether in fact there are proper systems and procedures in place to facilitate commissions of enquiry. This is not the first commission of enquiry. It was alluded to earlier on, when it was mentioned that in fact there are three occasions when the terms and conditions of this commission should have been gazetted. The first time is when it was appointed, the second time when the terms were amended to include Cleaver Heights and then on the third occasion, when Cleaver Heights terms of reference were extended. One time is one thing; twice, okay; three times, you begin to ask questions. It has been said on so many different occasions in this honourable place that there are so many negative perceptions and attitudes.

Sometimes, this is also with respect, it is not meant to be anti-government, I think when very objective, impartial and rational thinking people begin to feel a sense of discomfort with respect to decisions, and to wonder whether their trust and confidence was in fact misplaced, then I think it is incumbent upon the leadership to really do some soul-searching and ask themselves some questions. I too feel a certain sense of discomfort as I give support to this Bill and that is because there are so many unanswered questions. When there are unanswered questions, sometimes you see Jumbies that are not there and you wonder if you are on some sort of garish charade or something like that. Probably, that statement deserves justification in the context of this Bill.

We have a situation, it was mentioned, that UDeCott has filed for judicial review. The endorsement of Government of the actions of UDeCott, one assumes that it is on the basis that UDeCott is a corporate citizen and it has its rights enshrined in the Constitution. I think the hon. Attorney General actually said that. It has a right to defend itself vigorously. I will not question the right of anyone to vigorously defend themselves. What I think I have a right to ask, is whether in fact the Government and UDeCott do not have sight of the moral and ethical questions that could arise surrounding this situation.

UDeCott is no ordinary citizen; UDeCott is an institution and the sole shareholder is the Government, so that any action brought by Government is an action in the name of the people, and any action brought by UDeCott is also an action, one could say, indirectly in the name of the people. If the Government is the sole shareholder, then one could only come to the conclusion that UDeCott is indeed answerable to the Government, that is accountable to the people. I do not think that UDeCott or the Government should lose sight as to who its stakeholders are, that the fundamental principles here are the underlying trust and goodwill of those that the Government is serving. That is the moral question: Who is being

served? Because if we are to follow the Government's thinking, with respect to UDeCott and giving it support—as I have said, it has every right to robustly defend itself—it follows that, if for any reason—I am not trying to predict the future—UDeCott decides that it wants to contest even any decisions with respect to a review and take it right up to a Privy Council, it is rational and reasonable for any citizen to conclude that the Government will support it in such an action, unless the Government commits to otherwise.

Given the behaviour of UDeCott and given the basis on which it asked for judicial review, first of all, it is bias, with respect to the commission, including the chairman of the commission. With respect to the validity of the commission because it was not gazetted, what they are dealing with here today means that there is a substantive issue out there that deals with the work of the commission. What concerns me is not the commission; what really concerns me are actions with respect to the report of the commission and any subsequent action to stop that report. As I have said, if the Government has expressed that it has every right to support UDeCott in our name, then I feel it is only fair and—I should not use the word fair—it is right that we have some sort of understanding as to what is our position as citizens.

What is legally right is not necessarily morally and ethically right. I think that goes to the core of this situation, so where do the ethics come in? When the Government implemented the Commission of Enquiry, I think the Government did that in our name, so it established a contract with us.

5.45 p.m.

It says that it has the will to get information to uncover the truth and, by extension, when that is done, it is going to take corrective action, and if it is necessary to seek justice in our name, it will do so. Implicit in that contract is, therefore, what is ethically right; explicit in that contract is an obligation toward the people; and explicit in that contract is that when we give the Government a mandate, we give the Government a mandate to exercise jurisdiction over its agencies, UDeCott. [*Desk thumping*] Our part of the contract is that if you do not fulfil your obligations, we ought to hold you accountable. [*Desk thumping*]

In the final analysis, I think the test here is governance and civility and that has to do with our collective ability—meaning the Government; meaning UDeCott and meaning us—to do what is morally and ethically right, not what is somebody's legal right. The test of the Government is whether it is prepared to subordinate one corporate citizen to the expectation of all of us. That is your test.

The public trust is at the cornerstone of good governance, and how the citizens perceive that you were spending money; how UDeCott is spending money, because it is our money. Any profit UDeCott makes is our money. It is not UDeCott's money. One has to ask the question: Who are we gratifying? What are we gratifying by doing this and going down this road? I think even with perception, there is always a presumption of innocence under the Constitution by which we live. I believe in that right. I am not casting any aspersions either; I am not coming to any conclusion either, but the perception is that UDeCott has become in the eyes of many citizens a toxic agency. It has poisoned—as far as I am concerned, as far as many persons are concerned—every member of Cabinet, every member of the board of UDeCott. Whatever they may think, that is the perception out there. UDeCott has to understand that it has no rights outside of the rights that belong to us.

So, I think that when you hear all the discussions out there socially—and as Sen. Seetahal SC was saying on the radio that they are hiding something; follow the money trail and so on, that is the kind of talk that you are hearing. The boundaries of fact may very well have been breached and you ask the question: Who cares about truth anymore, given the feeling; given the frustration; and given the fact that we are so absolutely fed up of this nonsense? You are running huge deficits and piles of money are being spent by a state agency, as far as I am concerned to satisfy its own hubris. [*Desk thumping*]

Let me say that whatever the conclusion is in the long run—report or no report—I think the Government should put on its radar one thing and that is, we are in a democracy and in a democracy regimes change. When they change, regrettably, there are those who would seek retribution and keep Piarco Airport enquiry in their minds. While the public might feel that justice has not yet been done, the lives of those people and their families got to be hell. I think every Member of the Government should keep that in mind.

Let me also say, that it is true that these are very challenging times for the Government. Many voices are out there, and some of those voices are yes, with axes to grind. Some of those voices that speak out against it would have political agendas. Probably what the Government has done is to seek to block that out, and in trying to block out that noise it is blocking out the pleas of all other citizens who are very impartial and who would love to see their quality of life change under the goals of 2020.

So when the Government feels that people want to remove UDeCott so that it will not achieve its 2020 goals, I think the Government needs to sit back and say: "Ay, the only people who are stumbling with the goals now are us, not the people

who are out there.” Government’s action is the greatest hindrance at this point in time. We are pleading and the people are pleading. Hear a cry! All we hear is the rights of UDeCott. I am sorry, but I would be very frank. If UDeCott had any interest in the welfare of the people and the stability of the Government, every member of the board of UDeCott would have resigned. They would have removed themselves. [*Desk thumping*] So, I do not think that they have much shame in that respect.

Mr. President, thank you. [*Desk thumping*]

Sen. Lyndira Oudit: Mr. President, the Attorney General stated that the Commission of Enquiry really started as a result of some vague claims, but I would like to suggest that the country did not see these as vague claims. Mr. President, serious concerns were raised concerning the procedures involved; the lack of transparency; little or no apparent accountability for the State's funds or little adherence to statutory regulations. Far more important—and this is what really hit at the people—was the favoritism of foreign contractors over local contractors. These were some of the vague claims that the Attorney General made reference to. I think the country decided there and then that they were not vague claims, but they were serious allegations and many voices were raised, and the Government had no choice but to deal with an avalanche of calls from various and diverse stakeholders to address these concerns.

Mr. President, the Commission of Enquiry says that the Government of Trinidad and Tobago considered several options and the Attorney General referred to several of these options. The first option was the appointment of the Auditor General and that was thrown out, because under section 116 of the Constitution this could not have been exercised.

The second recommendation was that a special audit by the Minister of Finance be done but, again, this was thrown out simply because it was felt that it would be himself investigating himself.

The third recommendation was a commission of enquiry. Initially, this was not accepted, because it was said that specific allegations were not made, and so a commission of enquiry having a special purpose could not have been undertaken. After all of that analysis—the consultations, recommendations and back and forth—it was decided that a joint select committee would investigate this matter.

The recommendation at the time was to have an Independent Senator at the head of the chair, two Government Ministers and one Opposition Member. Quite rightly, there was much opposition to this because of the scope and nature of such an enquiry. It was really not in the best interest to do a JSC.

The Attorney General referred to the hon. Ramesh Lawrence Maharaj SC. Mr. President, had it not been for the Member for Tabaquite raising specific concerns against the chairman of UDeCott, as well as bringing to the public domain specific allegations against UDeCott as a whole—[*Interruption*] That is correct. I know this. I am just expanding on the point made by the Attorney General—this commission of enquiry would not have taken place.

What was so surprising was that after weeks of deliberations as to which option would be exercised and the next step to deal with these concerns that were raised by the public, on the very same day, May 23, up jumps the Prime Minister—no consultation, no Cabinet discussion or any other thing—and the public was told that a Commission of Enquiry would be held.

What we have and which was so ironic—that is why we are here today—and what has unfolded in the last couple of months is the three reasons given for not choosing the three other options. We were saddled not with one, but with all three. We were saddled with the reason that the first recommendation was not accepted which was the appointment of the Auditor General. It says that the Auditor General shall not be subject to the direction or control of any other person or authority. UDeCott is currently under no direction or control of any other person. In fact, Sen. Mark spoke about a runaway person. The chairman of UDeCott really has no person to whom he is accountable.

The second reason given was himself investigating himself. Are we not in that same place now? Is that not the reason for not choosing a special audit? Again, at first, you said that a commission of enquiry was not plausible, but here we have a commission of enquiry doing everything that we feared would have happened. I think this is a puppet show that is taking place with the pulling of strings, and it is all for the benefit of entertainment, but this is serious business.

When this enquiry was set up, the terms of reference were very broad, but very specific. The terms of reference of this commission of enquiry were to enquire into and it is very detailed—procurement practices; the use of provisional sums; incomplete designs and variations; performance of local versus foreign contractors and so on and it went specifically to UDeCott.

The second part of that terms of reference was really to make recommendations to ensure that taxpayers get value for money; high standards of workmanship are achieved; integrity and transparency in the public procurement practices; and then it spoke about the Trinidad and Tobago Housing Development Corporation Cleaver Heights project and several areas under which they were looking to investigate.

Further to that, when the procedural order of this commission was set out, again it was very clear on the methods to be employed in the recording of evidence of the proceedings of the commission. Issued by the chairman of the commission on October 27, 2008, the devices are very clear. It says the press, newspaper, public radio broadcasters, television cameras and it spoke about all materials being required to be in both hard copy as well as electronic form. It also spoke about an enquiry website. At no time in the laying down of the procedural order of the commission was any reference made to the gazetting as required under section 15 of the Commissions of Enquiry Act, Chap. 19:01.

Mr. President, this is not the first commission of enquiry to be set up in Trinidad, and from the rate we are going it would not be the last. This is a commission, as several Senators pointed out here is standard. It is a short document. The Act itself is short. There is not much where you have to go back and revise like the Bills that are coming up next week that are 70 and 80 pages long. No, it is not like that.

6.00 p.m.

It is not like that. The commission identifies a secretary, as well as a counsel. Sen. Mark in his contribution went into who the counsel members were: Seenath Jairam SC, Ian Roach, Garcia Simonette and Ms. Margo Harper. This Bill in front of us seeks to validate the said proceedings. It says here in the Bill:

"And whereas due to administrative oversight the publication of the appointment of the Commission was not done..."

And further:

"And whereas it is desirable to remedy the consequence of the failure..."

Is this country now to believe that an administrative oversight by some clerk or a secretary—Is that the administrative oversight we are referring to? Was it that a secretary was irresponsible and acted in a manner that was simply not suited to administrative good sight? This cannot be. Secretaries and clerks take advice and instructions, but what was clear was that while they were taking instructions, the one who made the decision and seemed to be making the decisions from the very helm, is the same individual who, on his own—as probably is his right, but with no consultations—stood up and decided that this commission of enquiry was just going to take place on the very day that the debate came up.

How could this be that so many procedural matters were so clearly laid out? How were their witnesses to be examined? How was cross-examination to be done? How are we going to document the evidence? How was the media going to be instructed? All of these things, the procedural guidelines were very clear.

Is it that this country is now to believe that the very people who identified all of these procedures so well, are the very people who should be held responsible for not gazetting or not pointing that out? Administrative oversight? This seems to be a very fishy sort of story. The White Paper on Public Procurement, very strongly recommended that an independent regulatory body be established to oversee the awarding of state contracts. The Government did not do this. The Government at the time did not take this advice for fear—I am quoting here the Minister of Works and Transport. It says:

“Imbert was defending Government's decision to not implement recommendations of the White Paper on Public Procurement. He told the commission, in his view, the paper's proposals would take away the powers of the Cabinet.

Imbert noted that the paper proposes an independent regulator for the award of state contracts...would stymie the Government's developmental plans and create a bureaucracy that would ‘have far too much power, even more power than the Government’.”

These words of Minister Imbert in the Trinidad and Tobago Transparency Institute (TTTI) report, laid or submitted on August 13, 2009, are very revealing because based on the Minister's words and remarks as to why he did not accept the recommendations to have a regulatory body, I would like to read for you, Sir, what TTTI indicated in their conclusion. Chapter 7:

“...the major issue is the discard of the White Paper on the Reform Public Sector Procurement Regime. Given this new position by the Government, it appears that the Government does not seek to implement serious reform of public procurement practices.”

I go on further in section 7.2.7:

“The high level of discretion placed on the Minister(s) opens up possibilities for corruption. However, it is also recognized that any monetary transfers are scrutinized by the Integrity Commission in the filing of financial declaration of the Minister(s). But this does not cover non-monetary transfers.”

Mr. President, we all know what is the situation and the status of the Integrity Commission. So, this alone, this little leeway that we can somehow scrutinize, even this is not there. This report goes on:

“The sole piece of legislation which specifically defined ‘illicit enrichment’ was a bill which went to the Parliament in 2001. That Bill, however, lapsed.”

And the last point on this, 7.2.22, says:

“The Government of Trinidad and Tobago on public procurement is in the process of abandoning the policy set out in the 2005 White Paper on the Reform of the Public Sector Procurement Regime.”

These are the conclusions of TTTI, submitted 2009. It is a direct relation to this very commission of enquiry, the problems and the concerns of the nation, when it comes to public procurement and the awarding of state contracts. The Bill before us speaks of the failure to gazette the commission. Firstly on September 09, 2008 and then in relation to proceedings of the commission from September 09, 2008 to September 07, 2009.

We ask the questions and it has been asked already today: Who failed to do the needful? Who benefited from this little loophole called the non-gazetting? This is a loophole, and many loopholes are used so that somewhere down the road it need not take place. Who benefited from this very curious simple loophole? I would like to offer a look at two simple projects that were under the UDeCott, and so maybe we could answer that question: Who benefited the most from this failure?

Brian Lara Stadium and Cricket Academy. Documents submitted to the enquiry shows the original figure of the stadium was \$375 million. In March 2008 that figure had moved to \$885 million, and it is not even one-third complete. Between October 2006 and March 2008, the documents refer in the enquiry and speaks directly to variations. Let us look at some of the variations. Package one for the Tarouba Stadium—

Mr. President: Senator, I do not think we are going to look at any of the variations. I have given you a fair amount of leeway. Most of what you said has already been said in this Senate and I am waiting for you to come with something new. Now, we are talking about the Validation Bill. We are not talking about the commission of enquiry. We are not here to enquire into any matters dealing with the construction industry.

Our concern here is to pass a specific piece of legislation that empowers and validates the actions of the commission of enquiry; that is it. So, I want you to speak to the Bill and to ignore any evidence that you think you have relative to the commission of enquiry. If you have any evidence then take it to the commission; this really is not the place for that. So, let us deal with the issues relating to the Bill.

Sen. L. Oudit: Well, I shall be so guided, Mr. President. I was really referring to what the Bill referred to as the proceedings and records as well as evidence, and I am simply pointing to the evidence, as it was given. When we look at validating, the question was asked in the House, as to why such an administrative oversight took place?

Really and truly, if it was such a simple matter on an oversight, to bring us here today, to have a Validation Bill, then we really need to look at what was, for example, in section 4 of the Bill, the proceedings and recording of the proceedings that are supposed to be valid. We talked about every matter being done as well as evidence being given. This is evidence that was given by witnesses to the commission, we have to understand why we are validating this Bill. Why have we come here to validate and why is it important for the country to validate this Bill?

In fact, I would like to say that we do support this Validation Bill, but it cannot be that we support this by itself. Sen. Mark said that you needed to answer some questions. Therefore, my question: Why were there so many variations in all of the projects that we had before? Is it that the country does not need to validate? The commission would certainly answer that and as my colleague, Sen. Cumberbatch said, it is only hoped that the validation of this commission is not done in vain and that we certainly would lay the report in Parliament. I am certainly supporting this.

