



**REPORT OF
THE SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED
“THE TOBACCO CONTROL BILL, 2008”**



December 5th, 2008



PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO

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SENATE

[2007-2008 SESSION]

REPORT

OF

THE

**SPECIAL SELECT COMMITTEE OF THE SENATE APPOINTED TO
CONSIDER AND REPORT ON A BILL ENTITLED
"THE TOBACCO CONTROL BILL, 2008**

Ordered by the Senate to be printed



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REPORT

INTRODUCTION

1.1 At a Sitting of the Senate held on Tuesday April 22, 2008 Senate Bill No.6 of 2008 entitled “**The Tobacco Control Bill**”, 2008 was introduced and read a First time.

1.2 The purpose of the Bill was to implement the requirements contained in the World Health Organisation Framework Convention on Tobacco Control which Trinidad and Tobago signed on August 27, 2003, ratified on August 19, 2004 and which entered into force on February 27, 2005.

1.3 The Bill, if enacted into law, would be inconsistent with Sections 4 and 5 of the Constitution of the Republic of Trinidad and Tobago. Therefore, as provided for in subsection (3) of Section 13 of the said Constitution, at the final vote in each House the Bill had to be supported by the votes of **not less than three-fifths** of the members of that House.

1.4 Based on the numerous issues and concerns raised during the debate on the Second Reading of the Bill, it was referred to a Special Select Committee of the Senate.

ESTABLISHMENT OF COMMITTEE AND TERMS OF REFERENCE

2.1 At a Sitting of the Senate held on Tuesday November 18, 2008 the Bill was read a second time. Immediately thereafter, in accordance with Standing Order 51 (1), the Senate appointed five (5) of its members to serve on a ‘Special Select Committee’ with a mandate to consider and report on the Bill entitled “An Act to prevent tobacco use by young people; enhance public awareness of the hazards of tobacco use and ensure that consumers are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit or restrict promotional practices; prevent illegal conduct, including but not limited to smuggling; provide for regulation of tobacco products to mitigate against the harmful

effects of tobacco; provide for sufficient regulatory flexibility to respond to new technological and scientific innovations and findings and to changes in consumer behaviours; create a national co-ordinating institution for tobacco control and provide for other related matters and purposes”.

2.2 The undermentioned Senators were appointed to serve on the Committee:

- Mrs. Hazel Ann Marie Manning
- Mr. Jerry Narace
- Dr. Emily Gaynor Dick-Forde
- Ms. Cindy Devika Sharma
- Ms. Dana Seetahal S.C.

ELECTION OF A CHAIRMAN AND DETERMINATION OF A QUORUM

3.1 The quorum of your Special Select Committee was not specified in the Order of the Senate nor was a Chairman named.

3.2 At the first meeting of your Committee held on Tuesday November 25, 2008, in accordance with Standing Order 70 (3), Mrs. Hazel Ann Marie Manning was nominated and duly elected Chairman. This procedure was presided over by Senator the Honourable Danny Montano, President of the Senate.

3.3 Your committee in determining a quorum was guided by Standing Order 73 (5), which states:

“Unless the Senate otherwise directs, three Senators shall be the quorum. In ascertaining whether there is a quorum present, the Senator in the Chair shall not be excluded.”

3.4 Your Committee accordingly agreed that the quorum would comprise any three members, inclusive of the Chair.

ASSISTANCE TO THE COMMITTEE

Secretarial Assistance

4.1 Mr. Neil Jaggassar, Clerk of the Senate, was appointed to serve as Secretary to your Committee with Mrs. Katharina Gokool, Parliamentary Clerk I, as the Assistant.

Technical Advice and Assistance

4.2 At its first meeting, your Committee agreed that the services of a legal draftsman was essential to the functioning of the Committee and to this end, a request was made to the Acting Chief Parliamentary Counsel to provide same.

4.3 Your Committee also agreed that the technical and legal personnel from the Ministry of Health who worked on the legislation from its inception would be able to provide valuable insight on the rationale and purport of the Bill. Your Committee was assured by the Minister of Health that the Ministry's Technical and Legal Team was present and ready to begin work.

MEETINGS

5.1 Your Committee held a total of three (3) meetings as follows:

- Tuesday November 25, 2008
- Friday November 28, 2008
- Tuesday December 02, 2008

5.2 At all three meetings, your Committee was advised on legal and drafting issues by Mrs. Nalini Persad-Salick, Acting Assistant Chief Parliamentary Counsel and Ms. Karlene Seenath, Assistant Solicitor General of the Ministry of the Attorney General.

5.3 At the first meeting of the Committee, the Technical/Legal Team representing the Ministry of Health was headed by Ms. Bhabie Roopchand, Legal Adviser and comprised Dr. Rohit Doon, Adviser, Public Health Promotion and Communication and Ms. Annika Frit, Legal Consultant. Ms. Roopchand and Dr. Andrea Yearwood, Director, Policy Research and Planning represented the Ministry at the two subsequent meetings.

DELIBERATIONS

6.1 At its first meeting, your Committee was advised that it was not empowered to discuss the general merits and principles of the Bill, but only its details. Therefore, in keeping with its mandate, your Committee embarked upon a clause by clause examination of the Bill. Your Committee noted that the Bill contained fifty-seven (57) Clauses and identified twenty-four (24) of these Clauses for further detailed consideration. These were Clauses 4, 6 to 14, 16, 18, 19, 25, 27, 33, 40 to 44, 47, 48 and 55.

6.2 Your Committee recognized that whilst the Bill before it did not criminalize cigarette possession or smoking tobacco, several attendant activities were being criminalized. Your Committee further recognised that this novel piece of legislation had far-reaching consequences in terms of the constitutionality of some of its clauses and the significant impact it could have on the lives of citizens. As a consequence, it was agreed that advertisements would be placed in the three (3) daily newspapers soliciting comments from members of the public. This was done and submissions were received from forty-two (42) members of the public, inclusive of businessmen, corporate citizens, doctors and other stakeholders. A copy of the advertisements is at **Appendix I** and a list of those who responded to the advertisements is at **Appendix II**.

6.3 The comments/submissions received were analysed by the Technical Team from the Ministry of Health who provided your Committee with a summary of the salient points contained in these submissions and advised your Committee thereon. The summary of the analysis of the comments/submissions is at **Appendix III**.

6.4 After careful consideration of all the issues related to the existing clauses of the Bill, your Committee caused substantial amendments to be drafted. A list of these amendments is at **Appendix IV**.

6.5 Because of the extent of the amendments recommended by your Committee, for ease of reference, your Committee has taken the liberty of preparing an **Amended Bill**. This amended Bill is at **Appendix VII**.

REPORT AND RECOMMENDATIONS

7.1 Your Committee wishes to report that it has completed its deliberations and submits the list of amendments on the Bill at **Appendix IV** for its consideration.

7.2 Your Committee further recommends that the Bill be accepted by the Senate subject to the amendments listed at **Appendix IV**.

sgd.
Mrs. Hazel Ann Marie Manning
Chairman

sgd.
Mr. Jerry Narace
Member

sgd.
Dr. Emily Gaynor Dick-Forde
Member

sgd.
Ms. Cindy Devika Sharma
Member

sgd.
Ms. Dana Seetahal S.C.
Member



**SPECIAL SELECT COMMITTEE OF THE SENATE
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"THE TOBACCO CONTROL BILL 2008"**

A P P E N D I X I

**COPY OF ADVERTISEMENT PLACED IN THE
GUARDIAN, EXPRESS AND NEWSDAY
NEWSPAPERS**



Parliament of the Republic of Trinidad and Tobago

SPECIAL SELECT COMMITTEE OF THE SENATE – THE TOBACCO CONTROL BILL, 2008

The above named Committee was appointed on November 18, 2008 to consider and report to the Senate on the **Tobacco Control Bill, 2008**. The Members of the Committee are: Mrs. Hazel Manning (Chairman), Mr. Jerry Narace, Dr. Emily Gaynor Dick-Forde, Ms. Cindy Devika Sharma and Ms. Dana Seetahal, SC.