If UDeCott is a state owned company and its officers are public servants, then why has UDeCott been left alone and remains unaccountable to the people for state funds? UDeCott as a state company is subject to the *State Enterprises Performance Monitoring Manual*. Paragraph 13.10 stipulates that companies, like UDeCott, publish their audited financial statements within four months of the end of financial year.

Mr. President, the country has to know. There are no such statements for 2007, 2008, far less 2009. Why?

Sen. Browne: Could I answer?

Sen. L. Oudit: Sure.

Sen. Browne: Because those statements have been presented, in accordance with the deadline, to the auditors, and the auditors in view of the commission of enquiry, have asked for several different types of information, the information has

been presented. And as I understand it, every time the information is dealt with, another piece of information is asked for. I understand that there are no more items and this matter should be concluded shortly.

Sen. L. Oudit: Thank you very much, hon. Minister, through you, Mr. President. You see again, all these explanations point to the problems. The reason that the commission kept asking for more documents is that simply in light of—

Hon. Senator: The auditors.

Sen. L. Oudit: The auditors determine that the information, in light of the commission that was being undertaken, required more. There seems to be a problem with the way we word things and the way we always have this need to come back to basics. Again it was pointed out by Sen. Cumberbatch, and I do not know why in this day and age we have always reached this point. On page 4, imagine you have: (a) The proceedings, (b) The evidence, (c) Each commission, and then you come back to (a) Every witness.

These are the simple things that really and truly, beg to be repeated, because every mistake of the Government, every word can be misconstrued to mean some sort of issue. Every time a Minister makes a mistake; every time mistakes are made, it costs the nation money. Money talks, as they say, and you know what walks. It is too costly; billions of dollars. Who really, really benefited from this loophole in the proceedings of non-gazetting?

6.15 p.m.

Who is the smiling fat cat? Wife, brother, aunt, cousins, “nenen” as we say in Trinidad and Tobago, all part of this old time movie, you know “Rich man poor man”. These are many things that come out, that are so clichéd. This seems to be a runaway train. Everybody is referring to UDeCott either as a runaway horse, a runaway elephant, a runaway train and it seems as if all the drivers, horsemen or anybody, nobody seems to have a handle on this runaway whatever it is; it is a runaway.

Sen. Dr. Dick-Forde: Runaway rumours.

Sen. L. Oudit: That is the reason why it is a runaway.

Mr. President, according to R. Baker, in 2005, an economist; he made a presentation to a G20 Summit and he spoke about illicit money and let me quote what is his definition of illicit money:

“Illicit money is money that is illegally earned, transferred, or utilized. If it breaks laws in its origin, movement, or use it merits the label.”

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The illicit and questionable use or transfer of vast sums of money across borders and across bank accounts is not only the worst loopholes—again, a next loophole—it is the worst loophole in the global economic system, but more importantly it is the most damaging activity that takes place.

Mr. President, it was recognized that that G20 Summit, illicit money and the problem of illicit transfers are mainly concentrated on resource-rich developing countries; resource rich, like us—

Sen. Browne: That is not true; absolutely not true.

Sen. L. Oudit: That is right; it is.

Sen. Browne: Absolutely not.

Sen. L. Oudit: If the Minister likes I would give him the documents after. So, massive variations in cost and expenditure in public projects must be seen for what it really is. This is really a drain on foreign currency. This Validation Bill is really a critical piece of document. With respect to Sen. Mark's call to the Attorney General, do not wait for the report to be laid. Certainly, there is appropriate regulation, statutory regulations that would guide any sort of action to be taken.

I would like to draw from the Integrity in Public Life Bill, Part IV, clause 24(1) and (2), and it says here in clause 24 (1) that a public officer, an employee or chairman of a state company is a public officer—

- “(b) afford no undue preferential treatment to any group or individual;
- (c) to arrange his private interests...to maintain public confidence and trust in his integrity,
- (2) A person to whom this Part applies shall not—
 - (a) use his office for the improper advancement of his own or his family's personal or financial interest or the interest of any person;
 - (d) directly or indirectly use his office for private gain.”

Mr. President, this Act goes on further at clause 31(1):

“The Commission shall report any breach...to the appropriate”—House of Parliament—“Service Commission, Board or other Authority...”

Mr. President: Senator, I do know about the other Senators, but I for one, am beginning to be a little impatient and waiting for you to talk about the Bill. I do not know why you are debating the Integrity in Public Life Bill, that is not before

us yet. I understand that there is an amendment that is going to come in a few weeks, but it is not here yet. So if you will talk about the clause of the Bill before us I would be grateful.

Sen. L. Oudit: Mr. President, again, I am guided, but I am making reference to the fact that we did not need to wait for this Validation Bill to come here for the Attorney General or the judicial arm of the Government or the State to act on matters that came before the public domain, but even if people said, it is simply I was referring to the—

PROCEDURAL MOTION

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Mr. President, I beg to move that the Senate continue its sitting until the completion of this Bill.

Question put and agreed to.

COMMISSIONS OF ENQUIRY (VALIDATION AND IMMUNITY FROM PROCEEDINGS) BILL

Sen. L. Oudit: Mr. President, this Bill before us is really up for a lot of interpretation, and so I beg the indulgence and the tolerance—am almost finished. I would wind up, because, basically, what you have here, reminds me of other Bills that came to do one thing, but really you need to look at the Bill. I find it very difficult to look at this three or four page document and debate on the validation of a commission without referring to the proceedings of the commission or the matters with respect to that particular commission.

I just wanted to point out again that any action can be taken, and it is possible that the lack of an Integrity Commission and the stalling of appointment of officers after the fiasco that took place possibly serves well this next fiasco that we call the commission of enquiry. So, certainly where the commission may have had all leeway on its own initiative or even whatever came out in the public domain to institute some form of investigation, there is no Integrity Commission, so the Integrity Commission simply cannot do anything. Somebody spoke about the timing; everything seems to be quite coincidental.

As I close, this Validation Bill is very critical, but it must not end here. So, the judicial arm of the State, through the Attorney General, must move swiftly and not wait—you must deal swiftly with any and all found guilty of wrongdoing. We need to really take back our country and we are not taking it back from gangs,

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warlords and drug lords alone, but we are taking it back from foreign leeches who seem to be working in cahoots with what I refer to as the political elite and they alone seem to know the true direction that this country is heading for 2020.

Thank you.

Sen. Prof. Ramesh Deosaran: This Bill is a rather simple Bill and in ordinary circumstances, and if you will permit me, Sir, with very great respect, if we were in a more civilized country the Government and the Opposition would have met behind the Speaker's Chair and smoothed out an appropriate resolution to what appears to the public mind, as simple administrative error. [*Interruption*] I say in ordinary circumstances and I say in a more civilized country. [*Interruption*] Let me therefore say that my intervention is necessitated to clarify the context in which this rather quarrelsome debate has proceeded.

I found Sen. Mark's contribution powerful and with a few editorial adjustments [*Laughter*] it could represent the man in the street, because a lot of what he said now rests in the public consciousness.

Since you implied the need for some freshness in the debate, let me make what is a fresh point, because I have not heard it before. I do not think that our distinguished Attorney General is to be blamed for what has happened.

Secondly, as I see it, he has come in at a rather late stage in this apparent fiasco and is trying to use his judgment as adviser to the Cabinet and would like to be more honourable, as an attorney-at-law, subscribing to the Legal Profession Act and its supporting ethics that he intends to clean up an apparent mess by bringing this amendment. Having elevated his reputation that way, I hope that the action required from the enquiry—the action that would be required from the ensuing report would be appropriate to justify the reputation of which I just spoke.

It is a pity that we could not take the high ground in getting this matter resolved, but I suppose and quite justifiably our public has grown very cynical, very suspicious of politicians—in fact they do not like politicians. A lot of people are fed up with Parliament in seeing it as irrelevant and as having the belief that Parliament really does not represent what the people want. I do not know if anybody is to be blamed; perhaps it has regressed over time for several different reasons. Because, the public is looking on at this, they thought, like myself, as taxpayers, that a real enquiry was going on at great expenses. The Parliament is about the people's business and whatever legalities that we might entangle ourselves in, to me the fundamental requirement, those entanglements, whatever

the nature, must always be directed to satisfy the public welfare, meaning in this case you cannot spend taxpayers' money by having an enquiry and having an enquiry in jeopardy, and even so, the public has little confidence as to what will be the outcome of what is an expensive enquiry.

They have been reading a number of things in the newspaper about the enquiry, about the conflicts that are ensuing, not only among the lawyers, but more recently and in a rather unprecedented way, a conflict between the State and a state board as it were. I think this is almost unprecedented. If it is a new instance, it might create a new case law, but the question arises in the public mind, whose money will be spent by UDeCott in pursuing this matter? But I stop there; I am just giving an example of what is disturbing the national community and they will remain so, cynical, suspicious, even in the midst of the good intentions by the Attorney General, because that is the context.

I think we have to use this opportunity to build, if not restore, public confidence in public administration, because this whole fiasco has caused the public, not only to be disturbed, but to continue to lose confidence in really, the State, the Government and Parliament in looking after the public welfare. That is why I think—and I have listened to him, and in my view, I think the Attorney General is trying his best, not only to clean up the situation, but by requiring the three-fifths majority and by having the Bill as extensively described as he has done, reflects to me a very cautionary stance.

Because as my mind goes back and Opposition Senators have made reference to it; some of my distinguished independent colleagues have also made reference to it, our minds go back to previous commissions of enquiry. And just briefly, I will tell you, not only do they cost a lot, but several reports from those commissions of enquiry have been stopped dead in their tracks from implementation because of litigation in one way or another, by having not only insufficient evidence, but defective evidence and calling people's names without proper evidence.

6.30 p.m.

So the whole report is thrown in the wastepaper basket because of our very clever lawyers, always looking for what has been called "a loophole". So if you ask me who benefits from the loophole, as you can see today, crowds of them. Sometimes I see them literally stumbling all over the other, as if it is something to be fed upon, at the taxpayers' expense. I use the word "they", without going further.

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So, that is the context in which the Attorney General is moving this piece of legislation. It is almost in a sense, or it would have been in an ordinary circumstance and in a civilized community, would have been a storm in a tea cup. A defect exists and rightly so, the Attorney General is moving to correct it and put it back on track. But it is not as simple as that, as several speakers, especially Sen. Mark, has indicated. Sen. Mark's allegation is that this thing looks like a hoax. This is a set-up, this is a scam, and he tried to trace some elements that would lead us to that conclusion. And I believe with great respect, Mr. President, in that sense, he is expressing the sentiments of a large section of the national community and that is what worries me. That is why I rose to encourage the Attorney General to pursue the track, the path of righteousness and rectitude in this matter because it needs to be done, not only because of taxpayers' money, but because of that sacred element of having trust in the Government. Trust in the Government is important because I must tell you, you are not looking good in the public eye. [*Desk thumping*] You are really not looking good in the public eye, for several things which I will not venture into, and this merely serves to aggravate that. In fact, if we had a very strong, viable—anyhow, I better stop. [*Laughter*]

I remember Mr. A N R Robinson when he was Prime Minister, in a debate similar to this, where the lawyers were clashing and trying to dot the i's and cross the t's which is necessary, of course, he said: "It amazes me in times of crisis, how lawyers rise to count how many angels can dance on the head of a needle." The metaphor was apt. The metaphor was apt because it seems as if the wider public interest is put at the wayside, and other things, necessary, but much, much less important come in the way. I also remember a famous calypsonian, he got the first prize in the competition, *Doh Touch My Heart*. Do you know why he won? Because it touched the public sentiment as well, and it attracted people because the verses in the calypso reflected corruption, it implied irregularities, and so on.

So, Mr. President, we cannot ignore the public consciousness, because every day UDeCott is in the news, and it is in the news in such a way that it implicates the Government. And once, let me repeat, I hope very sincerely, Mr. President, that the Attorney General helps to extricate the Government, or if not the Government as a whole, himself, on behalf of the public, because this is a matter that involves the public, if only because their moneys are heavily involved.

One new story in the *Trinidad Express* dated September 20, 2009, on page 3, and it says—I think the Attorney General might jump, and the Minister in the Ministry of Finance might jump even higher. This article claims that so far, \$30 million has been spent including cost to attorneys—"UDeCott moves to stop

probe." So anybody could fight for his rights, you know. I have no problem with that. If I had an opportunity and if anybody violates my rights, I will be prepared to fight for my rights, but I will use my money.

If I use my money to protect my rights, Mr. President, I will. But I want to know if this is the case, how would you justify it? Because you have to justify it. So the Validation Bill to me is timely, it is appropriate. I would like to hear the line Minister on this too, because it is a matter of accountability which brings me to the first question. How did this thing happen? Or, whoever the conspirators might be, do they believe that they would have gotten away with it? I doubt it, you know. When I think about it, it really takes a mafia type conspiracy and brazenness to wilfully commit something like this, violating section 15 of the Commissions of Enquiry Act, because it is a short Act. It is not a big Act like the Securities Bill coming before us, or the Proceeds of Crime Bill which are like bibles in their own right. It is a very old, thin Act, but section 15 is big. It tells you,:

"All commissions under this Act and all revocations of any such commission, shall be published in the *Gazette*, and shall take effect from the date of publication."

You have a senior counsel there—and I was struck by Sen. Mark's comment, which is true. I do not think any senior counsel, if he commits an error like that—and I am assuming he is the one responsible for that monitoring—they should strike out his senior counsel title, certainly.

I cannot understand, as indicated, four attorneys around the table, looking after such a high profile commission of enquiry, and nobody picks up section 15. It is amazing. It brings me to the second point and I would like, with respect, the Attorney General to pursue this point. I do not think the person or persons who made that transgression or sin of omission should be so lucky to get away. I am not too sure whether the Lucky enquiry will satisfy this matter. I think the Attorney General has the agency, the instruments, in collaboration with the DPP, or the police, or whatever agency he wants to use depending on the level to which he sees the offence exists, but do not sit idly by. That is another responsibility that I would like the hon. Attorney General to undertake to build public confidence, and if you can do that, well then, we will begin to see we have a real country and we are moving into Vision 2020.

So it brings us back to what I have been saying so many times, political management, because this was a case of a lapse in management. It may not be directly political management, but certainly, the matter in my view stems from the Attorney General's office. Because after Cabinet makes its decision, you become the executing agency for the commission of enquiry, and the personnel so required. So whether A was there before you, and now you are like B coming in, the Office of Attorney General should be held responsible for correcting that apparent error, mistake, or perhaps malicious act of sabotage, whichever one it is.

Finally, Mr. President, there are really about seven specific issues. Not because the Bill is a simple Bill, it is, and it could be dealt with as I said, rather simply. Let me reaffirm what I said because it is very close to my heart, why can we not do things better in this country? Why every little thing must go wrong and create a scandal, a controversy, distaste in the public mind? Every little thing, and yet everybody praying all over the country. We have more churches in this country than any other country in the Caribbean. Everybody is praying, and yet things seem to be deteriorating. There is selfishness, there is antagonism, there is hostility at every turn. I believe as I have said, with respect, Government might be trying, but you have to show some leadership, and as far as you could, not only politically, but if you could in public morality as well.

There were seven issues. Just to conclude: why the mistake was made and by who; there should be some accountability, including the offices of the hon. Attorney General and the line Ministry. I would like to know or hear something from the line Ministry and the required action—this is what the Attorney General is doing—is it a hoax or not? The public is very cynical. We have to correct that. Would there be action on the report? What is the cost? And finally, why did UDeCott decide to take that step with taxpayers' money? The question of bias, briefly, I do not know how that will be proven, but you have bias, apparent bias and now you have unconscious bias. With somebody who knows a little about psychology, it is difficult to prove bias, except it is physically committed. But the suspicion of bias is a very difficult thing to prove. Then you move into apparent bias, well that is another mystery.

I think some expert ought to go in the court when this matter is being heard and describe bias, the difficulty in measuring it, except that the judges and the legal profession have a very tactful way of getting out of things. When they have no law or reliable instruments to measure something, they will tell you, Well, what would the ordinary person think? What will the reasonable person think? That is the escape clause. Except that they do not call in any reasonable person. It

is the judge himself who assumes the role for reasonable person, and that complicates things. So it will be a difficult issue. But in terms of the Validation Bill, I support it, I encourage the Attorney General to live up to his reputation and I am quite sure he will do so.

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

Mr. President: Sen. Rahman.

Sen. Mohammed Faisal Rahman: Thank you, Sir. I was not sure you would have called my name. Very sorry about that. Mr. President, I thank you for the opportunity to make my contribution in today's debate. I feel as if we are here to do heart surgery today, to resuscitate an expired commission, that is the Uff Commission, that was birthed after a great deal of huffing and puffing, and brought forth into this country by virtual Caesarean section. Others have already reviewed the history of the Uff Commission, and we cannot help but recall the staunch resistance of the Prime Minister to the establishment of this commission in the first instance. This commission was appointed with the strongest resistance and it seems as though its entire existence is against resistance, resistance at every point.

Sen. Jeremie SC: Senator, would you give way?

Sen. M. F. Rahman: I now start for heaven's sake. No, no, be reasonable, please. Mr. President, I will continue if you do not mind. This commission has run into the most—well, it has been sunk. It has hit the iceberg and it has sunk to all intents and purposes, and it seems as though it was predesigned to run aground. One cannot help coming to that sort of impression.

6.45 p.m.

Sen. Prof. Deosaran made reference to the term "Mafia". I am not casting aspersions against anybody, but sabotage has taken place; a vessel has been torpedoed; it has run aground; it is stranded; the passengers are being taken off the craft. Some hidden power has to be responsible for all this total mass confusion. This cannot be a country of serially failed commissions, of one sort or the other. How can we have one commission failing in one circumstance, and another failing in the full public glare, in totally different circumstances? Is it that we are a failed State, as far as commissions are concerned? We are in a terrible, terrible position, Sir. Sir, the line from Hamlet comes to mind: "Something is rotten in the State of Denmark", and you cannot escape that.

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Here we have a special purpose state enterprise, created by the Government to accomplish efficiency, turning upon the Government. Earlier on in the day, when Dr. Rowley tried to rein in UDeCott, he was incapable of accomplishing that. At one point it came out in the Commission of Enquiry that UDeCott, because of its peculiar nature, which the Government created and invested it with, they are not even answerable to the line Minister. They are, not only a runaway horse, they are a Trojan horse with tremendous destructive capability.

We are in a state today where we are being told that you must support this Bill to validate the commission. I have the distinct feeling that we are being asked to provide a prosthesis, a false leg that we are infesting with termites before we put it on the poor patient. What is happening here is that this is a commission under siege. It is a commission under siege. It cannot be a coincidence that it was not gazetted and, on two successive occasions, when expanded terms of reference were given, they were also not gazetted, and we have senior counsel in charge of overseeing this commission. At least, the Government, which is referred to as the administration, has come to admitting an oversight, which it coyly mentioned to be an administrative oversight. It could have well said "a government blunder".

In one of the cases that went before, I think it was St. Vincent and the Grenadines, the Privy Council said—if I remember the quotation correctly—that the Parliament of that country clearly intended the consequence of its non-publication in the Gazette there. Quoting that from the Privy Council, the good Attorney General asked us to believe that the Executive never intended to expose us to the circumstance to which we have been exposed. We have become infected by substances that are more than toxic.

Mr. President, Sir, one has to wonder: Is this whole commission a grand diversion to take the public's awareness away from the other calamities facing this country, with regard to the health collapse and the crime collapse, and have us all agog and crazy over a matter that the Government could easily solve if it wanted?

I have a revelation to give to the Government: If UDeCott is giving so much trouble and there is so much evidence that has already been presented in the public arena, "why yuh doh fire somebody", the chief operator who is causing the trouble? You fire or suspend him and you take over your own creature. What is this Special Purpose State Enterprise relationship with the person in charge? And, by the way, he is in charge of so many other things in this country. God knows, this man is an untouchable, it seems to me.

The Government has bought the idea that the man is untouchable and simultaneously indispensable. At the same time, he has greater authority than his employers and greater authority than the Minister who is supposed to supervise him. I cannot understand how we, as an independent Vision 2020 nation, could subject ourselves to an imported despot, who has virtually straddled so many arenas in this country, to force on us the indignity and ignominy that the collapse of this commission has brought upon this nation. I cannot understand.

The question which I started to talk about was, if we validate this—and they are going to get it, because God knows we have no alternative; you are being told, "If yuh doh validate it, so many consequences will flow".

Whoever was put in charge by whosoever—if we say that the Government is innocent of all complicity, somebody has been giving instructions to trip up the commission; clearly. Even now, they are going to court tomorrow, and we have an undertaking, that I am seriously waiting to see honoured, that they are going to pull back or restructure their case. I am starting to wonder what it is we are supposed to do. [*Interruption*] I seemed to have lost my trend of thought.

The point I was making was that we were being asked to validate the commission, and yet we have absolutely murky waters ahead of us as to where it is really going to go. At the end of the day, with the history of commission reports and the efficacy that has failed in all previous commissions, what are we really going to accomplish with the validation? There is enough material outside there for all the government agencies to take action.

In my humble view, do you know what has inspired the validation of this commission? The person or persons who have been giving instructions for the scuttling and torpedoing of this commission, did not bargain for the issues that the Attorney General has brought forth; that is number one. Suing of the commissioners by the public, suing of witnesses and the taking of legal action, if this is not validated, a national legal catastrophe is going to hit this country, and we are going to be occupied with litigation of every type and sort over, I do not know for how many years. There is going to be—well, I do not know what is the right word—something to pay; there would be a lot to pay in terms of the confusion that is going to result.

The engineers of the torpedoing and destruction of this commission, did not realize that they had to contend with, not simply—if they had succeeded in aborting the commission early and there was no evidence taken for persons to be sued, and no commissioners doing the wrong thing to be sued, and no media

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running the risk of being sued, this thing would have died. There would have been no validation, and it would have been a lost cause and a false start. That would have been all about it, end of story.

It was against the odds that the commission survived for this length of time, one year almost. In that time, so much damage could now ensue, as a consequence, that this validation has to come in, because the Government cannot permit legal exposure to so many people on this issue. It is not a matter that they could simply cover up and leave to die a 10-day wonder death. That is the genesis of this validation. Had this happened early, we would not have any validation. The commission would have been scuttled.

One of the things that strikes me is that Commissioner Uff has stated that in common law the commission is on some firm ground; more reason to believe that the inspiring catalyst is to preserve libelous action becoming endemic in the national sea. I cannot lose that conviction. Clearly the engineers of the destruction of the commission did not bargain for that. This was the wildcard that has now caused the Government to bring about the honourable validation of a commission they had wished away from the very beginning.

You know, we have a saying in Trinidad that when the public cannot effect a change in the policies of the Government, and they keep on re-electing the same administration year after year, people say, "Well, you like it so; is you who want de government to be so, so yuh like it so, go and vote for dem." With the battle of the commission and UDeCott's open rebellion and the flaunting of its position in the face of the Government, the Government likes it so. It is serving the purpose of somebody or some bodies in the Government to permit this state of affairs to continue. Do not tell me that I employ you to do a job for me and you could virtually put me out of my house and overtake the government of my affairs? The whole thing is preposterous. The Government likes it so and wants it so.

I heard the line Minister, the Minister of Planning, Housing and the Environment, make reference to a matter of authority, on several instances: "It is a matter of authority and respecting authority." I have heard her use this in peculiar circumstances. If ever there was a case of a matter of authority which was invested in the Government, and which the Government could invoke and implement and utterly emasculate the runaway powers of this UDeCott and its chief officer, the Government is continuously declining. It has no interest in exercising that authority. It is perpetuating it by its inactivity and its resistance to taking any action.

7.00 p.m.

Mr. President, the instances of corruption that the Uff Commission has revealed and the flagrant disregard for authority and the cost overruns that can only indicate corruption, all of this has made all the prior corruption of O'Halloran and all the people who robbed the Treasury, all of that collectively now looks like Mickey Mouse corruption compared to what is facing this nation today.

And we are running a deficit budget while we have allowed a rape of the resources of the Treasury that belong to the citizens of Trinidad and Tobago.

Sen. Drayton wondered whether hubris is the *raison d'être* of the UDeCott runaway train. I would like to tell my respected fellow Senator hubris is not the factor; it is greed, it is corruption, it is avarice, it is everything to do with rape of the economy and rape of the resources of this country.

Hubris is what has afflicted our—in the words of Dr. Selwyn Ryan—our Prime Minister. Hubris has nothing to do with UDeCott; it is corruption. So everything has been trained upon this commission. This commission was forced upon this country when a Member of the UNC—the united UNC at that time stood up with the support of his party and showed undeniable corruption on the part of the appointment of some people related to the head of the UDeCott organization.

Since then we have seen the fax number and the CH company and the this and the that and things enough to disgust you and make you want to empty your stomach. Today we now have to face revalidating to protect the poor people who went up and gave sincere evidence at that time. We are going to have to do it, but I am not going to hold my breath, waiting for the report to be tabled, I am not expecting that to happen.

I remember one point which I wanted to make additionally. In addition to the revalidation, and in addition to the revalidation of the expanded terms of reference, there was a little matter of the senior counsel for UDeCott—I think SC Goddard is his name—having performed his duties on the Commission representing UDeCott, without having been admitted to the Bar for two or three days, and I am wondering whether there should not be some form of validation of his activities and the evidence that was taken during those days, because I do not believe that there was any validation. I do not know how the law works, but I know at that time he was improperly practising law in the Commission.

So I would suggest that the Attorney General—I do not know if he is hearing me—he should take a look at that because we do not want to have a little loophole for people to come in and start libel and ask questions, because the officials of

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UDeCott and their lawyers are very skilful. They will take everything and make it a platform for protest until this Government decides enough is enough, you are fired, get out of here; we are taking back what is ours.

Mr. President, I thank you and this honourable Senate for having been very patient with me. I am upset about this situation, I know the Government must validate, but let it please feel conscience-stricken enough to attend to the mess that has forced them to come today to seek to revalidate and let them know who is actually responsible because this is a matter that will go through the media of the world. We are going to be discredited, we are worse than a banana republic.

Thank you, Sir.

The Minister in the Office of the Prime Minister (Sen. The Hon. Dr. Lenny Saith): Thank you Mr. President. It was never my intention to participate in this debate, but after listening to Sen. Prof. Deosaran and to some of the repetitious contributions that have been made of the same issues over and over, I thought I would just make one or two points.

The first one is, like Sen. Prof. Deosaran, this really does not require all this debate on it. The mistake has been made, whether you feel it is part of a vast conspiracy, whether it is, or it is not, a mistake has been made; it has been identified and the Government is seeking—we assume that it is not part of the wide conspiracy to save the commission of enquiry. And if I hear some of your contributions, I think you are perhaps more likely to sink it now by not voting for the validation. Let us find a way of correcting what has happened so the commission's work can continue and what it has done so far be preserved.

Whether there is further information to come before the commission, that will come; and if any Member opposite has any further information which they wish the commission to consider, please send it there. What the Commission will do, how the report will be treated is a matter on which we will have to wait. The purpose of this exercise here is to correct what has happened and to let the commission move forward.

The second point I want to make is that this is not a Commission of Enquiry into UDeCott, UDeCott is part of the commission of enquiry. This is a Commission of Enquiry into the Construction Sector, UDeCott and recently with the change, Cleaver Heights. I do not know if you looked at the commission on TV, but I think a whole week of hearings were devoted to the system we are using to implement and get major projects done; procurement, the design build, the traditional way and many members of the public, many engineers went before the commission

giving their views, and the Government is hoping to get out of the commission some proposals and ideas about how it should deal with getting its projects done, minimizing overruns in cost and in time.

One of the strengths of Prof. Uff is his training as a civil engineer, we should not forget that. So there is a large portion of this commission's report which the Government is looking forward to with respect to how it continues its development work. The Joint Consultative Council had its say about how contracts should be awarded; whether we should go for traditional design, and then go for bids, or whether we should do design/build/tender, because we have many large projects to be done in the future, whether by this Government, or any other.

Sen. Rahman: Thank you, Sir. I understand what you are saying and there are many benefits to come out of the commission and we all share that view. My question to you is; all that you have said seem to have disregarded the toxic nature of UDeCott and Mr. Calder Hart himself and you are not paying attention to that, you are not attending to that as a Government.

Sen. The Hon. Dr. L. Saith: Mr. President, if the Senator would allow me to finish what I was saying, I said that there were three aspects to the commission; the question of the whole construction industry; UDeCott and the Cleaver Heights. UDeCott is not part of Cleaver Heights, so I was dealing with the first one; why the Government would want the commission to finish its work and to enable all that has been spent and all the hearings held, to get a report out of it, on that aspect.

The question of UDeCott is before the commission, evidence has been put forward, lawyers on both sides have had their say and I am prepared to wait for the commission to report back. I am not going to make a judgment; I am prepared to wait for that.

Sen. Prof. Deosaran: Thank you, Minister. The pivotal issue is the Validation Act arising from the non-gazetting of the enquiry. The parent Act in which section 15 is lodged is from 1892. Given the fact that scarcely anybody reads the *Gazette* apart from people in Parliament, would the Government care to consider another route if the purpose is for public knowledge? Apart from lawyers knowing about it, could you not make an amendment to that very provision given contemporary circumstances?

Sen. The Hon. Dr. L. Saith: Senator, the reason why I do not speak about law is because I know very little about it, and I am sure the Attorney General will take that question on whether it should be amended. I am looking at it purely from what the commission was meant to achieve.

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So that Cleaver Heights has absolutely nothing to do with UDeCott. Again, I am prepared to wait, the commission having heard all its evidence to think. I cannot in my wildest paranoia imagine the scenarios that I see being painted about this. As far as I know, the Government took a decision to have a commission of enquiry. Yes, we started off by saying perhaps at some time somebody is going to do an analysis whether that was the best way to do it.

I know Sen. Prof. Deosaran has his own view of what a joint select committee could have done. We started off that way, but ultimately, there was a feeling that a joint select committee could not do it and a commission was set up. The terms of reference were expanded twice. To say that somehow a group of masterminds is sitting behind this, having gone through all that and got all this evidence out in the public domain which you claim is enough for them to arrest people and charge them. Having gone through all that, at this stage to try to scuttle the commission?

Sen. Rahman: It is still inert.

Sen. The Hon. Dr. L. Saith: So if I take that to be valid, then the effort by the Attorney General to have the commission continue its work is what we should be supporting. So where is this conspiracy? [*Crosstalk*]

Mr. President, I just wanted to put a little—forget the emotion and what you have to go back and tell your boss about what you say in Parliament. I ask you to rationally and reasonably sit and let us proceed. In the end, what we all want to achieve is to have this commission continue its work, finish it and put its report to the Government, and to the people.

Thank you, Mr. President.

Sen. Dr. Jennifer Kernahan: Mr. President, I just want to take a few minutes to put in my two cents worth on this very important Bill before us, the Commission of Enquiry (Validation and Immunity from Proceedings) Bill, 2009.

Mr. President, the people of Trinidad and Tobago are tonight looking on at the “amazing scenes” that are being witnessed with respect to this whole scenario playing out with this entity called UDeCott.

Several Senators here have wondered if UDeCott is a law unto itself, they have said it is a runaway horse and it seems to many of us that UDeCott is more powerful than the Cabinet of Trinidad and Tobago.

7.15 p.m.

But a lot of us are also wondering if this seemingly all-powerful enterprise is really doing its own thing and if it is really as powerful as it would like us to believe, or if it is really a puppet doing the bidding of a powerful puppet master behind the scenes, and we are wondering if there is more in the mortar than the pestle.

This whole scenario is nothing new and we have documented this in our oral traditions, when one of our calypsonians sang, "Himself to Himself." Our populace tonight is scandalized and outraged that we have to use valuable parliamentary time to deal with this Validation Bill before us. We find that whole story of the "oversight" as presented in this Bill before us, incredible, to say the least, given the history of this whole UDeCott enquiry.

It is not out of the sky that we are saying that we find it incredible and there are conspiracy theories, and so on. There are very good reasons for that, because, as Sen. Oudit elaborated—and I would not go into all the details—the appointment of the commission of enquiry was a last resort. The Government fought tooth and nail not to have UDeCott come before a commission of enquiry; not to have that transparency of the processes by which it works. Every other option was put on the table and after the population and the Opposition rejected all, then the commission was appointed. So it is not strange that we would find this so-called "omission" and "oversight" very incredible.

If I were to explain this series of events to my seven-year-old grandson, he would laugh in my face. He is a bright little boy; he would laugh in my face. He is not going to believe that story.

This is the history of this Bill before us and it is very important to us and very important to the populace, because we are talking here about an entity that controls billions and billions of taxpayers' money. That is what this is all about. This is what the outrage is about; this is what all the concern is about. This is not a little two-by-four parlor we are talking about here, you know. We are talking about a state-controlled enterprise that spends billions and billions of taxpayers' money, and the thing is, that the evidence coming out of the Uff Commission of Enquiry was heartrending to the majority of the population; it was scandalous; it was incredible and we are surprised that this Government that is so committed to good governance and transparency and so on, has not seen it fit to haul some of those perpetrators before the courts of this country yet. But we are waiting to see.