The text of the Bill is available in all public libraries and on the Parliament of Trinidad and Tobago website, www.ttparliament.org.

Members of the public are invited to make submissions on the Bill and may do so as follows:

Via Email: njaggassar@ttparliament.org

Via Mail: The Secretary
Special Select Committee of the Senate – The Tobacco Control Bill,
2008
Office of the Parliament
The Red House
Abercromby Street
PORT-OF-SPAIN

**ALL SUBMISSIONS SHOULD BE RECEIVED BY THE SECRETARY TO THE
COMMITTEE BY WEDNESDAY DECEMBER 3, 2008 AT 4 P.M.**



**SPECIAL SELECT COMMITTEE OF THE SENATE
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A P P E N D I X I I

**LIST OF MEMEBRS OF THE
PUBLIC/CORPORATE CITIZENS WHO
RESPONDED TO ADVERTISEMENTS IN THE
PRESS**

APPENDIX II

TOBACCO CONTROL BILL, 2008

LIST OF MEMBERS OF THE PUBLIC/CORPORATE CITIZENS WHO RESPONDED TO ADVERTISEMENTS IN THE PRESS

NO.	NAME OF INDIVIDUAL/ORGANISATION
1.	Robert Dumas
2.	Tony Mark
3.	Iqubal Hydal
4.	Ezekiel Sampson
5.	Steven Mawer
6.	Mukram Sirjoo
7.	Anslem Waithe
8.	Rennie Ramlal
9.	Mark Durham
10.	Compton Seaforth
11.	Alicia Joseph
12.	Judy Cato
13.	Prof. P.R. Murti
14.	Rajesh Chhita Club Prive Limited
15.	Advertising Agencies Association of Trinidad & Tobago Limited (AAATT)
16.	Karen Cadette - Trinidad & Tobago Cancer Society
17.	John Eckstein – Trinidad & Tobago Cancer Society
18.	John Bailey
19.	DJ Monteil
20.	Anesa Ahamad
21.	Andrew Balthazor
22.	Susan Hamel-Smith - Marketing & Distribution(M&D)
23.	Natasha Mustapha-Scott, Trinidad & Tobago Manufacturers' Association (TTMA)
24.	Dean Atkin- Ultimate Carnival Ltd (Tribe)
25.	Mirissa De Four
26.	Finbar Fletcher, Manager, Desperados Steel Orchestra
27.	Marie Diane Dupré
28.	Dwayne Mc Clean-Parris
29.	Jean-Pierre du Courdray – West Indian Tobacco
30.	George Laquis. M.D, FAAFP, - Trinidad & Tobago Cancer Society
31.	Malini D. Lalla – K.R. Lalla & Company for Supermarket Association of T&T
32.	Cathleen Farrel – Cancer Society of Trinidad and Tobago
33.	David Alfonso
34.	Ahmad Ghany – Ghany's Distribution and Marketing Ltd (GDM)
35.	Dugan Singh – D & J Budgetmart Limited
36.	Johnny Soong – Zen
37.	Ann Paula Bibby
38.	Shurland Taylor
39.	Jacqueline Coutain – Dufry Trinidad Limited
40.	Dr. Michelle Trotman
41.	Steven Marhue, General Manager, 51 Degrees
42.	Kabir Hussain - AURA



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A P P E N D I X I I I

**SUMMARY OF COMMENTS RECEIVED
FROM THE PUBLIC AND
RECOMMENDATIONS OF THE
MINISTRY OF HEALTH**

SUMMARY OF COMMENTS FROM PUBLIC RE: TOBACCO CONTROL BILL, 2008

Name of Person		Comment		Reccommendation by Ministry of Health
1	Robert Dumas	i	Penalties are extremely harsh.	Addressed since fines have been significantly reduced.
2	Tony Mark	i	Not in support of Bill.	MOH need to increase awareness of the objectives of Bill.
3	Iqubal Hydal	i	Alcohol be included within ambit of the Bill.	Not relevant.
4	Ezekiel Sampson	i	Extreme fines and imprisonment.	Addressed since fines have been significantly reduced.
		ii	Discrimination against citizens who smoke.	Bill seeks to protect non-smokers and will benefit smokers in the long run.
5	Steven Mawer	i	Fines too high and hence would create enforceability problems.	Addressed since fines have been significantly reduced.
		ii	Issuance of ticket as means of enforcement.	Administratively cumbersome.
6	Mukram Sirjoo	i	Supports Bill.	
7	Anslem Waithe	i	Disadvantageous to businesses since people will choose to stay home to 'lime'; inconvenient to exit public places e.g. bars, clubs, to smoke.	Not valid. Evidence from Ireland, Uruguay and other countries show that sales were not significantly different than before the law. In New York, restaurant and bar receipts went up by 8% since the ban.
		ii	Resulting decrease in sale of alcohol.	This will further support the Ministry of Health thrust for a Healthy Lifestyle.
		iii	Safety concerns since persons have to smoke outside.	Not valid.
8	Rennie Ramlal	i	Fines too steep.	Addressed since fines have been significantly reduced.
		ii	Protection for homeowners must be included in clear unambiguous language.	Addressed.
		iii	All out ban not practical and should employ smoke-free zones.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
9	Mark Durham	i	Full support to Bill.	
		ii	Concerned about whether Bill is enforceable, it should be reasonable.	Enforcement will be a priority. Bill is reasonable.
10	Compton Seaforth	i	Penalties are excessively punitive.	Addressed since fines have been significantly reduced.
		ii	Bill should include enhanced provision of support by Parliament for economically viable alternative activities eg. in India, the Government decided to provide assistance to farmers diverting areas under tobacco towards the cultivation of medicinal plants.	We do not have farmers and we have only 1 manufacturer.
		iii	Committee should evaluate the Tobacco Control legislation in Kenya, South Africa and other countries.	Was done.

11	Alicia Joseph	i	Should limit the number of places which are allowed to sell tobacco based products within a particular area and review every 3 years.	Defeats purpose of Bill.
		ii	Minimum age to smoke should be increased from 18 to 21.	Legally, a minor becomes an adult at age 18.
		iii	Health benefits and disadvantages of each ingredient product should be publicized.	This will be the responsibility of the Ministry of Health if there is evidence to show that this will have a positive impact on tobacco control.
		iv	Advertising of tobacco should be restricted to late night television and newspaper advertisements restricted to a maximum of 3 per day.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children as well as to reduce the demand for the product.
12	Judy Cato	i	Reduced penalty.	Addressed since fines have been significantly reduced.
13	Prof P.R. Murti	i	Penalty too draconian.	Addressed since fines have been significantly reduced.
14	Rajesh Chhita (for Prive)	i	Clause 8 too harsh; it should allow for smoking in partially enclosed areas but restriction for those places where more than half of the space is enclosed.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children and also reduce demand.
		ii	Not in agreement with display bans.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
15	Kenrick Attale (For Advertising Agencies Association of T&T)	i	Provisions relating to prohibition displays at retail outlets will give rise to growth of an illicit trade and criminal activities.	Not valid. Evidence shows that consumption decreases significantly when there is a comprehensive ban on advertising.
		ii	Clause 12 should be deleted because the prohibition of use of a company's registered corporate name and symbol of the manufacturer of tobacco products serves no purpose in discouraging the use of tobacco.	Addressed previously. Sponsorship is a form of advertising and should not be allowed.
		iii	There should be legislation for smoking designated zones of hotels, cafes, ...etc	Defeats purpose of Bill. Bill seeks to protect non-smokers and children and also reduce demand.
		iv	Constitutionally wrong to include one's home in legislation.	Addressed.
		v	Not in agreement with a seller not being able to display at point of sale.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children. Point of sale display is a form of advertising.
16	Karen Cadette	i	Full support to Bill.	
17	John Eckstein	i	Full support to Bill.	
18	John Bailey	i	In agreement with ban in public places.	
		ii	Not in agreement with a person's home being included in the Bill.	Addressed.
19	DJ Monteil	i	Full support to Bill.	