The last speaker, the Minister in the Office of the Prime Minister, got up to talk about, “it is not just about UDeCott—the commission of enquiry is not just about UDeCott”; there are other issues; Cleaver Heights and so on. But UDeCott is a massive part of the objective of this commission's enquiry, because I have a list here of the projects that UDeCott is responsible for in this country, and these are projects all over the country, in Trinidad and Tobago. I have counted over 48 projects here, huge projects. So this is not a small entity we are talking about; this is an important entity. Sen. Mark referred to massive cost overruns and so on, in many of these projects. I would not call all these projects but they are here; they are listed.

On the UDeCott website we have another document here that tells us who are the partners of UDeCott and it sends shivers down our collective spines when we look at who some of these partners are, because some of them are very notorious elements, as was revealed in the Uff Commission of Enquiry in terms of corruption and these unseemly relationships between UDeCott and some of these so-called partners.

We have here, the Government of Trinidad and Tobago, which I would not say is one of the unseemly partners but, you know, people can draw their own conclusions; the Office of the Prime Minister; we have China Jian Gsu; we have Haffeez Karamath Construction. Some of these names leave a very bitter taste in our mouths. We have NH International and Shanghai Construction; Sunway Construction, one of the partners of UDeCott; Times Construction; Turner Alpha. A lot of these people will have to face the courts if this Government has the commitment, as it says, to transparency to "no one is above the law" and to good governance and the rule of law in this country.

The Government here this afternoon thinks that we should all wrap this up very quickly and go home and there is nothing much to talk about; there is nothing to say here; just go home. But there are other commentators and stakeholders in the society that have very serious questions and very serious issues with this whole question of the validation. I want to quote an article written by Afra Raymond: “Property Matters”. The headline is: "The Uff Commission - A Quality Finish?" This article starts by saying, and I quote:

"To produce good, lasting results..."

Mr. President: Could you just say what the journal is from and the date?

Sen. Dr. J. Kernahan: This article was taken off the Internet and it does not have a date. I am not seeing the date that it was written, but it is Raymond Pierre—

[Article handed to Sen. Dr. Kernahan by Sen. Prof. Deosaran]

Is it the same article? Yes. It is the *Guardian* of Thursday October 01, 2009. This commentator, a stakeholder, says and I quote:

"Restoring the Enquiry's legality is an important part of a good finish to this important public work, but there is a vital ingredient, which has been missing so far. I am referring to the constant resistance being mounted by UDeCott's attorneys. Given the PM's strong statement to the effect that this government has nothing to hide, it is almost unbelievable that these attorneys acting for Calder Hart and UDeCott have taken certain positions. Unbelievable, but true. It is like a subsidiary company resisting or obstructing lawful instructions coming from its parent company. The missing ingredient here would have to be that the board of UDeCott be instructed to desist from such actions, since those are contrary to the atmosphere of transparency and probity which the PM is advocating."

And this is the bottom line. Nobody believes this story. How could you have a state company resisting the intention by the State to examine this particular entity? How could you have that?

The writer also went on to make a comparison between what happened with respect to the HDC, which is one of the state agencies within the Ministry of Planning, Housing and the Environment and what is happening with UDeCott, which is also responsible to the Ministry of Planning, Housing and the Environment. He is here, as he said, to remind readers of the actions of that very Minister of Planning, Housing and the Environment:

"...when the HDC were trying to complete a second submission to the Enquiry. The entire HDC Board of Directors, save its Chairman...were dismissed. The Minister cited a 'governance crisis'..."

He is saying, how come the entire board of the HDC was dismissed, the Minister citing a governance crisis, but yet we have the retention of the UDeCott's board of directors in the circumstances where UDeCott is coming up against, spending our taxpayers' money, to come up against the State. He is saying here, and I quote:

"That those UDeCOTT Directors remain in place is a clear vote of confidence from the PM. Any further attempts by Mr. Hart's or UDeCOTT's attorneys to de-rail the Enquiry would be a recipe for a complete loss of the limited confidence the PM now enjoys."

So nobody is being fooled here. Everybody knows what is happening here. Everybody understands that UDeCott is just a puppet in the hands of the puppet master and UDeCott is doing what its master's bidding is. I am saying that the total

collapse of any residue of credibility that the Government might have had in some circles, from some people who are very loyal to them, and so on, will collapse and had collapsed with this challenge by UDeCOTT for judicial review in the courts.

How could the Government stand up and say it has no knowledge of this, and this is a surprise to it, and the Attorney General begging them to step down and step back and so on? Who is going to believe that story? The country, at this point, in September 2009, was expecting to have a report by the Uff Commission. The Uff Commission was carded to have finished their investigation and produce a report to the country in September 2009. But instead, what do we have? We have the commission hauled before the court, a scandalous state of affairs in this country, and we are going to sit here with a straight face and talk for five minutes and go home; nothing to say here; and the debate should not be so long and it is not important, and so on. Who does this Government feel they are talking to?

Mr. President: Senator, I think you have missed the point and the point is that what is being said is being repeated. You have just been making a point for five minutes and I have allowed you the time to make the one point and you have been making it for five minutes—I timed you—a point that has been made at least half a dozen times. That is why I think that there is a feeling—and certainly on my part as well—that we do not need to keep repeating it ad nauseam. We can say things that are current; that are important; that are relevant to the issues and to the Bill at hand and then we can press on with it.

Sen. Dr. J. Kernahan: Thank you, Mr. President. We are saying here this afternoon that we are very skeptical of this Commissions of Enquiry (Validation and Immunity from Proceedings) Bill before us because we believe it is a grand charge. We believe that, you know, it is like in a stick fight when a master stick fighter makes a grand charge and if you do not look sharp, after that is blood, “buss head”.

We are saying that what would be the point of these clauses in this Bill: clauses 4, 5, 6, 7 and 8, where witnesses are protected; where the proceedings are protected; where evidence is protected; the commission is entitled to rely on the evidence; where all the evidence obtained, published and disseminated is protected, and so on. We are asking, what is the point of all these clauses in this Validation Bill if at the end of the day you are going to have the spectacle of UDeCott challenging the State to scuttle the Uff Commission and to have the commissioners recuse themselves and so on—at the end of the day if we are not going to get a proper report on that commission after the millions of dollars that have been spent, as has been pointed out here this afternoon.

So we are saying that this is a feint; this is red herring; this is something that the Government is using to cover itself and to cover the fact that it absolutely is on the road to really scuttling that Uff Commission and refusing to bring the outcome of that commission to the public domain.

The population is waiting; we are watching. We believe that this is a very disrespectful and very disingenuous action on the part of this Government, because we know that UDeCott could not have done this on its own. The population is very much horrified by this obscene parade of power and the waste of our wealth and resources. As Sen. Prof. Deosaran said, I do not mind if we challenge any commission or entity in this land, but challenge it with your own money, and this is the bottom line, that this obscene waste of resources; is our resources that they are wasting, to slap us in our faces, as a population, a long suffering population.

I am saying also that we are waiting and we are watching. People have recourse, and they understand what their recourse is, and very soon the 74 per cent of the population that in a recent poll said that they were dissatisfied with this Government, will make their voices heard in this country and the population will deal with this Government as they see fit.

I thank you, Mr. President.

7.30 p.m.

Sen. Michael Annisette: Mr. President, thank you for allowing me the opportunity to participate in this debate. Before I get into some realities, let me state from the outset that I am a member of the UDeCott Board since December 16, 2006; a member of the Board of NIB, Port Authority, Nipdec, TTMF and VMCOTT, all in my capacity as a labour representative coming from the National Trade Union Centre. I have always been associated with the trade union movement. It is a proud association, a movement that always stands up for justice. I am also the President General of the SWWTU. I was made President of the National Trade Union Centre in 2008. I am also the Vice-President of the Latin American and Caribbean Region of Seafarers of the International Transport Workers Federation which represents over 70 million workers in 117 countries worldwide. I am also a member of the Administrative Board of the Caribbean Congress of Labour. I am also an executive member of the Confederation of Trade Unions of America. I was appointed an Independent Senator by the President in December 2007, long after my appointment as a member of the Board of UDeCott.

Having said so, I need to put this whole question in its proper perspective.

[MR. VICE-PRESIDENT *in the Chair*]

I think it is necessary that the general public begins to understand this issue, so that all the fanfare, special interests and cartels that have been manipulating the press to make it appear that the construction industry is UDeCott and no one has taken the time to ask the question that in terms of the construction industry, both private and public, are we, the citizens of Trinidad and Tobago, happy with what is happening? Cost overruns—while I am not justifying them—are some things that everyone knows happen in the construction industry in Trinidad and Tobago, because of the cartels and special interests that run that industry.

I welcome the enquiry because the purpose of the enquiry—if we start to get away from the personalities and look objectively in terms of what we want to accomplish in the commission of enquiry, I think that we would be on a better footing. Let me give you an example in the context in which I want to make my statement. The war in Iraq. I was convinced that Iraq had mass weapons of destruction. The whole world was convinced! The whole world including me was convinced—who I think looks over things—because Powell and the government did a very good, good, good job. They manipulated public perception and went in Iraq and what happened? Nothing. It was all about oil.

I am tying it into the context of a statement that was made. We have to begin to understand what is happening in Trinidad and Tobago when you decide to tackle special interests, they would use the news media to destroy you. That is what is happening to UDeCott. That is the issue. How dare UDeCott start to talk about design build and interfere with Emile Elias and his cohorts? That is the issue. You are talking about corruption. What? "What corruption yuh talkin about?" All the talk they talk, the Member for Tabaquite was wise enough not to sign those statements. The statement that he made he made it under parliamentary privilege. I am asking the question: If he was so sure about what he was saying why did he not sign what he said and face the commission of enquiry? He did it under special privileges. I understand that.

Let me deal with some fallacies once and for all. Comrade, Sen. Wade Mark, Chancery Lane was tendered. In October 02, 2004, the tenders were opened and seven companies submitted proposals for Chancery Lane. Another misrepresentation. I want the public to understand that. I also want the public to know that Bolt which they say is the Minister's wife's company has never gotten a contract with UDeCott to date. Never ever.

Let me give you another example. “Annisette’s company subject of Uff probe”. Anyone reading this—my son said to me, “Daddy, I didn't know you had a company.” The person who writes it is Andre Badoo, Andre Badoo. When you read this the impression is conveyed that I own a company. Then he went on and made statements that Dr. Rowley calls on Annisette to resign because there is something happening with UDeCott and NUGFW Construction Company Limited as it relates to the land in Valsayn. I am going to deal with that. Yes I am a proud member of NUGFW Construction Company Limited, a company that has been formed by the trade union movement which is Seaman's Union and NUGFW. We formed that in order to build houses for workers.

[MR. PRESIDENT *in the Chair*]

It is the only organization outside of the Government that is building affordable houses for working class people in this country. I make no apologies for that. I am not as he said, the owner of a company. I am a member of the board by virtue of the fact that the Seamen and Waterfront Workers Trade Union has shares in the company. He is aware of that. What does he put? “Annisette’s company subject of Uff probe”. Misrepresentation over and over and over.

Having said that, let me deal now—because "de ole people does say sometime yuh have to eat yuh biscuit and hush yuh mouth, yuh know." Let me make it clear to the public. “Dr. Rowley, I eh fraid yuh. Yuh make ah mistake to interfere with a dock worker an ah go deal wit yuh tonight.” Dr. Rowley submitted a document trying to implicate me in the NUGFW deal with UDeCott.

Sen. Michael Annisette, President of Seamen and Waterfront Workers' Trade Union in a letter from Judith Gonzales, secretary of the commission of enquiry. “Statements submitted by Dr. Keith Rowley to the Commission of Enquiry into the Construction Sector”. He made all types of allegations. I responded through my attorney to the same commission of enquiry. It is dated January 22, 2009. It states:

“I act for Senator Michael Annisette.

I refer to your letter dated 20th January, 2009.

The extract provided under cover of your letter does not raise any issues which require a response by my client.

In the event that the Commissioners are of the view that they require my client's assistance on any issue before them, either presently or in the future; or that my client is mentioned in future proceedings before the Commission, please do not hesitate to contact either myself or my client.

I am grateful for your courtesies.”

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Doctor Rowley is aware of this. He comes in the *Newsday* Tuesday September 29, 2000 and raises the issue again, misleading the public because there is a perception. Kill UDeCott or anybody on the board because there is a perception. "We close to the Prime Minister. We doing the bidding of the Prime Minister." Misrepresent the facts. Dr. Rowley failed to tell people that his good friend Emile Elias has a company, "I eh hear no comrade, Sen. Wade Mark who does buss mark, he eh buss dis mark, buh I go buss it now." Sen. Wade Mark I went to get it. I want the TV to take it out. Look it here! Look it here! I have it. Mr. Bago I want you to come and get it. I kept an extra copy for you.

NH International Caribbean Limited registered where? In the Cayman Islands, British West Indies. Tax haven country. Do you know what that means? That he has gotten over \$1 billion of taxpayers' money for doing government work but his company is registered in a tax haven. What does that mean? Nothing comes back to Trinidad and Tobago. "Dr. Rowley eh talk about dat. Nobody eh mention dat." No one mentioned. What is ironic? I will show you the connection.

Commission of Enquiry into the Construction Industry, I am sticking on the construction industry. I will get back to the Bill because I am tying everything. This is dated January 22, 2009. Dr. Rowley is being questioned by the Attorney for UDeCott, Senior Counsel Frank Solomon. Page 48 states:

“Q. ...Now, one of the revaluations, if I may so, which has alerted me to this aspect of your varied career was a statement reported in the press by Mr. Emile Elias to the effect that—well, first of all, he makes the claim that he is a friend of yours. Is that by the way true?

A. Very true.”

Rowley responded. Leave this dock worker alone.

On page 52 again on the 22nd he is questioned by our attorney.

“Q. Dr. Rowley, you acknowledge a friendship with Mr. Elias?”

Rowley responds.

A. Unhesitatingly.

Q. Do you also acknowledge a business relationship with Mr. Elias?

A. I acknowledge no such thing, because I never had and I do not now have a business relationship with Emile Elias.”

Mr. President: Senator, as you reach that point we have given you a fair amount of leeway to go on with this. I do not see what it has to do with the Bill. I am going to give you two more minutes to finish what you are talking about and then come back to the Bill. I have given leeway to everybody so I am giving you a bit of leeway. I am warning you to finish your thought and move on to the Bill please.

Sen. M. Annisette: I want to tie it with the misconception about UDeCott and the construction industry. I am just trying to show the connection. Allow me hon. President, I beg, give me three minutes. Please. [*Laughter*] He went on to say yes that Emile Elias is his personal friend. “Did Emile Elias finance you in 1996 with the People's National Movement?” “Yes” he contributed. “How much?” “I can't say because he has somebody in charge.” I know that is not so. Ah could tell yuh de amount but ah wouldn't embarrass him. “Ah could tell yuh de amount. Yuh want to know?”

Senators: Yes.

Sen. M. Annisette: \$500,000. Having said that where is Badoo? Not there. Landate Report. We are talking about corruption. I am now calling on the Attorney General. This is the report and I am quoting from the Commission of Enquiry into Allegations of the Removal of Materials, Equipment and Resources by NH International Caribbean Limited.

7.45 p.m.

Sen. Mark, I was hoping that you would bring evidence on the chairman of UDeCOTT with his houses. The commissioner's findings—I will run it quickly.

“The commission is of the view that having regard to his ministerial position, whatever part Dr. Rowley played, it displayed a total lack of discretion and the Commission advises that he should be more sanguine in his relations in matters concerning the development of the project as further issues of impropriety may be raised especially because he had a beneficial interest to which he has admitted.”

Emile: They concluded that he should be charged:

“(1) That from the testimony of the witnesses as above...and the exhibits, that the appropriate authority should visit...sections 2, 3, 4 and 21 of the Larceny Act, Chp. 11.12 with a view to addressing illegal Act (if so found by them) committed by NHIC by the removal of NIPDEC'S material from the Scarborough Hospital site to the Landate Development Project;”

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I now call on the Attorney General to investigate this. I am now calling upon you because it is recommended that he should be charged for larceny. I will hand you the report. Do you want me to bring it for you? We are talking about corruption and I am showing the connection. I am not worried about that.

I now get back. I find it an act of the greatest impertinence for anyone, be it man, human or beast to suggest to me, an independent Senator, duly appointed by His Excellency the President of the Republic of Trinidad and Tobago, that I should be restrained or restricted in any way whatsoever from expressing fully and completely my opinion on any matter which comes up for debate in this honourable Senate.

However, I promise hon. Senators and you, Mr. President, that when I make my contribution I would make it with due respect to the rules and protocols of this honourable Senate. These are the only restrictions I will accept. My right and duty is to speak freely, as His Excellency The President has appointed me, and expect me, to do. No one—they can say what they want in the newspapers; they can talk what they want—will stop me from saying my piece. Get that clear Emile; get that clear Rowley! You will not stop me.

Having said that, I have some issues with the Bill and let it be made clear that what is mischievous and malicious about the debate and the conversation is that this commission of enquiry has been set up in 2008 and UDeCOTT has been participating in it. We have subjected ourselves to scrutiny and examination and it is unfair to UDeCOTT and those bright young engineers and project managers working there, really working, to be subjected to this kind of malicious rumours. I was coming from Jamaica. In the airport, a gentleman stopped me and said he heard Calder Hart and his children left Trinidad because they were going to charge him. They saw him with eight bags. That is the kind of rumours we are hearing.

We at UDeCOTT have never said that we do not want an enquiry. We subjected ourselves to open examination and have never said not to validate the Bill. That is another misrepresentation. We are saying—that is what is hurting me because there are intelligent people here; they must know that UDeCOTT has been set up as a special purpose company under the Companies Ordinance and, therefore, we are subject to all the rules and regulations governing the Companies Ordinance. While the line Minister can give instructions as they relate to government policies, the line Minister cannot interfere, cannot instruct in matters that fall outside that domain. That is law.

My learned friend, Sen. Wade Mark, who at one time, when he used to give classes—we all know that because board members are subject to enquiry, not the Minister. Also, under the Companies Act, sections 101 and 103, we are protected and also capable of being sued. Therefore, under our Constitution, which is UDeCOTT rules and regulation, which is registered, we have to be indemnified. You know that. If you are a private company and you are a board member, you are indemnified from legal action. So that, if UDeCOTT takes an action, it will have to pay. It has nothing to do with taxpayers' money. That is the law of Trinidad and Tobago, so do not misrepresent the facts. Do not make the public believe that we are misusing public money. We are following the law. In one breath, you are saying that we are a runaway horse; we are not following the law and when we follow the law, we are misusing public money.

The individual board members of UDeCOTT are not before the commission. Even if we were before the commission, the Act provides that we be indemnified so that UDeCOTT has to take the legal course. I am a member of a private company.

Do you know what is amazing? Under the UNC, UDeCOTT was there. Nobody talks about that. I remember I was at the Port Authority of Trinidad and Tobago as a board member and the hon. Minister Humphrey said they were taking all the port lands and assigning it to UDeCOTT. I was the only one who said he could not do that; because the board members said he was the Minister. UDeCOTT did not happen now. It was formed in 1994.

Having said that, when you came into power, you hugged UDeCOTT. The same Calder Hart was there, and Minister Humphrey. When they came to the board of the Trinidad and Tobago Port Authority, it was Minister Humphrey in front and Calder Hart behind. These are some of the issues that we must put in the public domain to have sanity in the debate.

We continue to twist the issues and, with the greatest of respect, hon. Attorney General, I have an issue with clause 9. Our position at UDeCOTT—and I am not a lawyer and my position, having read it, as a bush lawyer, is that you have to take out “and in relation to the proceedings of the commission”. As soon as you put that, you open yourself to ambiguity and legal challenges. From “and”, move that out. I am not a lawyer, but as a bush lawyer practising in the Industrial Court, I always follow protocol. I am a decent dock worker.

Sen. Jeremie SC: Sen. Annisette, I was enjoying your contribution. I welcome your observations on clause 9, but on a true construction of the clause, it can only mean that the immunity extends to consequences of a failure to gazette. I know that is so and I believe that your lawyers will tell you that is so.

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On a true construction, they will say that it extends to consequences of a failure to gazette. The word “and” is conjunctive. It links what follows to the consequences of the failure to gazette the commission. As I said, the point has been raised before and to make doubly sure, there is a case which says if there is ambiguity in a statute, *Pepper v Hart*, you go into the Parliament and see what the person who moved the Bill said. I said, several times during the course of my presentation, that there was no intention to inoculate the commissioners from any sort of action taken by anyone to protect their rights. I said that on several occasions and I will say it again during my winding up.

Sen. M. Annisette: Hon. Attorney General, thank you for your explanation, but I am a dock worker and I came from “Doxford” University. I studied on the docks and, therefore, what we have learned is that any ambiguities, you take out. The fact that you are telling me that having made all those statements, they can come back to see what you have said, tells me that there is ambiguity.

Why do that when all that is required is simply moving “and” and all the others and it would not interfere with what you are trying to do. I know that sometimes simplicity and intellect do not mix, but sometimes common sense is better than intellect. I humbly suggest it. I gave this to four attorneys—two juniors and two seniors—and four of them told me the same thing. So I know I am right. You do not get this with attorneys. I say no more.

My concern is that, to support the Bill, it has to be properly thought out, so that we would not have the ambiguities, and the Bill being exposed to all kinds of interpretation by attorneys. Then they will say: See what I tell all “yuh”; games again. Let us simplify it and make the Bill easy.

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Let me give another example. The Bill is riddled with errors. It says that the commission terminated its proceedings on September 09, 2009. But this cannot be so, when Prof. Uff has made it quite clear that he is going on with what he calls his “ad hoc enquiry”. He said that—[*Interruption*] allow me to finish. It has not terminated its proceedings at all.

The Bill—I am making another point, I would sit and you could clear it—seeks to validate actions of the commission up to September 07, 2009, but Prof. Uff continues to issue orders and directives after the date and before the first attempt to gazette the commission. If we say that—and it is a fact, he has been issuing directives as it relates to that, after that. In that context, we could have all kinds of legal challenges. [*Interruption*] I will give way again.

Sen. Jeremie SC: I do not know where Prof. Uff got his interpretation of the law, with respect to the ad hoc commissions. My job is to advise the Government and, as far as I am concerned, I am satisfied that the commission came to an end and that all the instructions issued after that point in time are invalid. That is the reason we have the Validation Bill before us. It is precisely because, if there was a possibility of Prof. Uff continuing an “ad hoc commission”, would he have stopped it? He would have gone on to complete his work. I have to advise the Government. I cannot tell them anything about an “ad hoc commission”, there is no such thing known to the law. I cannot advise my colleagues in good faith about an ad hoc commission. What I have to do is say that the commission was terminated on that date. That is the date when he described his ad hoc proceedings as at an end. What he does after that and what directions he gives after that, as far as I am concerned, are invalid without something to buttress it.

Sen. M. Annette: It is refreshing to hear what you are saying, but I think that it is my responsibility to point out that these can face some challenges legally, because he has been doing it. That is a fact, not a fallacy and it can create problems. All I am simply bringing to your attention is that we need to be mindful of that fact, because once the commission is validated; I do not want that we have issues flowing from it.

Having said that, my concern continues to be our attempt to make it appear as though what we have done is illegal. To talk about ethics, morality and that the people outside say you are supposed to do it, those things are nice. If the people say to do a wrong thing, go ahead and do it. If we are talking about a society that respects laws, equality before the law and equity, how do you or how can you justify that you feel, as a registered company under the Companies Act, that there is bias and conflict and that UDeCott is being treated unfairly? It will be a dereliction of the duty of the board and its members not to exercise its fiduciary responsibility by taking up that challenge. But, more importantly, what the public must understand and what nobody is saying, a judicial review is not automatic. You have to apply for it and the judge has a discretion to determine whether or not there is a basis for it. It is not automatic. At the end of the day, the court will determine whether you are right or whether you are wrong.

I made the point at my last debate and I would make it again, so that the people on the street can understand, the police commissioner can give a police officer instructions, as it relates to police duties, but if a police officer feels that some bias, conflict or a breach of natural justice, as he believes, has happened, to him as a police officer, the Commissioner of Police cannot tell that police officer

not to take that matter to court. In the same image and likeness, the line Minister or the Government cannot tell a board: Do not take that particular matter to court. That is clear. That is a reality. When we start to talk about the Minister—at one time we talk about not interfering with the company's right to operate and in the next breath we talk something else.

When UDeCott picks up their position, in terms of a breach of natural justice, which is a fundamental principle and is something that—everybody has taken judicial review. I walked with the document with my learned friend, Dr. Keith Rowley, because he went for judicial review too. “Look it here.” That was his right and I have no problem with that. How can other people have rights and when you exercise a right it is wrong, immoral and unethical and you should resign? It is so ludicrous and unfair! *[Interruption]*

Sen. Seetahal SC: Who is paying for that?

Sen. M. Annisette: That is not the issue.

Sen. Seetahal SC: That is important.

Sen. M. Annisette: “Ah glad yuh come and I will answer you, because you is ah senior counsel and yuh ought to know, with the greatest of respect, Sen. Dana Seetahal SC, that UDeCott has been set up under the Companies Ordinance.” Therefore, in that context, we fall under the rules and regulations governing that and the board members are exposed, not the Minister. If they are going to charge anybody, they are not going to charge the Minister, they would charge Michael Annisette. In those kinds of circumstances, under those laws, the company has to pay the legal fees. Even though—I could quote if for you, because you know that more than anybody. I am a little disappointed that as a learned Senior Counsel for whom I have the greatest respect, you would be running down that slippery slope by giving the impression that—*[Interruption]*

Sen. Seetahal SC: On a point of order.

Mr. President: Senator, speak to me.

Sen. M. Annisette: I apologize.

Sen. Seetahal SC: May I say my point of order is that I do not know that the Senator should be, with respect to him, addressing me. If I make a comment that he chooses to take cognizance of, which is not on the record, it is not a matter to suggest, which I would suggest, he should attribute all kinds of different motives. Usually, people throw comments for clarity. I think that should be taken in that context and that light, rather than—

Mr. President: No, no, Senator, you can be assured that if any Senator here challenges anything with your integrity or your motives I would defend you. I heard nothing of the kind. Senator, please continue.

Sen. M. Annisette: Sir, with the greatest of respect. Senior Counsel, I would never ever walk that road. I believe in the rule of law and following protocol. That is one thing about me. [*Interruption*]

Sen. Seetahal SC: I know that.

Sen. M. Annisette: I have the greatest of respect for you and all Members of this august Chamber.

Mr. President: Speak to me.

Sen. M. Annisette: It is unfair to be making those kinds of statements and to make it appear to the public that if UDeCott exercises its fiduciary responsibility, then the board members have to pay the legal costs.

Let me carry the argument to a logical conclusion. It would be right to say in the Commission of Enquiry that is taking place, we have attorneys there, we should pay the attorneys' fees and not UDeCott. Who is paying their fees? I am talking simple, so that the laypeople outside there can understand. When those statements are made, the people will understand that we have to be careful, because there are a lot of sideshows and theatre, but the reality is not coming out. There is a saying that I learned from my grandmother: What is will always be what is. Everybody is entitled to their own opinion, but everybody is not entitled to their own truth, because the truth will always be the truth. You can twist and turn, the truth will always remain the truth.

I want to assure the general public from where I sit, that yes, UDeCott, like any other state and/or public enterprise, has its challenges and we have made mistakes. It is a fact. The issue at the Brian Lara Stadium, I personally and I think all the board members, are hurt to know what has happened there, but there are several matters that were outside our domain and some that I believe we should have worked on quickly. Like every other thing, we are learning and we are developing. We have paid attention to the criticisms coming out of the Commission of Enquiry that are genuine and those that will assist in helping UDeCott move forward to deliver timely deliverables of services to the people of Trinidad and Tobago. I want to assure them that we pay attention to what is happening and were not arrogant. We are paying attention and we are trying in our own way to learn from our mistakes and move forward.

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UDeCott is part of this society and it is not different. I challenge anybody who would have built a house by themselves and brought in a contractor, to tell me the headaches they normally get. Everybody is aware of that. It is not specific to UDeCott; anybody who does that will know what I am speaking about.

That is why I am saying there is a cartel in this country that controls the construction industry and one of the issues that is facing us is that we are trying to mash up how things have been done in the past by doing design/build and other things and then, obviously—I understand that you would be attacked left, right and centre.

I want to assure them of the commitment of the management, the workers of UDeCott and the board of UDeCott for correcting the wrongs and attempting in, our own way, to deliver what UDeCott has been made a creature to do. Like every other thing, we are making mistakes.

One Woodbrook Place is a private enterprise. When was that to be delivered? *[Interruption]* I am dealing with cost overruns. I talk about a private enterprise. The Bill on the Commission of Enquiry is to look at the construction industry. I do not know if One Woodbrook Place is not a part of the construction industry, but my little common sense tells me yes, because they are constructing a big, big building. They are private, but there are cost overruns with several buildings. I can call five more, all with cost overruns.

The question of timely deliverables in Trinidad and Tobago is an issue for Trinidad and Tobago. If we try to let our minds, personalities and emotions get into the issues and we do not deal with the facts, we would not be able to change the construction industry for the benefit of Trinidad and Tobago. As I have said, we have no issue with the Bill; all we are simply saying is that the Bill must be done in such a way that it would not expose us to further scrutiny.

I raised an issue and I would raise it here also. Everybody is talking about who was wrong and who was right, but the Commission of Enquiry had the most lawyers I have ever seen; Senior Counsel—*[Interruption]*

8.15 p.m.

Mr. President: Hon. Senators, the speaking time of the hon. Senator has expired.

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

Question put and agreed to.

Sen. M. Annisette: I want to make the point that I also attempted, in my own way, to try and look beyond personalities, and not to accept anything mechanically. With respect to the issue of the validation, I ask myself the question: Am I to blame UDeCott lawyers, the JCC lawyers or the lawyers who appeared for all the other persons? Did they not have a responsibility? I am asking myself that question aloud to ensure that with all the utterances that have been made before and after the commission—they are going to try to mash it up—they will ensure that all the “i’s” were dotted.

I believe that each and every one of us has to take the blame for what happened. We wash our hands and say that it is this person and that person but, I think, everyone should be responsible. I think everyone who was representing their clients should have ensured that all the mechanisms and the processes that were required were in place to ensure that we did not have to do what we are doing today. That is my opinion. I may be wrong, but no one, in this instance, is free from blame. We all had that responsibility.

I would want to conclude by saying that the Government did the right thing by bringing the Bill. In bringing this Bill, they are attempting to ensure that the commission of enquiry continues. As I have expressed, the Bill needs to be thought out in such a way so that when it is passed it is not going to expose us to any kind of litigation.

I want to conclude by saying that as a people we have to be careful that when we attempt or try to deny anybody—be it private, public or a corporate citizen, which UDeCott is—their rights to exercise the rights that they have in the Constitution of Trinidad and Tobago—any attempts by anybody to deny UDeCott that right that is enshrined in the Constitution—does not understand or appreciate what democracy is all about and what is fair treatment and equality before the laws of Trinidad and Tobago. [*Desk thumping*]

I thank you for this opportunity to contribute in this debate. [*Desk thumping*]

Sen. Subhas Ramkhelawan: Mr. President, thank you for giving me the opportunity to speak on this particular Bill, the Commissions of Enquiry (Validation and Immunity from Proceedings) Bill, 2009. I thought long and hard—

Mr. Vice-President: I neglected to tell Senators that apparently dinner is being served in the tea room. The Leader of Government Business is suggesting, with my concurrence, that if you wish to eat you could just filter out rather than suspend the sitting for dinner so that we can complete the debate.

Sen. S. Ramkhelawan: Mr. President, I was saying that I thought long and hard following on the heels of my hon. colleague, Sen. Annisette, because of some of his pronouncements, I wonder how I was going to deal with them. He was a dock worker, and that had its implications, and sitting next to him I had to be a little worried about what that was supposed to mean. Hopefully, it is about a verbal battle rather than any other battle. Having said that, I learnt a lot from the hon. Senator's contribution tonight and it helped me to clarify and reinforce some of my thoughts on this validation Bill.

Mr. President, some famous lines come to me, one of which we use very often in Trinidad and Tobago and, that is; “where there is smoke there is fire” and we experienced some affixations in a very smokey situation, at the beginning of this century in respect of the commission of enquiry with the airport, but that pales in comparison with this particular commission of enquiry and the validation that we are seeking to pursue tonight. I say this because in the case of the airport enquiry, the maximum amount involved, depending on whose figures you took, was about \$1.6 billion, and the enquiry into the construction sector which I believe had its genesis in the question of UDeCott—UDeCott on its own as at June 2008, based on its half-year results published on its website is in the order of \$725 billion versus that \$1.6 billion. Mr. President, \$725 billion—and I would expect that from June 2008, one year and one quarter exactly—is the equivalent of 20 per cent of the fiscal revenues expected to be collected in fiscal year 2010. This is massively significant in terms of where we, as a nation, place our assets and, therefore, it is not only right and proper, but it is critically important that each one of our citizens be fully satisfied that the operations of this major player in the construction sector stand up to scrutiny, transparency, disclosure and proper accountability.