20	Anesa Ahamad	i	Supports Bill.	
		ii	No provision to regularly raise taxes to at least match inflation.	Need not be addressed in Bill since addressed in other legislation.
		iii	No provision for using tobacco tax revenues for the funding of local cancer research.	Agreed. NGOs to gain funding from the State.
		iv	Bill should explicitly require the Minister to establish a Tobacco Control Council to monitor tobacco use.	Disagree. A unit will be established.
21	Andrew Balthazor	i	Full support to Bill.	
		ii	Bill should include tax incentives to private donors to give cancer support groups.	Not relevant.
		iii	Include legislation to prevent cancer NGOs from being used for the profit of those that operate them.	Not relevant.
22	Susan Hamel-Smith	i	Bill impractical and will be difficult to implement.	Not valid.
		ii	Penalties too harsh.	Addressed since fines have been significantly reduced.
		iii	Clause 24(2) vague -"such information", "reasonable and necessary precautions" to be clarified.	Will look into this.
		iv	Clause 28 ban on sale of packs of 10 sticks of cigarettes will lead to illicit trade.	Addressed. 10 unit packs to be included for 2 years.
		v	Not in agreement with Clause 33; retailers have a legitimate right to display products they sell.	Not valid.
23	Natasha Mustapha-Scott (for T&T Manufacturer's Association)	i	Clause 20(2) should be deleted and words "light", "mild", "low tar content", etc be allowed.	Defeats purpose of Bill.
		ii	Unclear whether products for export are required to meet the requirements of sections 22 and 23.	Products for export are required to meet the requirements of the country to which same is being exported.
		iii	Clause 24 should be deleted since manufacturer's have the right to select independent technologies for tamper proof packaging and labelling.	Defeats purpose of Bill.
		iv	Clause 28 ban on sale of packs of 10 sticks of cigarettes will lead to illicit trade.	Addressed. 10 unit packs to be included for 2 years.
		v	Ban of displays is unconstitutional, breaches manufacturer's right to use its intellectual property.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		vi	Clause 9 is vague.	Addressed.
		vii	Monthly reporting is staggering.	Addressed.
		viii	Clause 34 be amended so that sales through the internet are allowed to wholesalers, distributors where only adults have access.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.

24	Dean Ackin (for TRIBE)	i	Not in agreement with restrictions on tobacco sponsorship.	Addressed previously. Sponsorship is a form of advertising and should not be allowed.
		ii	Smoking should be allowed at outdoor events in a clearly designated area.	Designated areas defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		iii	For events within enclosed spaces, designated smoking areas can be enclosed and clearly identified.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		iv	Smoking to be allowed in any open area, pation, rooftop etc.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		v	In partially public enclosed spaces, smoking be allowed in partially enclosed places and restricted in substantially enclosed spaces.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		vi	At events, want to be able to display cigarettes which are available for patrons.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
25	Marissa De Four	i	Penalties are harsh.	Addressed since fines have been significantly reduced.
		ii	Definition of "workplace" should not include a person's home.	Addressed.
		iii	Where manufacturer denied a licence under Clause 7(3), what remedies are in place for resulting job losses?	Not valid.
		iv	Not in agreement with ban on sale of packs of 10 sticks of cigarettes.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		v	Not in agreement with Clause 54.	Compromises were made.
26	Finbar Fletcher (for Desperadoes Steel Orchestra)	i	Clause 12 should be deleted.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		ii	Clause 10 be amended to allow for the continued provision of support to community development by WITCO and the use of its legal name and logo in so doing.	Addressed previously, not in agreement.
		iii	Bill erodes constitutional right to freedom of association.	Not valid. 3/5 majority will be sought.

27	Marie Diane Dupre	i	Bill seeks to ban tobacco completely.	Not valid. Bill seeks to protect non-smokers and children.
		ii	Smokers are taxpayers, citizens and have rights including smoking and drinking.	Bill seeks to protect non-smokers and children.
		iii	How does sponsorship of a group or event, by a tobacco company encourage the use of tobacco?	Addressed.
		iv	Bill seeks to penalize law-abiding citizens who smoke.	Not valid. Bill seeks to protect non-smokers and children.
		v	Clause 12 seeks to impose a limited prohibition on tobacco sponsorship and advertising.	This is the intention.
		vi	Are government owned gas stations going to hide cigarettes under the counter?	Yes.
		vii	Will public awareness and education cessation programmes also make public aware of dangers of alcohol?	Yes.
		viii	Are streets, roads, highways, lanes, paths, pavements etc, included in public place?	No.
28	Dwayne Mc. Clean-Parris	i	Prejudicial to smokers because no enforcement of noxious emissions of motor vehicle exhaust which is more harmful.	Not valid.
		ii	Will stop smoking cigarettes because of fines and smoke marijuana instead.	Not valid.
		iii	Not practical to enforce non-smoking in bars.	Disagree. Enforcement will be a priority.
		iv	Should not be a ban in tertiary level institutions.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		v	Should pass the Breathalyser Bill now to enforce my right to protection from persons driving under the influence of alcohol.	Not valid.
		vi	OSH Act not enforced.	Not valid.
		vii	Labels on cigarette packages already conform with sections 16 (1) and (2)- voluntary standard and hence what is its purpose?	Not sufficient.
		viii	Not in agreement with section 48 which gives inspectors the power to enter his home.	Addressed.
		ix	Bill is to harass smokers and criminalize them whereas no enforcement for drinking and driving.	Not valid.
		x	Where are the studies that conclusively prove that second hand cigarette smoke is harmful.	Not valid. There are many such studies, in fact, the FCTC is an evidence based Treaty.
		xi	Bill not enforceable eg Carnival Monday and Tuesday.	Not valid. Open spaces not included in Bill.