As we debate this validation Bill which is surrounded by the UDeCott issue—the issues are straightforward in this validation Bill; one is to validate and the other is to protect—to validate the commissioners, publications and to protect the commission, commissioners and the publication up to and inclusive of September 07, 2009.

In the hon. Attorney General’s presentation he made the claim that validation was important—in his words—in the interest of good governance. Who amongst us in this honourable Senate would be against good governance? Maybe it is coming late, but it should be there. It should have probably been there in the first instance, but better late than never.

My colleague, Sen. Mark, raised the question of the conspiracy theory versus the Attorney General's claim of a mistake. I think that conspiracy theory of this

magnitude would require brilliance of genius proportions. I do not see that level of conspiracy coming from the players involved, but I may be mistaken.

On the other hand, the Attorney General claimed to correct a mistake for the purpose of good governance, and some other famous lines come to me; “forgive them for they know not what they do”. In this particular instance, there is need to amend or correct it. The greatest concern that I have in respect of this Bill is that we as a nation—as right-thinking citizens and hon. Senators in this Senate—must do nothing. In fact, we must contribute to ensure that the derailment of this enquiry does not take place.

That is why I am concerned about the position taken by UDeCott. A perception is developing that the position that is being taken is a position aimed at delaying or even derailing the process of this commission of enquiry. As the Attorney General said, some matters in the judicial review would be set aside for the time being.

The question of bias could run us—I am not even a bush lawyer as my colleague Sen. Annisette, but I have seen matters gone to the courts and ended up in the Privy Council for as long as five, six or seven years. This is something that we can ill afford in this society. We are very concerned about the level of expenditure; the level of overruns that have been experienced in many of UDeCott’s projects.

Now, if it is somebody else's money in the private sector that has cost overruns that is their business. If it is cost overruns where the Government is the trustee of the people, then that is our business. The hon. Minister in the Ministry of Finance must know that he is a trustee of the citizens of this country. If he is a trustee of the citizens of this country, he ought not to be too worried about what goes on in the private sector as to cost overruns. He must be worried about the Clico fiasco, because it is the people of this country who have to dip their hands in their pockets to make restitution, whatever that restitution is.

With respect to the question of derailment, I believe there are remedies that are available to the Government to deal with this potential threat of derailment and delay of this report which is to come from the commission of enquiry. I understand quite clearly that a private limited liability company such as UDeCott is a special purpose company and the directors are entitled to take certain actions in their defence and in the defence of the company.

8.30 p.m.

But if I had to put the interest of the citizens of this country against the interest of the directors of UDeCott, there is no question that the interest of the people comes well above that of the interest of the directors of UDeCott, who by the way, would benefit from immunity as directors. They would benefit in terms of the extent of personal liability and so on, unless it is a matter of gross negligence and fraud on behalf of the directors. I am not a lawyer but trust me on this one. *[Interruption]* We would ask Sen. Seetahal SC.

If the interest of our citizens is to be prejudiced or set behind that of UDeCott, there are remedies for the Corporation Sole, as shareholder. Those remedies include if you are going to find obstacles to the enquiry, which after some deliberation, the Government has decided that they want to pursue—if these are going to be obstacles in the path to the finding of truth, as my learned colleague suggested—you have remedies.

One of the remedies is to remove the board and replace it with another board, if it is that this board is going to establish obstacles, that is a matter for the Government and the Corporation Sole, but that is one clear remedy that is available. So, it is not to say that the matter can go into abeyance for any long period of time, if it is the will of this Government to ensure that the report and the findings of the enquiry come before the citizens of this country in short order. It cannot be that a tail wags the dog. It cannot be that we the citizens of this country, could or may be held to ransom in terms of the thirst for information and findings of this commission of enquiry.

If it is that UDeCott is frustrating the Government as trustees to the people of this country, then the correct thing to do, if the Government is so minded, and is of the view that their intent is to generating the findings for the benefit of the public, then there is one way to go, and it is in the hands of the Government and the Corporation Sole as shareholder, to change the board so that it does not become an obstacle in the path of this enquiry, but that is up to the Government.

I certainly will support this Bill, because this Bill is intended to ensure that the findings of the commission of enquiry eventually and I hope in the shortest order, find the light of day. So, there is no difficulty in supporting this particular Bill.

In conclusion, I would like to appeal to the Government to do everything that is in its power to ensure that the findings on this construction sector come before the people in the shortest possible order. I would remind that in part a previous commission of enquiry, led to the eventual demise of that particular

administration in power. We are playing with bigger fish, \$7.3 billion and counting, as opposed to \$1.6 billion. We are playing with bigger fish at a time when our resources are indeed strained.

Therefore, this is my appeal to the Government of the day, do the right thing; do it quickly; bridge no resistance that is aimed at frustrating the citizens of this country.

I thank you.

Sen. Dr. Adesh Nanan: Thank you, Mr. President. I rise to make a contribution on the Commissions of Enquiry (Validation and Immunity from Proceedings) Bill, 2009. We heard in this debate about the board of UDeCott attempting to correct the wrongs and cost overruns are no big thing.

The difference here is when you are dealing with the public sector and the private sector; if you have cost overruns in the private sector the shareholders will fire the directors; however, in the public sector, it is the taxpayers who feel the brunt of cost overruns in terms of no roads, no water, high food prices and all the amenities that they would have gotten if they did not have the high cost overruns in the public sector.

Questions must be asked in this Senate when a Senator makes a contribution here concerning the board of UDeCott attempting to correct the wrongs. Certain questions must be asked in terms of UDeCott and the board of UDeCott from 2003 to 2007. The questions have to be asked: Who was the chairman of the tenders committee in UDeCott at that time? Who was the chairman of the tenders committee that forged an alliance with the chairman of Nipdec, who is Calder Hart? Who was the chairman of the tenders committee that agreed that Chinese should be given the contract for the Riverwoods project at the Cleaver Heights area? Who was the chairman of the tenders committee who said yes, to the Chinese coming in as the contractor and asked for their family and friends to be subcontractors? And who was the chairman of the tenders committee at the time when the chairman of the tenders committee's son was given a contract for tiling at the Riverwoods project—*[Interruption]* I am making quick references—and fired for unsatisfactory performance? Those questions must be asked.

If you relate that to the situation in terms of cost overruns between UDeCott and the United National Congress administration, you will see that the cost overruns for the secondary schools, because of a change in the scope of works went from \$25 million to \$30 million, but here we are seeing billions in cost

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overruns. At that time when the cost overruns were pointed out, they said it was corruption under the UNC administration. We are saying what is good for the goose, must be good for the gander. [*Desk thumping*]

If that is the case with respect to cost overruns, we are saying, you have billions that are being reflected in terms of cost overruns, and you sent a message to the population, cost overruns equal corruption. Well, the public must judge. We are talking billions here in terms of cost overruns; all the projects that were identified by Sen. Dr. Kernahan.

You know, Mr. President, as we deal with the waterfront project, I want the country to know that the Government is paying \$14 million a month for that waterfront project for the next 15 years. The question was asked in this Senate in terms of the insolvency of UDeCott, and the Minister in the Ministry of Finance replied, but we are asking the question because the majority of projects that UDeCott undertook, the money was borrowed and there was no Government guarantee or no letter of comfort and that is why we are saying that the assets of UDeCott are depreciating on a daily basis. In terms of rental of those properties, we are not going to get back the market value.

Sen. Gronlund-Nunez: Mr. President, Standing Order 35(1). I have sat here all afternoon and I do believe we are dealing with a commission of enquiry—the validation—into the construction sector. I am hearing all sorts of stuff about waterfront project and insolvency. Could I get the relevance of this or could you ask the Senator to get back on track?

Mr. President: Senator, I have allowed a certain level of flexibility to all speakers so far. I would venture to say that with the exception of the Attorney General when he presented and perhaps Sen. Mark, who responded, every other Senator has wandered into the ether for at least 15 minutes or 20 minutes, and I have allowed certain latitude in the spirit of debate, and it is my usual practice to do so. So, Senator, you got about 15 minutes, at which point I would warn you, like I did with Sen. Annisette, when you have run out of time.

Sen. Dr. A. Nanan: Thank you, Mr. President. I was responding to a few issues raised in the debate. You know, when the issue of Dr. Rowley came up, it reminded me that Dr. Rowley was called the Rottweiler of the PNM. It is my understanding that in public circles in UDeCott, the chairman of that same tenders committee is now being called the Rottweiler of Calder Hart.

Sen. Browne: Where you see that? Where you hear that? You are making that one up.

Sen. Dr. A. Nanan: That is public knowledge. Go and read the blogs, Minister in the Ministry of Finance. I have a few blogs here but I would not read them because it would just take up my 15 minutes. I just want to go to another area, as I was dealing with Dr. Rowley, because we need to get some clarity on this matter, because Dr. Rowley's action was against the integrity commission.

The independent constitution commission was the Integrity Commission; the Uff Commission, the commission of enquiry, the members are selected and the terms specified by the Cabinet. There is a difference. The President issued the documents for the appointment of the commission. So the commission of enquiry is a creature of the Government, whereas the integrity commission is enshrined in the Constitution.

So, when Dr. Rowley took on the Integrity Commission, it is a different matter here from UDeCott taking on the State, and UDeCott is taking on the State as a body corporate. When we hear in this debate about board members trying to save themselves, they are going in as a body corporate. I am sure if I am wrong somebody would correct me on that particular issue.

8.45 p.m.

What is interesting is when Sen. Mark talked about a conspiracy theory, I just want to elaborate a bit on that theory, because in the spy business you have someone called a mole and a mole in the organization—

Sen. Enill: That is a “guana”. [*Laughter*]

Sen. Dr. A. Nanan:—is an enemy planted as a double agent. [*Interruption*] A mole’s job is to destroy the organization from within. He waits patiently and when he sees the opportunity he strikes with a telling effect.

When Sen. Mark made reference to a certain senior counsel, I just want to say to that senior counsel that loose lips sink ships. [*Interruption*] That is all I have to say on that matter with that particular situation.

What we are seeing, as Sen. Rahman clearly put forward, is a red herring, and once the evidence is not favourable—Sen. Rahman made reference to [*Inaudible*—UDeCott and Calder Hart, there is a diabolical plan to scuttle the process. I just want to elaborate on what Sen. Mark described.

Mr. President, if we look a bit about the political stakes, because it is the opinion that political stakes are very high—

Sen. Mark: Very high.

Sen. Dr. A. Nanan:—very, very high and the Government has recognized that if this enquiry goes any further it can have a catastrophic effect on its administration. When we see the Attorney General coming with this validation we have to be very guarded in our approach. We have to be very guarded in our approach because the Government has a history in terms of hiding information. The Freedom of Information Act; gradually there are certain restrictions coming from the Freedom of Information Act. We cannot get information from the Government; you have to squeeze it out of them. So many questions are asked on a daily basis and they are not responding.

So you have to understand that we are very skeptical here in terms of a lack of information. What we have from the commission of enquiry is that we have evidence in the public domain.

Sen. Browne: Whatever that is.

Sen. Dr. A. Nanan: Apparently the Minister in the Ministry of Finance did not look at the commission of enquiry, unlike my good friend Sen. Cumberbatch on this side who paid very close attention to the enquiry.

Sen. Browne: He has an allegation, whatever it is.

Sen. Dr. A. Nanan: Mr. President, let us look at one quick area in terms of the [Interruption] history of commissions of enquiry [Interruption] and we have the classic enquiry into the Biche High School. That report was sanitized and never saw the light of day. [Interruption] The Caroni Bridge, where is that report? And you know what the other one is? This one is very telling, the Commission of Enquiry into the Health Sector.

Hon. Senator: Your 15 minutes not up yet?

Sen. Dr. A. Nanan: And why that is such a problem, because there are several recommendations coming from that commission of enquiry and I was surprised to learn, because when I listen to the Minister of Health about the glowing work that is done in the Ministry of Health—I had a patient telling me about a situation where they had to wait almost 24 hours to get a bed, to be even seen and they had to be placed in ICU, that is to tell you how serious that particular condition was. We have to be skeptical.

The Minister of Health comes and paints a picture here of a fantastic health system and we see on the ground that people are suffering on a daily basis; shortage of bed, as Sen. Mark pointed out.

Sen. Browne: The Bill, the Bill.

Sen. Dr. A. Nanan: So that is why the commission of enquiry is so important—

Sen. Mark: You did not ask Sen. Annisette about the Bill.

Sen. Dr. A. Nanan: —to be followed up on. The commission of enquiry, I think the Government should take the initiative and send a signal that they will look at the Commission of Enquiry into the Health Sector and utilize some of the recommendations and make a difference, because you have a history of not acting on any commission of enquiry.

Sen. Browne: One, two, three, four say that already.

Sen. Dr. A. Nanan: Mr. President, I am trying to get some positives into the debate. *[Interruption]* So, I am pleading with the Government to send a signal so the public could get some confidence, they have very little confidence. I saw a poll of 95:5 against you; 5 per cent said that they reject your Constitution— sorry 95 per cent said they rejected your Constitution, that is to tell you how your ratings are falling.

Sen. Manning: That is like the 4 per cent.

Sen. Dr. A. Nanan: What 4 per cent?

Sen. Manning: That would vote for the UNC. *[Laughter]*

Sen. Dr. A. Nanan: Mr. President, I am very happy to hear in the Senate this evening that those SEA students would not face Social Studies in their examination. *[Interruption]* It was not (b). *[Interruption]* I just wanted to place that on the record so they will be very happy. *[Laughter]* Of course, the cost overruns in that sector would be another debate in the education sector and that will be the next commission of enquiry. Attorney General, you may need to look into that particular area, that is the Education Facilities Company, another runaway state enterprise down there. *[Interruption]*

I want to speak on a clause of this particular Bill that the Attorney General needs to give us some—*[Interruption]* Mr. President, I am hearing some asides from the Attorney General there, but I want to congratulate Sen. Wade Mark on an excellent reply to your—*[Laughter and desk thumping]* The Commission of Enquiry Act, Chap. 19:01, section 12(3) and I read:

“No person giving evidence before the commission shall be compellable to criminate himself, and every such person shall, in respect of any evidence given by him before the commission, be entitled to all privileges to which a

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witness giving evidence before the High Court is entitled in respect of evidence given by him before such Court.”

But clause 9 of the Bill under immunity reads:

“Notwithstanding any law to the contrary, no legal proceedings or other action shall be filed or maintained against—

- (a) the Commission or a commissioner for any matter, act or thing done by the Commission or a commissioner;
- (b) any person who gave evidence to the Commission;”

That includes Mr. Calder Hart.

“(c) any person who reported, published or in any other manner disseminated any evidence given by a person to the Commission in respect...”

Sen. Jeremie SC: What clause are you reading from?

Sen. Dr. A. Nanan: Clause 9. [*Crosstalk*]—any person who gave evidence to the Commission.

Hon. Senator: He gave evidence. They are not following you.

Sen. Dr. A. Nanan: “any person who reported, published or in any other manner disseminated any evidence given by a person to the Commission in respect to such dissemination;

as a consequence for the failure to gazette the Commission on the 9th September, 2008, and in relation to the proceedings of the Commission from the 9th September 2008...”

Sen. Jeremie SC: [*Inaudible*]

Sen. Dr. A. Nanan: Yes, but what we are saying, we are putting an amendment forward, because we do not like (b) “any person who gave evidence to the commission”. We do not want this to be a lacuna where certain alleged wrongdoers may escape, so our amendment is to delete clause 9 and replace it with what is in the Commissions of Enquiry Act that is under section 12(3).

So that is our suggestion because we are afraid because of the sleight of hand—I am not imputing improper motives to the Attorney General. [*Interruption*] I just said “by sleight of hand”. [*Crosstalk*] Where the seeds fall let—in whose garden the seeds fall the flowers will bloom.

Sen. Mark: “Aye aye aye, very good Adesh, very good”. [*Desk thumping*]
Let them put that in their pipe and smoke it.

Sen. Dr. A. Nanan: Before I conclude, I just want to look at another area, and of course I will hear from that side, that has been said a thousand times in the debate. But I want to make reference to the—which I find that this section that deals with the special majority of being three-fifths—we heard the explanation from the Attorney General, but it is our considered opinion that it should be two-thirds.

Sen. Jeremie SC: Not simple, not three-fifths but two-thirds?