29	Jean Pierre du Courdray (for Witco)	i	Legislation is over-regulating the tobacco industry.	Addressed previously.
30	George Laquis	i	Full support to Bill.	
31	KR Lalla & Co (for Supermarket Associatio of T&T)	i	Bill seeks to prevent tobacco use.	Not valid. Bill seeks to protect non-smokers and children.
		ii	Heavy penalties including incarceration.	Addressed since fines have been significantly reduced.
		iii	Requirements not defined in Clause 56.	Addressed.
		iv	Clause 7(8) could lead to an outright denial of licence by the Minister.	Not valid.
		v	Clause 7 (9) - Licence Fees excessive.	Not valid.
		vi	Not in agreement with ban on public places; should have designated places for smokers.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		vii	Clause 8(3) - 'any public place that provides servcies primarily to children or youth under the age of 18' is ambiguous.	Addressed.
		viii	Clarification of whether playground includes recreational ground or community centre or park.	Addressed.
		ix	Clause 9 too ambiguous.	Addressed.
		x	Clause 24(1) 'best available technology' is subjective and vague term.	Not valid.
		xi	Clause 28 (1) - omission of packets of 10 promotes illicit trade.	Addressed. 10 unit packs to be included for 2 years.
		xii	Not in agreement with prohibition of display.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		xiii	Fines excessive.	Addressed since fines have been significantly reduced.
32	Cathleen Farrell (for Cancer Society of T&T)	i	Full support to Bill.	
33	David Alfonso	i	Full support to Bill.	
34	Ahmad Ghany (for Ghany's Distribtuion and Marketing LTD.)	i	Clause 7 requirements for licences is time consuming.	Disagree.
		ii	Clarify 'wholesaler' in Bill and to detail the minumum transaction which would define the wholesaler.	Agreed. Wholesaler now defined to mean a 'person who sells in large quantities to be retailed by others'.
		iii	Clause 28 which eliminated packs of 10 sticks of cigarettes for sale does not deter youths.	Addressed. 10 unit packs to be included for 2 years.
		iv	Not in agreement with Clause 33; wholesaler has right to display products for sale and will lead to illicit trade.	Not valid.

35	Dugan Singh (for DJ Budgetmart Ltd.)	i	Clause 7 requirements for a licence is highly time consuming process.	Disagree.
		ii	Clarify 'wholesaler' in Bill and to detail the minimum transaction which would define the wholesaler.	Agreed. Wholesaler now defined to mean a 'person who sells in large quantities to be retailed by others'.
		iii	Clause 28 which eliminated packs of 10 sticks of cigarettes for sale does not deter youths.	Addressed. 10 unit packs to be included for 2 years.
		iv	Not in agreement with Clause 33; wholesaler has right to display products for sale and will lead to illicit trade.	Not valid.
36	Robert Charles (for Zen)	i	Not in agreement with ban on smoking in public places, balance should be sought..	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		ii	Restriction in partly enclosed public spaces should be places that are substantially enclosed rather.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		iii	Employment of smokers jeopardized since employers will prefer to hire non-smokers.	Not valid.
		iv	Not in support of ban on display of products.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
		v	No definition of 'club' in Bill.	Not necessary.
37	Ann Paula Bibby (for Cancer Society of T&T)	i	Full support to Bill.	
38	Shurland Taylor	i	Streets and Transport hubs must be covered.	Transport hubs are included in Bill.
		ii	Penalties for use of illegal drugs should be increased and standardized to establish a balance between them and tobacco.	Valid but outside ambit of Committee's mandate.
39	Jacqueline Coutain (for Dufry Trinidad Ltd.)	i	Penalties unreasonable.	Addressed since fines have been significantly reduced.
		ii	Clause 7 requirements for licences is time consuming.	Disagree.
		iii	Not in agreement with Clause 28 which eliminated packs of 10 sticks of cigarettes for sale.	Addressed. 10 unit packs to be included for 2 years.
		iv	Not in agreement with Clause 33 since wholesaler has right to display products for sale.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
40	Michelle Trotman	i	Fully supports Bill.	
41	Steven Mathue (for 51 Degrees)	i	Not in agreement with ban on smoking in public places.	Defeats purpose of Bill. Bill seeks to protect non-smokers and children.
42	Kabir Hussain (for Aura)	i	"enclosed space" needs to be defined.	Already defined in Bill.
		ii	Not in agreement with Clause 33 should be able to display products for sale at adult establishments.	Not valid.



**SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED
"THE TOBACCO CONTROL BILL 2008"**

A P P E N D I X I V

**LIST OF RECOMMENDED
AMENDMENTS**

APPENDIX IV

THE TOBACCO CONTROL BILL, 2008

List of Amendments recommended by the Special Select Committee

First Column

Second Column

Clause

Extent of Amendments

4

Insert in the correct alphabetical order, the following definitions:

“ “authorized officer” means an officer appointed under section 6 and includes a police officer, customs officer or public health officer;

“child” means any person under the age of eighteen;”

Delete the word “ministry” and substitute the word “Ministry”;

Delete the definition of “workplace” and substitute the following:

“workplace” means any enclosed place in which persons perform duties of employment or work and includes private offices, common areas, and any other area which generally is used during the course of employment or work but shall not include private residences except to the extent that they are used for commercial purposes however, an enclosed workplace is a partially or fully completed building structure, that is separated from the outdoors.”

5

Delete the words “The Ministry shall be responsible for” and substitute the words “The Minister shall establish a unit which shall be responsible for”.

6

Delete the words “officers authorized” and substitute the words

First Column

Second Column

Clause

Extent of Amendments

7	<p>“authorized officers”</p> <p>Delete the words “six months” and substitute the words “nine months”</p> <p>In sub-clause (6), delete the words “with responsibility for trade”;</p> <p>Delete sub-clause (13) and substitute the following:</p> <p>“(13) A person who contravenes this section commits an offence and is liable:</p> <ul style="list-style-type: none">(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment” <p>In sub-clause (14), delete the word “minister” and substitute the word “Minister”</p>
8	<p>Delete sub-clause (1)</p> <p>In sub-clause (3), delete all the words occurring after the word “any” and substitute the words “outdoor public place that caters primarily to children, such as children’s playgrounds, amusement parks and video arcades.”.</p> <p>Delete sub-clause (4).</p> <p>Delete sub-clause (8).</p> <p>In sub-clause (9), insert after the words “ten thousand dollars” the</p>

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words “or two years imprisonment”.

9

Delete clause 9

10

Delete clause 10

11

In sub-clause (2)(c), delete the words “young person” and substitute the word “children”;

In sub-clause (3), delete the words “young person” and substitute the words “a child”

12

In sub-clause (1), delete the words “Tobacco sponsorships” where they first appear and substitute the words “Subject to section 11, tobacco sponsorships”.

Delete sub-clause (2) and substitute the following:

“(2) A person who engages in any activity prohibited under section (1) commits an offence and is liable:

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

13

In sub-clause (1), insert after the words “depiction of a tobacco product” the words “, except where the person held the intellectual property rights to that product prior to the commencement of this Act.”

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- Delete sub-clause (3) and substitute the following:
- “(3) A person who contravenes subsection (1) commits an offence and is liable:
- (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
 - (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

14 Delete sub-clause (2) and substitute the following:

“(2) A person who contravenes subsection (1) commits and offence and is liable:

 - (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
 - (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

15 Delete sub-clause (3) and substitute the following:

“(3) A person who contravenes this section commits an offence and is liable:

 - (c) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
 - (d) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

16 Delete this clause.

17 Delete sub-clause (3) and substitute the following:

“(3) A person who contravenes subsection (1) commits an offence and is liable:

 - (a) on summary conviction, to a fine of one hundred

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thousand dollars or six months imprisonment; or
(b) on indictment, to a fine of five hundred thousand
dollars or one year imprisonment.”.

18 Delete the word “unattributed” and substituted the words
“attributed”.

Delete sub-clause (4) and substitute the following:

“(4) A person who contravenes this section commits an
offence and is liable:

(a) on summary conviction, to a fine of one hundred
thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand
dollars or one year imprisonment.”.

19 Delete sub-clause (3) and substitute the following:

“(3) A person who fails to comply with this section commits
an offence and is liable:

(a) on summary conviction, to a fine of one hundred
thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand
dollars or one year imprisonment.”.

Delete sub-clause (3) and substitute the following:

“(3) A person who contravenes this section commits
an offence and is liable:

20

(a) on summary conviction, to a fine of one hundred
thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand
dollars or one year imprisonment.”.

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- 22 Delete sub-clause (2) and substitute the following:
“(2) A person who contravenes this section commits an offence and is liable:
(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.
- 23 Delete sub-clause (3) and substitute the following:
“(3) A person who contravenes this section commits an offence and is liable:
(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.
- 24 Delete sub-clause (3) and substitute the following:
“(3) A person who contravenes this section commits an offence and is liable:
(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.
- 25 Delete this clause and substitute the following:
“25. The information printed on a tobacco product shall be in English only.”.
- 27 Delete sub-clause (3) and substitute the following:
“(3) A person who contravenes this section commits an offence and is liable:
(a) on summary conviction, to a fine of one hundred

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thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

28

In sub-clause (1) delete the word “twenty” and substitute the word “ten”.

Insert the following sub-clause:

“(4) Subsection (1) expires two years from the date of the proclamation of this Act.”

30

Delete sub-clause (3) and substitute the following:

“(3) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of:

(a) one hundred thousand dollars or three months imprisonment for the first offence;

(b) two hundred thousand dollars or six months imprisonment for the second offence; and

(c) three hundred thousand dollars or nine months imprisonment or the third offence.”

31

Delete sub-clause (2) and substitute the following:

“(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of:

(a) one hundred thousand dollars or three months imprisonment for the first offence;

(b) two hundred thousand dollars or six months imprisonment for the second offence; and

(c) three hundred thousand dollars or nine months

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- imprisonment or the third offence.”
- 32 Delete sub-clause (2) and substitute the following:
“(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of:
(a) one hundred thousand dollars or three months imprisonment for the first offence;
(b) two hundred thousand dollars or six months imprisonment for the second offence; and
(c) three hundred thousand dollars or nine months imprisonment or the third offence.”
- 33 In sub-clause (1) insert after the words “incidentally” “or accidentally”.
- Delete sub-clause (2) and substitute the following:
“(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of:
(a) one hundred thousand dollars or three months imprisonment for the first offence;
(b) two hundred thousand dollars or six months imprisonment for the second offence; and
(c) three hundred thousand dollars or nine months imprisonment or the third offence.”
- 34 Delete sub-clause (3) and substitute the following:
“(3) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of:
(a) one hundred thousand dollars or three months imprisonment

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- for the first offence;
- (b) two hundred thousand dollars or six months imprisonment for the second offence; and
- (c) three hundred thousand dollars or nine months imprisonment or the third offence.”
- 35 Delete sub-clause (2) and substitute the following:
“(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of:
(a) one hundred thousand dollars or three months imprisonment for the first offence;
(b) two hundred thousand dollars or six months imprisonment for the second offence; and
(c) three hundred thousand dollars or nine months imprisonment or the third offence.”
- 36 Delete sub-clauses (1) and (2) and substitute the following:
“(1) No person shall:
(a) import or manufacture; or
(b) sell, display for sale or [distribute/]supply any sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products.

(2) A person who contravenes subsection (1)(a) commits an offence and is liable:
(i) on summary conviction to a fine of one hundred thousand dollars and six months imprisonment; or

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(ii) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

(3) A person who contravenes subsection (1)(b) commits an offence and is liable:

(i) on summary conviction to a fine of ten thousand dollars and six months imprisonment; or

(ii) on indictment, to a fine of one hundred thousand dollars or one year imprisonment.”.

40- 46

Delete Clauses 40-46 and substitute the following:

“Information
required in
reports

40. (1) Every manufacturer and importer of tobacco products shall submit to the Minister on a quarterly basis reports containing the information required under this Act.

(2) Quarterly reports shall include information on:

- (a) import and export;
- (b) business sales, marketing and distribution;
- (c) new products or brands;
- (d) constituents, additives, and of toxic constituents and additives in smoke,

expressed in their individual concentrations

and as a ratio to nicotine; and

(e) product packaging and labeling,
of all tobacco products.

(3) Reports shall be made on the basis of products prepared and tested in accordance with the methods prescribed in Regulations.

(4) Reports shall be submitted in the form and manner

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as prescribed by Regulations made under this Act.

(5) Reports required under this Act shall be public information.

- 47 Delete this clause and substitute the following:
“47. No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or deny that employee a benefit on the grounds that the employee testifies against an employer in an action brought under this Act.”
- 48 In sub-clause (1)(g), insert after the words “reasonably believes” the word “bulk”
- 50 Delete this clause.
- 51 Delete this clause.
- 52 In sub-clause (1), delete paragraph (d).
- 56 Insert after the words “Regulations” the words “subject to negative resolution of Parliament”
- 57 Delete this clause and substitute the following:
“57. A person who contravenes a provision of this Act for which there is no prescribed penalty commits an offence and is liable:
(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or
(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.”.

December 04, 2008



**SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED
"THE TOBACCO CONTROL BILL 2008"**

A P P E N D I X V

MINUTES

APPENDIX V

SPECIAL SELECT COMMITTEE OF THE SENATE APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED “THE TOBACCO CONTROL BILL, 2008”

MINUTES OF THE FIRST MEETING HELD ON TUESDAY NOVEMBER 25, 2008 AT 11:00 A.M. IN COMMITTEE ROOM NO. 2, OFFICE OF THE PARLIAMENT, THE RED HOUSE, ABERCROMBY STREET, PORT OF SPAIN

PRESENT

Mr. Danny Montano	-	President of the Senate
Mrs. Hazel Manning	-	Member
Mr. Jerry Narace	-	Member
Dr. Emily Gaynor Dick-Forde	-	Member
Ms. Cindy Devika Sharma	-	Member
Ms. Dana Seetahal, SC	-	Member
Mr. Neil Jaggassar	-	Secretary
Mrs. Katharina Gokool	-	Assistant Secretary

ALSO PRESENT

Mrs. Nalini Persad-Salick	-	Assistant Chief Parliamentary Counsel (Ag.) Office of the Chief Parliamentary Counsel Ministry of the Attorney General
Ms. Karlene Seenath	-	Assistant Solicitor General Solicitor General's Department Ministry of the Attorney General
Ms. Bhabie Roopchand	-	Legal Adviser Ministry of Health
Ms. Annika Fritz	-	Legal Consultant Ministry of Health
Dr. Rohit Doon	-	Adviser, Health Promotion & Communication and Public Health Ministry of Health

INTRODUCTION

- 1.0 The President of the Senate called the meeting to order at 11:25 a.m. and welcomed members.

- 1.1 The President explained that his presence at the meeting was simply to facilitate the election of a Chairman in accordance with Standing Order 70(3) since a Chairman had not been named in the Order of the Senate when the Committee was appointed.

ELECTION OF CHAIRMAN

- 2.0 The President invited nominations for the post of Chairman.
- 2.1 Mr. Jerry Narace nominated Mrs. Hazel Manning for the post of Chairman and the nomination was seconded by Dr. Emily Gaynor Dick-Forde.
- 2.2 There were no further nominations and the President declared Mrs. Hazel Manning the duly elected Chairman of the Committee. He then wished the members success in their deliberations and invited Mrs. Manning to take the chair. Mrs. Manning thanked the President.
- 2.3 The President left the meeting.
- 2.4 The Chairman thanked Members for electing her Chairman. She advised that the aim of this Committee would be to ensure that the Bill was dealt with as expeditiously as possible in order to get it back on the Senate's Agenda before the end of the year.