Sen. Dr. A. Nanan: Yes.

Sen. Jeremie SC: Right.

Sen. Dr. A. Nanan: So in that vein, Mr. President, I thank you.

Sen. Corinne Baptiste-Mc Knight: Thank you, Mr. President. As usual and in light of the hour I shall try to be as brief as possible but I think it is important that I get a few of my areas of concern with this Bill clarified.

I understand the hon. Attorney General to have insisted that the purpose of this validation is to be able to have the commission continue. Now, this raises a couple areas of concern: One, I come back to what was said by Sen. Seetahal SC, and I ask whether it would be necessary to include the amendments to the original terms of the commission of enquiry, specifically, in this Bill in order to ensure that the complete work of the commission is covered. Two, I wonder whether in replying to Sen. Annisette, a bit of confusion was not created in my mind, in that, reading the Bill, and again, from what was said by the hon. Attorney General, it appears as though the commission terminated its work on September 07.

9.00 p.m.

Now, if the commission terminated on September 07, this Bill is not about continuing the work of the commission. Can the commission terminate its work before its report is submitted? I do not think so. So it means that the references to September 07, 2009, would have to be deleted from the Bill if the commission has to continue its work. Further to that, talking about indemnity, immunity, et cetera, given the fact that the immunity in the Bill as it stands now, terminates or terminated at September 07, 2009, what is the status of Prof. Uff because he will

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no longer be Commissioner Uff, in terms of the judicial review? Does he have any status? Can he go there in the guise of a commissioner of a commission that no longer exists? Now, these are some questions that spring to mind. It could be that not being legally trained, sometimes common sense makes you ask foolish questions, but I would like to have these areas clarified.

Another thing that bothers me, is that this validation deals solely with the matter of gazetting the commission, and therefore, validating it. It does not in any way exempt the commission and commissioners from the other areas, all those areas involved in the judicial review. Now, I am not clear as to the status of the agreements that the hon. Attorney General has said he has arrived at with UDeCott lawyers. I do not know whether that means that everything comes to a halt, and the commission is allowed to continue its work. I just do not know and I would like him in wrapping up, to explain to me exactly what are the benefits of this arrangement.

Now, given my normal position here, I think that it is expected that I would say something about the reason for this validation being necessary at all, and I will be very honest and say that my first reaction was, gross incompetence. But then, I realized when the Attorney General answered a question here at our last sitting, he pointed out to us that in the Solicitor General's office, he has no Solicitor General and at least 10 other posts, many of them senior counsel—[*Interruption*]

Sen. Jeremie SC: Not senior counsel, Senior State Counsel.

Sen. C. Baptiste-Mc Knight:—Senior State Counsel, sorry, vacant, it either means that he has a little Hollywood going there, or he has a lot of vacancies. Now, this could explain why something falls through the cracks. Even though I feel in my heart of hearts, that something may have fallen through the cracks in the Government's office, but when you retain senior counsel and other counsel on retainers, somebody should have picked it up. So that basically, all in all, the blame has to be shared. But I like to see the opportunity that lies behind every catastrophe.

I would like to suggest to the hon. Attorney General, that this gives him the opportunity, not only to prosecute harder for staff, but to insist that his whole department get themselves ISA 9000 ready, which would mean, that every single desk would know exactly what it is supposed to do. Everybody would have a desk manual. So if I come in from "O-he-o-ho", to act in a certain position, I know what is required of me. Perhaps, he can have recourse to the Public Service Academy and have

them train his people and get them ready so that his department would be completely functional, whether they have their full complement of permanent people, or they have to rely on some help.

Now, there is another problem that I have, and it has been alluded to, almost beaten to death, and it really is the perception of my folks, my Trinidadian and Tobagonian people, where this is concerned. I understand UDeCott's right to defend itself; I lament the fact that it is at my expense. I would be less than honest if I did not say that. But I wish to state and I feel quite strong about this, and think I talk on behalf of at least a million of the 1.3 million, that Corporation Sole—there was a time when this kind of behaviour would have been laid at the door of corporation "crepesole". But we no longer use "crepesoles", and I cannot talk about "corporation sneakers". I think that just as UDeCott has been given the right to defend itself at our cost, Corporation Sole has a duty to defend our rights in this matter. I think Sen. Ramkhelawan gave the recipe. I do not feel that my folks are going to be very tolerant of this situation being allowed to drag on with recognition of rights on the one side and no rights on the other.

Mr. President, I would like to have these explanations. It will not affect my support for the Bill because I feel it is absolutely important. It is critical that we get this obstacle out of the way, but I would be much happier if the concerns raised by Sen. Seetahal SC could be addressed and also this serious matter of when the termination of this commission is agreed upon. I do not see it as being terminated, and therefore, I would be disappointed if the references to September 07, 2009 persist.

I thank you. [*Desk thumping*]

The Attorney General (Sen. The Hon. John Jeremie SC): Thank you, Mr. President, and thank you colleagues for the expressions of support, largely from the Independent Senators, but also the contributions which came from the Opposition side.

Mr. President, the first speaker in response to me and it obliges me to respond to him, was my good friend and colleague, Sen. Mark, who, now true to form, I have known him for five years now and his behaviour is predictable in matters of this sort. He will never, ever, be productive. He will never, ever, come to support legislation which the Government puts. If the Government were to enact legislation to adopt every single orphan in every part of the world, Sen. Mark would be in opposition to that. [*Crosstalk*] He has a problem with everything. He has a problem with everything, however benevolent we might be on this side.

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Mr. President, the legislation which is before us this evening—we started this afternoon—is critical legislation. It is legislation which demonstrates the Government's commitment to integrity in public life. If we did not care about integrity in public life, we would not bring this legislation. This legislation would not be here. The commission of enquiry would be allowed to go by the way. What we seek to do, is noble. What we seek to do is to invalidate an error—I cannot describe it as an error—but some lapse which occurred, which had the effect of rendering everything that took place at great expense to the taxpayer inconsequential. Now, it was our duty as a responsible Government to do that, and I should have thought that as a responsible Opposition, it was their duty to support our actions in this respect, this evening.

Mr. President, Sen. Mark spoke about a conspiracy theory, but for this conspiracy theory to work, these things would have to obtain. Mr. Jairam SC, who is a member of the Inner Bar, who is a decent man, would have to be in cahoots with the Minister of Works and Transport. Somehow, they would have had to conspire at some point in time when the commission was first established, not to gazette the commission, so that the seeds of destruction would then have been planted.

9.15 p.m.

He called the name of all the attorneys on the commission, so it was Mr. Jairam, who is a distinguished member of the Bar; Mr. Garcia, who happens to be married to a Minister of Government, but who also has a good reputation and is one of Trinidad's leading junior counsels, a decent man, and Mr. Roach. I did not mention Mr. Simonette, but he was also part of the team. They would all have had to be acting in concert, at some point in time, when the gazetting was supposed to be done. It is my understanding that attorneys for the commission came on board afterwards, at some point after the commission was appointed. So the commission would have been appointed, and I was away at the time.

Sen. Mark asked me whether Israel Khan was my friend, and I am proud to say that he is. Israel Khan is a decent man; he is my friend, as is Sen. Mark. [*Crosstalk*] The point is, how could all these parties, in various parts of the world—I was thousands of miles away; Israel Khan was here in Trinidad, unconnected with these four attorneys, four independent attorneys, one senior counsel, three other junior counsels from different chambers, who I do not know what sort of relationship they would have had, but they would also have been acting in concert to invalidate the proceedings of the commission at the time when they were not even appointed to the commission. [*Interruption*]

He spoke about a conspiracy. He did not speak about inaction; that was not the allegation, so you are contradicting your leader. In his statement, his thesis was based on a conspiracy theory. As far as I know, a conspiracy requires that there be two persons acting in concert to do something which is wrong.

Yes you have a number of persons, but in different parts of the world, at different times, with no relationship and very little ties to each other. I said Israel Khan was my friend, but I certainly was not in contact with him at the time this commission was established. It boggles belief that these persons who were not yet appointed counsels to the commission would have conspired with the Minister of Works and Transport to have the commission not gazetted, when it was supposed to be, when it was first announced. It is impossible. It is an argument that just has to be stated to be debunked; it makes absolutely no sense.

But I thought I owed it to Mr. Jairam, the Minister of Works and Transport and his wife, who is a citizen of this Republic, like everybody else, who had nothing to do with any of those matters, who is not a politician and who should not be the subject of Sen. Mark's—I do not want to describe what type of politics he was engaged in, but it was politics which one would not normally find on the pavement; it might be at the side of the pavement. *[Interruption]* It might be at the side of the pavement; certainly not on the pavement, where there are some drains.

Sen. Browne: The word is "gutter".

Sen. The Hon. J. Jeremie SC: I did not say that word.

The Government has acted in good faith and we have acted with dispatch. As soon as the error was discovered, there were procedures that we had to follow. The legislation was drafted; it went to the Legislative Review Committee and in record time it came out of the Cabinet and in the Parliament. We have acted with dispatch. We have done the proper thing; we have brought validation legislation.

We have also published the commission in the *Gazette*; that was done on September 11. Prof. Uff made his statement on the 7th, and I would return to deal with the points raised by Sen. Baptiste-Mc Knight, just after I am finished with my good friend, Sen. Mark.

I think he indicated that Israel Khan would have shot himself in the foot, so apart from being involved in this grand conspiracy to not gazette the commission, he would have behaved in such a way during the proceedings of the commission, because he described himself as being a PNM. The last time I checked, the

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Constitution allowed us to join political parties and join trade unions, as Sen. Mark might have done; I do not know. He does not speak like a man who is a member of a trade union movement or a member of any movement. [*Laughter*] The last time I checked, the Constitution allowed us the freedom of association.

Mr. Khan was chosen to sit on this commission, not by me; I was not around; I was thousands of miles away. I knew nothing about it; I just want to re-emphasize that point. So whatever he did on the commission, he did as Israel Khan, and everybody in the legal profession knows that Israel Khan is—

Sen. Mark: Is a PNM.

Sen. The Hon. J. Jeremie SC:—is a man who dances to the beat of his own drum.

Sen. Rahman: Is that a compliment?

Sen. The Hon. J. Jeremie SC: I think it is; some might differ. We would all remember the stance he took years ago, with few attorneys, when he sought to advertise his services.

Sen. Seetahal SC: One other attorney.

Sen. The Hon. J. Jeremie SC: He was rocking the boat; he is Israel Khan. He behaves as Israel Khan would behave.

Sen. Rahman: He is doing it a different way now, by notoriety.

Sen. The Hon. J. Jeremie SC: Everybody in the profession knows that. He was selected to be a member of this commission, and that too boggles the belief that anyone putting Israel Khan on this commission would then seek to control him; he controls himself. When he stepped out of line, he did the honourable thing and recused himself. That did not invalidate the commission. The commission was free to continue its work thereafter.

So that the Senator's point about Israel Khan's behaviour is irrelevant; it did not affect the validity of the proceedings of the commission. Mr. Khan decided that he had had enough, after he did a certain act, he went his merry way.

Sen. Rahman: Calder Hart is challenging him in court.

Sen. The Hon. J. Jeremie SC: Yes, Mr. Hart is challenging him and that has to be tested in the court, but it did not invalidate the commission. The commission still had a quorum.

I will turn from Sen. Mark and his lighter contribution. I think the contribution of Sen. Mark is always light. [*Crosstalk*] It is always the easiest point to start at. [*Crosstalk*] Mr. President, you would know from your time sitting next to me, that

Sen. Mark provides a certain type of relief in this Senate. I am happy to deal with his contribution, in the same way that he made it and in the same spirit that he made it. With that out of the way, I turn to the more serious points which were made this evening.

On the constitutional issue, which was raised by Sen. Seetahal SC, knowing that it might come up again, and again and again, I tried to interrupt her to deal with it then and there. The point is that we believe this legislation requires a special majority. Sen. Seetahal SC believes that it requires no special majority, a simple majority. The Opposition front bench believes that it requires a two-thirds majority.

Our guide is the Constitution. The Constitution says in section 13 that an Act to which this section relates must be passed by a three-fifths majority. I will identify the specific point of constitutional illegality, as far as we are concerned; it is the right we have taken away from persons to sue by granting immunity from proceedings in the Validation Bill.

There were two options opened to us in the Cabinet: We considered, first of all, a Validation Bill which provided an indemnity in respect of lawsuits; that would not have interfered with the right to sue. We would have validated all the proceedings, but then we said, "Listen, if you feel that you have been aggrieved by anything that has been done by the commission, notwithstanding the fact that it is now valid, we will indemnify the commissioners, the media, and so on and so forth, in respect of all lawsuits brought by you." That was one measure we considered, giving a general indemnity in respect of persons. Remember, this is State error, so we considered giving a general indemnity in respect of the various categories of persons: the commissioners, persons giving evidence before the commission and the media. We considered giving a general indemnity.

What we decided to do instead was to create an immunity from proceedings. That should have been welcomed by those on the front benches who talked incessantly about us doing grand things, wasting huge sums of money. What we have done is say, "Listen, you cannot sue in respect of our error." That is what we have done. We have taken away a right, which you would otherwise have had, to pursue a claim in respect of, let us say, damages, because the immunity which the Act would have created would not be there. You cannot pursue a claim in damages for, let us say, defamation in respect of something which was said, as a consequence of the failure to gazette the commission. You cannot do that now. That is a right which we have taken away.

There are two cases: *La Salle v the Attorney General*, which is close to 40 years old now; it was decided in 1971, and there is the more recent case of *Alleyne-Forte v the Attorney General*, which is 12 years old, 1997, in respect of

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which the Privy Council is clearly saying that the due process right includes a right to natural justice and includes a right to sue. If you take away that right, that is a breach of a constitutionally protected right.

We are not amending the Constitution, so we do not need a two-thirds majority. That is how I would treat with the contributions made by those on the front bench. We do not need your support as we did when we passed the police service amendments. Remember when we passed those amendments we had to come to you, cap in hand, and we asked you to grant your support. We had all those meetings; you gave, we gave, and we had a grand compact which fell down. I would not go into why it fell but, in any event, you supported us with the police service amendments to the Constitution. A two-thirds majority was required then, we did not have it and we needed your support. We do not need your support, hopefully, tonight.

9.30 p.m.

What we need is a three-fifths majority vote because we are not amending the Constitution, we are simply derogating from the rights enshrined under sections 4 and 5, and doing so in the manner in which it is laid out in section 13 of the Constitution. So we are adhering to section 13 of the Constitution and that is how I deal with the constitutionality point.

Mr. President, in respect of Sen. Baptiste-Mc Knight's concern about the commission ceasing work, we have no control over Prof. Uff, we did not know what Prof. Uff was about to say when he had his press conference. He said—and I got a report on it—that he was treating what had transpired up to that point in time as an ad hoc commission.

My view is that is wrong in law, that there can be no such thing and I think it follows from his course of action thereafter, that he himself was not sure that was the way to go. Because had he been certain that he was entitled to treat what was going on as an ad hoc commission, or a common law commission as he described it, then he would have continued his hearings in an ad hoc fashion or as a common law commission and delivered his report to the President.

He elected after the hearing that his was a common law commission and an ad hoc commission, he declared the proceedings at an end. So my suspicion is that Prof. Uff recognized that he could go no further, and my reasoning is that he recognized that he could go no further because he recognized what he had done up to that point in time was irregular. That is my read of it, but I can only say that

is my read of it, I do not know what was operating in Prof. Uff's mind, and it would be highly improper for me to suggest a course of action to Prof. Uff. I cannot dictate to him, his is an independent commission.

But what we seek to do here today is to say that everything that took place up to that point in time, that was the 7th, he made those statements on the 7th. We validated everything that took place up to that time, we then gazetted on the 11th. As far as we are aware, nothing took place between the 7th and the 11th September when the *Gazette* started to roll. So the commission, once it was gazetted on the 11th, and in the days following that—because it took several days for it to be fully gazetted—would have been a statutory commission, and there would have been no argument about whether it was an ad hoc commission or a common law one, which clearly, in my view, it cannot be because this is a territory which has had a Commissions of Enquiry Act since 1892.

It is not as if we do not have legislation. If we did not have legislation, then it would have been open for someone to say, I am treating this as an ad hoc commission or a common law commission perhaps. But we have legislation, so it is either a statutory commission, or not a commission of enquiry. That is how I dealt with that point.