QUORUM

- 3.0 The Chairman indicated that the first order of business was the determination of a quorum. She further indicated that the usual quorum for a Committee such as this was three (3) members, inclusive of the chair and cited Standing Order 73(5) as the authority for same.
- 3.1 The Chairman enquired whether any member had any objections to three (3) members inclusive of the Chair being the quorum.
- 3.2 There were no objections. The Committee's quorum was therefore fixed at three (3) members, inclusive of the Chair.

TERMS OF REFERENCE

- 4.0 The Chairman informed members that the terms of reference of the Committee was to consider and report on a Bill entitled "the Tobacco Control Bill, 2008", and to report back to the Senate.
- 4.1 She further informed members that the Committee was not empowered to discuss the general merits and principles of the Bill, but only its details and that:

- (i) The Committee had the power to make amendments to the Bill as the Committee sees fit; and
- (ii) The amendments could include new clauses and new schedules, but they must be relevant to the Bill.

4.2 The Chairman invited members to begin discussion of the Bill.

DISCUSSION ON CLAUSES OF THE BILL

5.0 Ms. Seetahal informed members that she had some specific areas of concern in terms of the constitutionality of some of the clauses and disproportionality and inconsistency in terms of the penalties in other clauses. (*See Verbatim Notes*)

5.1 Ms. Seetahal advised that the Committee should look at the WHO Convention since the purpose of the Bill was to implement the requirements of the Convention. She stated that the first thing in the Convention speaks about “public awareness” and in her view the Bill did not focus on that as it should. She cited clause 55 at page 27 which deals with evidence-based programmes to inform the public and indicated that what was really needed to accomplish this was some sort of commission, permanent group or organization whose business it will be to do just that. (*See Verbatim Notes*)

5.2 Ms. Seetahal stated that whilst the Bill did not criminalize smoking or the possession of tobacco products, it was a recognition, in her opinion, that smoking cigarettes or use of tobacco was considered less dangerous than cocaine, marijuana, heroin and even alcohol. However, the penalties prescribed were disproportionately more serious than that for drug trafficking. Further, most of the offences in the Bill were indictable because of the fines recommended, which meant that there could be no summary trial before a magistrate. She indicated that the first such example could be found in clause 12 which deals with sponsorship. (*See Verbatim Notes*)

5.3 Ms. Seetahal then listed her main areas of concern in chronological order, which were:

- Clause 4 - Definition of **“workplace”** – should not include private residences.
- Clause 6 - This clause deals with the persons authorized to carry out inspections. There is no requirement for these persons to have a certificate and in a sense these persons will have more powers than the average police officer.
- Clause 8 - In sub-clause (2) (i) - Private members’ clubs should be exempted.
In sub-clause (2) (0) - **“facilities that employ paid personnel”** is not clear enough, it is too wide.
In sub-clause (3) - There is need to specify what is meant by **“any place that provides services primarily to children under the age of 18”**. It is too wide.
Sub-clause (4) is not necessary.

Sub-clause (9) – the penalty, which is a fine of ten thousand dollars is inconsistent with the penalty for a sponsor which is one million dollars. In addition, there should be an alternative to the fine, possibly a fine of ten thousand dollars **or two (2) years imprisonment**.

- Clause 9 - This clause is too wide, it shifts the whole burden of proof. Needs to be clarified.
- Clause 10 - This should be revisited. It is not necessary. Clause 11 would be enough since promoting the product by means of advertisement is being banned.
- Clause 11 - Sub-clause (2) (c) – There is need to define what is meant by **“young people”**.
- Clause 12 - Sub-clause (1) is an extreme provision and it is also inconsistent with clause 11 (2).
- Clause 13 - Sub-clause (1) needs to be looked at. It appears to offend “Freedom of Expression”.
- Clause 14 - Sub-clause (1) also needs to be reconsidered.
- Clause 16 - Sub-clause (1) needs to be reconsidered.
- Clause 18 - Sub-clause (2) was struck down in the Canadian Court.
- Clause 19 - Sub-clauses (1) and (2) were also struck down in the Canadian Court.
- Clause 25 - Should be revisited. It suggests that labelling should not be in any other language but English.
- Clause 27 - Could be possibly seen as curtailing “Freedom of Expression”.
- Clause 33 - Too extreme.
- Clause 40 - Provision is extreme and irrational.
- Clauses 41 to 44 Need to be looked at and make them work together.
- Clause 47 - Clarification needed in what is meant by “retaliate”? How do you know it will be retaliation? This is a creation of an offence and the

generic penalty at clause 57 is five hundred thousand dollars which is a great deal of money. Needs to be tidied up.

- Clause 48 - Sub-clause (1) (g) is totally out of line. It gives too much power to those authorized officers.
- Clause 55 - There should be greater focus on the whole education aspect. ***(See Verbatim Notes for full details).***

5.4 Ms. Sharma indicated that she had a concern with Clause 7 in terms of the period for licensing which in the Bill is six months. She was of the view that this period should be lengthened and something should be included in the educational component. She suggested a period of two years, which will allow businesses time to establish facilities with external seating. ***(See Verbatim Notes)***

5.5 The Chairman summed up the deliberations of the Committee and requested the Secretariat to outline the areas of concern that were raised. She also requested that the technocrats from the Ministry of Health supply the Committee with research material before the next meeting. Ms. Seetahal promised to forward some documents and analysis for the Committee to look at. ***(See Verbatim Notes)***

ADJOURNMENT

6.0 There was discussion on the next possible day for the Committee to meet.

6.1 In light of the impending prorogation of Parliament there was also discussion on how the work of the Committee could be saved in the event that its deliberations cannot be finalized before this happened.

6.2 The Secretary advised that the work could be saved by submitting a report to the Senate requesting same before Parliament is prorogued.

6.3 The Committee agreed that the next meeting will be held on Friday November 28, 2008 at 11:00 a.m.

6.4 The adjournment was taken at 12:35 p.m.

We certify that the above Minutes are true and correct.

.....
Chairman

.....
Secretary

**SPECIAL SELECT COMMITTEE OF THE SENATE APPOINTED TO CONSIDER
AND REPORT ON A BILL ENTITLED “THE TOBACCO CONTROL BILL, 2008”**

**MINUTES OF THE SECOND MEETING HELD ON FRIDAY
NOVEMBER 28, 2008 AT 11:00 A.M. IN COMMITTEE ROOM NO. 2,
OFFICE OF THE PARLIAMENT, THE RED HOUSE, ABERCROMBY
STREET, PORT OF SPAIN**

PRESENT

Mrs. Hazel Manning	-	Chairman
Mr. Jerry Narace	-	Member
Dr. Emily Gaynor Dick-Forde	-	Member
Ms. Cindy Devika Sharma	-	Member
Ms. Dana Seetahal, S.C.	-	Member
Mr. Neil Jaggassar	-	Secretary
Mrs. Katharina Gokool	-	Assistant Secretary

ALSO PRESENT

Mrs. Nalini Persad-Salick	-	Assistant Chief Parliamentary Counsel (Ag.) Office of the Chief Parliamentary Counsel Ministry of the Attorney General
Ms. Karlene Seenath	-	Assistant Solicitor General Solicitor General’s Department Ministry of the Attorney General
Ms. Bhabie Roopchand	-	Legal Adviser Ministry of Health
Ms. Andrea Yearwood	-	Director Policy Research and Planning Ministry of Health

INTRODUCTION

- 1.0 The Chairman called the Meeting to order at 11.05 am and welcomed Members.
- 1.1 The Chairman indicated that the order of business for this morning’s meeting will be changed slightly to deal with correspondence received before dealing with the Minutes of the First Meeting. The Secretary was called upon to give an update on the correspondence received.

CORRESPONDENCE

- 2.0 The Secretary informed members that he had received correspondence from the Managing Director of West Indian Tobacco Company Limited (WITCO) requesting an audience with the Committee to voice the company's concerns. This was forwarded to the Chairman who discussed the request with Ministers Narace and Dick-Forde and on instructions from the Chair, he discussed it with Senators Sharma and Seetahal S.C. There was consensus that the company be written to informing them to submit their concerns in writing, and if the need arises, they will be given an opportunity to appear before the Committee. This was done.
- 2.1 The Secretary advised that correspondence was received from an organization by the name of Havana Hut Cigars Limited which outlined their concerns and from Mr. Ballyram Maharaj, President of the Supermarket Association of Trinidad and Tobago requesting a meeting with the Committee. The Committee agreed that a letter similar to the one that was sent to WITCO should be sent to Mr. Maharaj.
- 2.2 Ms. Seetahal S.C. submitted comments from Senators Helen Drayton and Corinne Baptiste-Mc Knight which she indicated were already submitted to the Ministry of Health. Copies were made and circulated to Members.
- 2.3 Mr. Narace submitted a document entitled **“Report of the Ministry of Health on issues raised at the Select Committee of Parliament”** which contained responses to the issues raised at the First Meeting of the Committee. This was also circulated.

CONFIRMATION OF MINUTES

- 3.0 The Chairman referred to the Minutes of the First Meeting and enquired whether there were any corrections and/or omissions.
- 3.1 Ms. Sharma advised that at 5.2 the word “disproportionately” was incorrectly spelt as “disporpationately” and moved that it be corrected.
- 3.2 Ms. Seetahal S.C. requested that the words **“in her view the Bill did not focus on that as it should”** in lines 3 and 4 be deleted and the words “that it should be a paramount consideration in the Legislation” be inserted in its place. The Committee agreed.
- 3.3 The corrections/amendments were accepted and the Chairman asked that the Minutes be confirmed and seconded.

- 3.4 Ms. Sharma moved that the Minutes of the First Meeting be confirmed and this was seconded by Ms. Seetahal S.C.
- 3.5 The Minutes of the First Meeting were duly confirmed and seconded and the Chairman referred to the next agenda item –“Matters arising out of the Minutes”

MATTERS ARISING OUT OF THE MINUTES

- 4.0 The Chairman enquired at what point will the Committee stop receiving comments and the Secretary advised that this was an issue for the Committee to decide.
- 4.1 Mr. Narace informed the Committee that he and officials from the Ministry had met with representatives of WITCO, the Cancer Society and other Stakeholders and suggested Wednesday December 03, 2008 as the final day for receiving comments from the Public. (See Verbatim Notes)
- 4.2 Ms. Seetahal S.C. was of the view that if the Bill become law, it was going to cause significant changes in the lifestyle of the citizens of Trinidad and Tobago and as is normally done with such legislation, the Bill should have been published and circulated for public comment. She felt that a policy document should have been published as a Green Paper and then a White Paper developed and there should have been public consultation on the matter. (See Verbatim Notes)
- 4.3 Ms. Roopchand, Legal Adviser, Ministry of Health informed the Committee that there was no Green Paper or White Paper, however there was public consultation and comments were received from members of the Public. She further stated that the Bill was drafted based on the WHO Framework Convention on Tobacco Control, which was signed in 2003 and ratified in 2004 and on several occasions, the Minister of Health signaled the intention of the Ministry to bring legislation to the Parliament. (See Verbatim Notes).
- 4.4 Ms. Seetahal S.C. inquired whether the Bill was published for the Public to see and make comments and Ms. Roopchand advised that it was not. Ms. Seetahal S.C. cautioned that in the absence of a Green Paper or White Paper with the Bill not being published for the Public to see and even though the idea behind the Legislation was a good, one had to be careful in terms of the significant impact on the lives of citizens. She advised the Committee that whilst the legislation was not criminalizing cigarette possession or smoking tobacco, there were several attendant activities that were being criminalized and in addition there were very severe penalties. In light of this, she felt that the deadline suggested for receiving comments was too short. She was of the view that Friday December 05, 2008 was a reasonable deadline. (See Verbatim Notes).

- 4.5 There were further discussions on the matter and it was agreed that in addition to an immediate Press release, the Office of the Parliament would place advertisements over the weekend in the three main Newspapers soliciting comments from the public on the Bill. The advertisements would indicate where the Bill could be obtained, to whom to send the comments and stipulate that the deadline for receiving comments was 4.00 p.m. on Wednesday December 03, 2008. (See Verbatim Notes).
- 4.6 The chairman referred to paragraph 5.1 of the Minutes and enquired what was the response of the Ministry of Health to the particular issue raised therein. Mr. Narace advised that the response was lifted at Issue #3 in the document referred to at paragraph 2.3 which was that the Ministry intended to establish a dedicated unit to handle its commitments under this Act and the Framework Convention on Tobacco.
- 4.7 Ms. Seetahal S.C. indicated that the Preamble to the Bill spoke about, among other things, the creation of a National Co-ordinated institution for tobacco control, but nowhere in the Bill was there any provision for such an institution. She contended that if it was not put in the Legislation, it will take time to get done, which could result in lack of enforcement. There was a prolonged discussion on the pros and cons of creating a Tobacco Commission which resulted in Mr. Narace calling for a **“Division”** on whether there should be the creation of a “Commission” or the establishment and maintenance of a dedicated unit as proposed by the Ministry of Health. Mr. Narace and Dr. Dick-Forde voted in favour of the creation of a dedicated Unit but Ms. Seetahal S.C. did not vote, state that she agreed with the creation of a unit, but was disagreeing with not having a Commission which could result in the other provisions of the Act not being enforced. (See Verbatim Notes).
- 4.8 Ms. Sharma agreed with the creation of a dedicated Unit, but felt that the powers of the Unit should be stated more explicitly. She indicated that both Ms. Seetahal S.C. and herself agreed with the creation of such a unit, but as to the setting up of a Commission there should be a compromise. Dr. Dick-Forde suggested that since the problem was with enforcement of the Legislation and since that provision was in the Bill before it was removed by the CPC, maybe it could be put back in. Mr. Narace agreed that it would be included in the proposed amendments to the Bill. (See Verbatim Notes)
- 4.9 The chairman referred to paragraph 5.2 of the Minutes and Mr. Narace indicated that this was dealt with in Issue No.4 of the response of the Ministry of Health. He further indicated that all fines of 1 million will be reduced to \$500,000.00 and offences will be tried summarily or indictably. Ms. Seetahal S.C. advised that there should also be alternatives to the fines. The Committee agreed that this would be looked at. (See Verbatim Notes)