In respect of the judicial review matters; what can I say about them? As I understand it, UDeCott—and this is prior to my return—would have filed several actions in the course of the hearings of the commission. I think—and Sen. Annisette can correct me—one of them related to whether or not a ruling by Prof. Uff as to whether—Is it submissions by counsel were protected by privilege? An innocuous point which, in my view, ought to have been dealt with differently by Prof. Uff. It was not dealt with sufficiently by Prof. Uff. The parties had to go to court, they went to court, it was resolved very quickly. The status of the submissions was determined, they were protected by privilege, or so they thought because they were operating on the basis that this was a statutory commission. Of course, we know now it was not. So that too was an opportunity for someone to pick up that this commission had not been gazetted which they failed to do. That went before a judge and nobody picked it up.

So at the end of the day these sorts of applications have been going on in this matter. There was that application where the State, I think, joined in those proceedings. There is the judicial review application in respect of the Salmon letters. The State is not a party to those proceedings. UDeCott feels as a person—because it is a person—it is a body corporate, it is a person. UDeCott feels it has a difficulty with some of the issues in the Salmon letter. I have only just read about

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10,000 pages of transcripts of what took place in the proceedings. I knew nothing about what was going on, I deliberately wanted to know nothing about the Commission of Enquiry into the Construction Sector. I shut off my mind from it and I have only recently got a chance to actually see the transcripts and read them.

The point is that UDeCott felt aggrieved as a person and sought judicial review in respect of the Salmon letter. That has to be determined, that is outstanding. My understanding is that that issue will be joined with its bias claim and I am just responding to your question about the judicial review matter and its status. My understanding is that their challenge in respect of the Salmon letters is going to be joined—

Sen. Seetahal SC: If I may, through you, Mr. President, many people are asking on this side what is the Salmon letter, and I think members of the public may not know. It sounds like some kind of mystique.

Sen. The Hon. J. Jeremie SC: Before the commission makes a finding, if it is minded to make an adverse finding against a party, it is required to issue a letter to say: “We have heard you on this, we have seen the evidence, we are minded to make a finding against you in respect of ‘x’, ‘y’ or ‘z’. What have you to say about that?” It is an outgrowth of the natural justice principle, that you give everybody a fair hearing.

As I understand it, there were some 54—a number of such requests made of UDeCott, very few were made of the State. So that it does not take a rocket scientist to figure out that the commission obviously felt that UDeCott had some issues which they needed to respond to. So that issue with respect to the Salmon letter, UDeCott as an individual has taken issue with.

My understand is that the present claim which was brought, maybe about two weeks ago—do not hold me to that, I am not certain of it. I have been in this Chamber for close to seven or 10 days straight; both in the Senate and the House. But I think it was brought about two weeks ago. My understanding is that UDeCott's claim, as it was filed, is partly a bias claim against Prof. Uff and Mr. Sirju—Mr. Anisette can correct me if I am wrong—and which also made allegations in respect of the inappropriate action taken by the State in respect of the failure to gazette and the direction given by His Excellency the President to the commissioners to use materials collected between September 09, 2008 and September 07, 2009 which was the grey area; that period of time. There was a direction from the President to the commissioners to use the records and evidence collected. UDeCott took issue with that.

My point is that was not open to UDeCott to do, if they had a difficulty with the commission of enquiry, then they could pursue that claim as an individual, but as a state enterprise, I had a real difficulty with UDeCott taking action essentially against the President, or against actions taken by the President.

It is my understanding they undertook to amend their claim to take care of my concerns. So the claim, as amended, would proceed as a bias claim against the commissioners. The State is out of that, we have no problem with the commissioners, so that is a UDeCott matter. UDeCott as a person has taken action against the commissioners. The State is out of that.

Sen. Rahman: Is the State paying for it?

Sen. The Hon. J. Jeremie SC: Mr. President, I trust that that clarifies the position with respect to the judicial review, that it clarifies the position with respect to the so-called conspiracy theory; that it clarifies the position with respect to the constitutional issue.

If I might just turn to the Bill itself, some Senators both on the Independent Benches and the one responsible Senator on the Opposition Bench—the one responsible contribution, I cannot impute improper motives—from the new, Senator, Mr. Cumberbatch, who perhaps has not yet been affected by his close proximity to Sen. Mark. But he did express some concerns with respect to clause 9, I am not sure I agree with everything that he said. Sen. Drayton expressed a concern which Sen. Anisette echoed with respect to the sub clause and in relation to the proceedings of the commission from September 09, 2008 to September 07, 2009.

It adds nothing to the clause and I am prepared to be flexible. This is a Bill which requires a special majority and, as a consequence of that, I propose to make an amendment at the committee stage. I also propose to make an amendment to take into account Sen. Drayton's point with respect to the preamble.

9.45 p.m.

At this point in time it would be premature for us to say that—it is a small point but I think it is a valid one—for us to conclude when we ourselves have established a mechanism to find out what took place; for us to conclude that this thing took place as a consequence of administrative error, so that I have prepared a short list of amendments for circulation which the Clerk will now circulate. Just to be on the safe side, because this is a special majority Bill, I want you to see the amendments; I do not propose to make them at the committee stage which I know

Validation and Immunity Bill
[SEN. THE HON. J. JEREMIE SC]

Thursday, October 01, 2009

I can do. I have had them typed out for you, even for Sen. Mark who is not going to support the legislation, because he does not support anything this Government would do. If we decided to adopt, as I said, every single orphan in the world, or if we decided to go into the ILO and make ourselves 100 per cent compliant with Comrade Mark's position—because he is a stalwart of the labour movement—he would object to that.

As a matter of fact, Mr. President, you will know better than me, but when you were in a different place and you had a different cap on, I suspect that he might have even objected to the OSHA, the Occupational Safety and Health Act. I suspect that he might have done that.

Sen. Mark: I supported it.

Sen. The Hon. J. Jeremie SC: That is my suspicion. But as a labour man, for you to object to OSHA, that has to say something.

So that with those few words, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1.

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

Sen. Seetahal SC: One thing, Mr. Chairman. It says here: "This Act may be cited as the Commissions". That is one commission. So I just thought we need to clear that up. It should be "Commission of Enquiry...Act".

Sen. Jeremie SC: It is one commission but in the long title in the parent Act it says "the Commissions of Enquiry Act, Chap. 19:01.

Sen. Seetahal SC: This is not an amendment to the parent Act; this is a specific commission of enquiry.

Sen. Jeremie SC: It validates the parent Act.

Sen. Seetahal SC: It validates not the parent Act; it validates one commission. So it has to be "the Commission of Enquiry (Validation and Immunity from Proceedings) Act". Are we in agreement?

Sen. Jeremie SC: Yes. It is a typo.

Sen. Seetahal SC: I know, but it should be corrected. Right?

Sen. Jeremie SC: That is the work of the Law Revision Commission.

Mr. Chairman: So what are we doing?

Sen. Jeremie SC: It is a typo, Mr. Chairman.

Question put and agreed to.

Clause 1 ordered to stand part of the Bill.

Clause 2 ordered to stand part of the Bill.

Clause 3.

Question proposed, That clause 3 stand part of the Bill.

Sen. Mark: Just on a point of clarification. This period of time up to the 7th that Sen. Corrine Baptiste-Mc Knight was advancing, what happens subsequently to the 7th? Because the impression I am getting is that the Government is interested in allowing the commission to conclude its work and then having regard to what Prof. Uff has said and then this judicial review. So what is the status of these commissioners if we pass this legislation up to that 7th?

Sen. Jeremie SC: Well, as I understand it, everything that took place after the 7th—we gazetted the commission on the 11th, so there is a four-day period. If anything took place during that time the commission would have to sort its own business out. So if they gave orders during that period of time, they would have to re-issue those orders. Whatever they did, if anything was done—I do not know if anything was done.

Sen. Seetahal SC: Well then why can we not just put the 10th? Why do we not put 9th September to 10th? Why do we not change 7th to 10th to make it cleaner?

Sen. Jeremie SC: Would you support it then?

Sen. Mark: Yes.

Sen. Jeremie SC: You would support the legislation?

Sen. Mark: No. I am supporting the 10th. [*Laughter*] We are not talking about legislation. I am supporting the 10th.

Sen. Seetahal SC: Which allows for continuity. Mr. Attorney General, I do not see why you would stop at that. What is the point? Just because Uff got up on the 7th and made a statement?

Sen. Jeremie SC: Yes.

Sen. Seetahal SC: It is really illogical.

Sen. Jeremie SC: That is when he purported to bring the proceedings to a halt.

Sen. Seetahal SC: Well since you are saying it is not—and in any case, now we are validating it should go right up to the date of the gazetting. So I think it should be to the 10th.

Sen. Jeremie SC: Okay, no problem.

Sen. Seetahal SC: So wherever in the Bill we have “7th” we should replace it with “10th”.

Sen. Jeremie SC: Okay. I have no problem with that.

Sen. Seetahal SC: Which should be in the “evidence” and “proceedings”.

Mr. Chairman: Okay. Clause 3 will be amended wherever it says the “7th September” to read the “10th September”.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 ordered to stand part of the Bill.

Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Sen. Seetahal SC: Sen. Rahman was raising this point with me just now. I had made the point which you did not quite answer, through you, Mr. Chairman, as to the two other times when there were terms of references, amendments.

Sen. Jeremie SC: Everything has been gazetted.

Sen. Seetahal SC: They were not gazetted. So is it then that you are saying that clause 4 will cover that?

Sen. Jeremie SC: Say again? Clause 4 or clause 5?

Sen. Seetahal SC: Clauses 4 and 5. Is it that you are saying that that would be covered by the validation in clause 5, the two other times the terms of references were changed, when they were not gazetted?

Sen. Jeremie SC: Yes. They have since been gazetted. Everything has been gazetted.

Sen. Seetahal SC: Right. So, therefore, they would all be covered up to the period. That is what you are saying?

Sen. Jeremie SC: Yes.

Mr. Chairman: Clause 5 is amended by changing the 7th to the 10th.

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

Clauses 6 and 7 ordered to stand part of the Bill.

Clause 8.

Question proposed, That clause 8 stand part of the Bill.

Mr. Chairman: Clause 8 will be amended by changing the 7th to the 10th.

Question put and agreed to.

Clause 8, as amended, ordered to stand part of the Bill.

Clause 9.

Question proposed, That clause 9 stand part of the Bill.

Mr. Chairman: Clause 9 will be amended again. We have a circulated amendment. Attorney General, are you putting the amendments, because you indicated—

Sen. Jeremie SC: Yes. The amendment to clause 9 reads as follows:

Delete the words “on 9th September 2008, and in relation to the proceedings of the Commission from 9th September, 2008 to 7th September, 2009.”

So you will have a fullstop after "Commission".

Sen. Drayton: You are removing the word "and"?

Sen. Jeremie SC: Yes. We went further than "and".

Mr. Chairman: Are we all agreed?

Sen. Jeremie SC: Yes.

Sen. Seetahal SC: I have one question, though. I note the amendment and I agree with it because if you have "failure to gazette the Commission" you already have the date in the definition section. But I am also wondering, that first introductory, "Notwithstanding any law to the contrary", some people have expressed concern, why do we need that. Do we not just want to say, "no legal proceedings...shall be filed or maintained as a consequence of the failure to gazette the commission?" Why do we have to say "Notwithstanding any law to the contrary"? There is no other law. We are saying that already. So they think it might be too wide.

Sen. Jeremie SC: There is a specific form that we follow from the Thornton with respect to validation clauses and the suggestions as how these clauses should be drafted and we felt that we wanted to—this is the format which we have used in this territory in respect of validating legislation before. It is to be found in Act No. 29 of 1981 and we wanted to keep it.

Sen. Seetahal SC: I am expressing a concern. I know 29; I know 30 and I know the reason that it was put there was because you had one section amending everything, which I mentioned before. So the question was whether or not this would dispense with the provisions of the original Commissions of Enquiry Act. That is why it was asked. So I am putting it to you. If it is a generic position notwithstanding any law they were wondering whether it would be amended.

10.00 p.m.

Sen. Jeremie SC: It is not intended to do that. It is intended to be a generic provision.

Sen. Drayton: You are saying that it is not intended that way and that is sufficient. Should it be unambiguous?

Sen. Jeremie SC: We do not see an ambiguity in it. There are specific guidelines as to how these clauses should be drafted. In my presentation, I did make the point that there is specific legislation which we should seek to identify with particularity what is being validated. There are different forms of words and this is a form with which we are comfortable. We have used it before in validating legislation. It is perfectly in order here.

Sen. Seetahal SC: The point about it is that since the Attorney General is saying that it is generic, if it should ever be questioned, his statement, he is the mover of the Bill, saying that would be conclusive.

Question put and agreed to.

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Clause 9, as amended, ordered to stand part of the Bill.

Preamble.

Question proposed, That the Preamble be approved.

Sen. Jeremie SC: Mr. Chairman, I beg to move that the Preamble be amended as follows:

- A. In paragraph 3, delete the words “due to administrative oversight”.
- B. In paragraph 5(c), delete the words “be indemnified” and substitute the words “not be subject to any legal proceedings”; and
- C. In paragraph 5(d), delete the words “may be indemnified” and substitute the words “shall not be subject to any legal proceedings in respect of such evidence or publication, as the case may be”.

Delete the words “on 9th September, 2008, and in relation to the proceedings of the Commission from 9th September, 2008 to 7th September, 2009”.

Sen. Seetahal SC: I was looking at paragraph 5(c) since there is no paragraph 5(c) as in the normal legislation and it is paragraph 5 of the Preamble, we should say in paragraph 5 at (c). It is a big difference.

Sen. Jeremie SC: This is circulated for us to know what we are doing. If there were a way for me to identify it other than by saying paragraph 5(c)—

Sen. Seetahal SC: If this part is not going to be included then it does not matter.

Sen. Jeremie SC: It is not. “Each commissioner shall not be subject to any legal proceedings...for any matter or thing done by him as a commissioner;”. That is (c).

In (d)—

Sen. Seetahal SC: There is no (d). There is an (a).

Sen. Jeremie SC: My version has (d). I do not know what other persons have.

We delete “may be indemnified” and replace it with “shall not be subject to any legal proceedings in respect of such evidence or publication as the case may be”.

Sen. Seetahal SC: Is it that (c) will now read,

“each commissioner shall not be subject to any legal proceedings in respect of such evidence or publication as the case may be for any matter or thing done by him as a commissioner;”? Is that the intention?

Sen. Jeremie SC: Yes that is the intention.

Question put and agreed to.

Preamble, as amended, approved.

Sen. Mark: Mr. Chairman, I know that you have completed your clauses and Preamble. We had asked early in the proceedings—I ask the Attorney General to respond because he had not responded then—that an undertaking be given by the Government through the Attorney General on two fronts.

Firstly, when this report is finally submitted to His Excellency, The President and Cabinet, that that report be tabled in the Parliament.

Secondly, we had made a request to the Attorney General in the context of what we are going to do. He did not respond. For the record, could he indicate to us, through you, whether the Government is prepared to accede to our request that the report when submitted would be tabled in Parliament and whether the recommendations that would be made by this particular commission would be sent to the appropriate or relevant authorities? He never responded during his winding up. I thought that this might be an appropriate moment for him to do so.

Mr. Chairman: We are at the committee stage. I do not think that that is the time. When we revert to the Senate he still has to get on his legs. Perhaps, if he wishes to do it then he can.

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

Senate resumed.

Bill reported, with amendment.

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

Mr. President: The Bill requires a special majority.

The Senate divided: Ayes 23

AYES

Enill, Hon. C.

Saith, Hon. Dr. L.

Jeremie SC , Hon. J.

Browne, Hon. M.

Joseph, Hon. M.

Manning, Hon. H.

Piggott, Hon. A.

Dick-Forde, Hon. Dr. E.

Gronlund-Nunez, Hon. T.

George, W.

Hadeed, G.

Rogers, L.

Melville, Miss J.

Ramkissoon, Miss A.

Primus, J.

Deosaran, Prof. R.

Seetahal SC, Miss D.

Annisette, M. Ramkhelawan, S.

Baptiste-Mc Knight, Mrs. C.

Drayton, Mrs. H.

Merhair, Miss G.

Rocke, Miss A.

The following Senators abstained: W. Mark, Dr. A. Nanan, Dr. J. Kernahan, M. F. Rahman, L. Oudit, R. Cumberbatch.

Question agreed to.

Bill accordingly read the third time and passed.

Adjournment

Thursday, October 01, 2009

ADJOURNMENT

The Minister of Energy and Energy Industries (Sen. The Hon. Conrad Enill): Mr. President, I beg to move that this Senate do adjourn to Monday October 05, 2009 at 1.30 p.m., when we would debate the Proceeds of Crime (Amdt.) Bill.

It is our intention to come back on Tuesday, October 06, 2009 at 10.00 a.m. to debate the Financial Intelligence Unit of Trinidad and Tobago Bill.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 10.14 p.m.