- 4.10 The Committee agreed that the definition of **“workplace”** should be amended. Ms. Seetahal S.C. referred to clause 6 which dealt with inspections and Mr. Narace indicated that the technocrats had agreed that the designated officers should be Police Officers, Customs Officers, Trade Inspectors and Public Health Inspectors.
- 4.11 Ms. Seetahal S.C. referred to clause 48 (1) (g) and asked how could power be given to search for tobacco when tobacco was not illegal? The Legal adviser, Ministry of Health stated that Clause 55 would be amended to include bulk. (See Verbatim Notes)
- 4.12 There was discussion on clause 8 on the issue of Private Members’ Clubs and whether they should be exempted. Mr. Narace indicated that the Ministry’s position was that they should not be exempted and he was holding firm to that. Ms. Seetahal S.C. suggested that the technocrats look at Sections 12 and 13 (a) and (b) of the Smoke Free Environment Act 1990 of New Zealand and how they dealt with that issue. Mr. Narace stated that they will look at it. (See Verbatim Notes)
- 4.13 The Chairman referred to the Clause that dealt with the employment of paid personnel and indicated that this was consistent with the definition of **“workplace”** which required that all workplaces must be smoke free. She indicated that this provision would be retained.
- 4.14 The Chairman advised that Sub-Clause 3 dealing with Children and any place that provides services primarily to children under the age of 18 was too wide and can lead to some degree of ambiguity. It was agreed that this would be amended. Sub-clause 4 was deemed not necessary. Sub clause 9 does not carry an alternative term of imprisonment to the fine and therefore the words **“or two years imprisonment”** would be inserted at the end. (See Verbatim Notes)
- 4.15 The committee agreed to amend Clause 9 and to delete clause 10 as it was not necessary and carried an onerous responsibility on the state. (See Verbatim Notes)
- 4.16 The chairman referred to clause 11 and indicated that the Ministry’s response proposed that the words **“young persons”** be replaced by the word **“children”** and to define **“children”** to mean persons 18 years and under. Ms. Seetahal S.C. suggested that what should be stated is **“persons under the age of 18”**
- 4.17 Mr. Narace indicated that the Ministry of Health agreed to have Clause 13 redrafted to allow the Tobacco Company to use its name and 13 (3) would be amended to include two alternatives. The Ministry also agreed that clauses 16, 25, 28, 33, 40 and 47 would be amended. In addition, the technocrats would also revisit clauses 19, 36, 41 to 44, 48 and 55. (See Verbatim Notes)

ADJOURNMENT

- 5.1 After some discussion on a possible day for the next meeting, it was agreed that it should be Thursday December 04, 2008 at 1.30 p.m. since the cut off date for receipt of submissions was December 03, 2008.
- 5.2 The meeting was adjourned to Thursday December 04, 2008 at 1. 30 p.m.
- 5.3 The adjournment was taken at 12:39 p.m.

We certify that the above Minutes are true and correct.

.....
Chairman

.....
Secretary

**SPECIAL SELECT COMMITTEE OF THE SENATE APPOINTED TO CONSIDER
AND REPORT ON A BILL ENTITLED “THE TOBACCO CONTROL BILL, 2008”**

**MINUTES OF THE THIRD MEETING HELD ON FRIDAY
DECEMBER 04, 2008 AT 1:35 P.M. IN THE PARLIAMENT CHAMBER,
OFFICE OF THE PARLIAMENT, THE RED HOUSE, ABERCROMBY
STREET, PORT OF SPAIN**

PRESENT

Mrs. Hazel Manning	-	Chairman
Dr. Emily Gaynor Dick-Forde	-	Member
Ms. Cindy Devika Sharma	-	Member
Mr. Neil Jaggassar	-	Secretary
Mrs. Katharina Gokool	-	Assistant Secretary

ABSENT/EXCUSED

Mr. Jerry Narace	-	Member (Excused)
Ms. Dana Seetahal, S.C.	-	Member (Excused)

ALSO PRESENT

Mrs. Nalini Persad-Salick	-	Assistant Chief Parliamentary Counsel (Ag.) Office of the Chief Parliamentary Counsel Ministry of the Attorney General
Ms. Karlene Seenath	-	Assistant Solicitor General Solicitor General’s Department Ministry of the Attorney General
Ms. Bhabie Roopchand	-	Legal Adviser Ministry of Health
Ms. Andrea Yearwood	-	Director Policy Research and Planning Ministry of Health

INTRODUCTION

- 1.0 The Chairman called the Meeting to order at 1.37 pm and welcomed members.
- 1.1 The Chairman indicated that the first item of business would be correspondence received from the Public.

CORRESPONDENCE

- 2.0 The Chairman informed members that the Committee received forty-two (42) pieces of correspondence; one from a law firm on behalf of the Supermarket Association of Trinidad and Tobago, seventeen from business organizations, and twenty-four from individuals.
- 2.1 The Chairman requested the technical team to provide an assessment of the comments/submissions received in terms of how many submissions were in favour of the proposed legislation and how many were against.

CONFIRMATION OF MINUTES

- 3.0 The Chairman referred to the Minutes of the Second Meeting and enquired whether there were any corrections and/or omissions.
- 3.1 Dr. Dick-Forde moved the following amendments:
- Delete the word **“informing”** appearing in the sixth line of paragraph 2.0 on page 2 and substitute the word **“inform”**;
 - Delete the word **“become”** appearing in the first line of paragraph 4.2 on page 3 and substitute the word **“becomes”**.
 - Delete the word **“state”** appearing in the tenth line of paragraph 4.7 on page 4 and substitute the word **“stating”**.
 - Delete the word **“to”** appearing in the second line of paragraph 4.14 on page 5 and substitute the word **“too”**.
- 3.4 Ms. Sharma moved that the Minutes of the Second Meeting be confirmed and this was seconded by Dr. Dick-Forde.
- 3.5 The Minutes of the Second Meeting were duly confirmed and seconded and the Chairman proceeded to the next agenda item –“Matters arising out of the Minutes”

MATTERS ARISING OUT OF THE MINUTES

- 4.0 There being no matters arising out of the Minutes for the consideration of the Committee, the Chairman directed that the Technical team be invited to the meeting. (Technical Team summoned)

- 4.1 The Chairman welcomed the technocrats from the Ministry of Health and the Attorney General's Office and advised them that the Committee was about to consider the list of proposed amendments as prepared by the Legislative Drafting Department, the summary of the comments received from the public and the responses prepared by the Officials from the Ministry of Health.
- 4.3 The Chairman indicated that in order to be concise and cohesive, that the documents be dealt with in relation to the Clauses of the Bill.

AMENDMENTS TO THE BILL

- 5.0 The following amendments were proposed and agreed to:
- 5.1 In Clause 4, the proposed definition of the word "Child" to be inserted in the relevant place.
- 5.2 Also in Clause 4, the word "ministry" to be deleted and substituted by the word "Ministry".
- 5.3 The definition of "workplace" to be amended to now read, "means any place in which persons perform duties of employment or work and includes private residences except to the extent that they are used for commercial purposes. However, that an enclosed workplace is a partially or fully completed building structure that is separated from the outdoors."
- 5.4 In Clause 5, delete the word "Ministry" where it appears and substitute the word "Minister".
- 5.5 Clause 6 should be amended to specify and include "designated officers such as police officers, customs officers, trade inspectors, public health inspectors or any other fit or proper person".
- 5.6 In Clause 7, delete the words "six months" where they appear and substitute the words "nine months".
- 5.7 In Clause 7, sub-clause (14), delete the word "minister" where it appears and substitute the word "Minister".
- 5.8 Delete Clause 8(1) and renumber accordingly.
- 5.9 Delete all the words occurring after the word "any" and substitute the words, "outdoor public place that caters primarily to children, such as children's playgrounds, amusement parks and video arcades."
- 5.10 Delete sub-clause (4) and renumber accordingly.
- 5.11 Delete sub-clauses (8), (9) and (10).
- 5.12 In Clause 11, sub-clause (2)(c), delete the words "young people are" and substitute the words "a child is".
- 5.13 In Clause 11, sub-clause (3), delete the words, "young persons" and substitute the words "a child".
- 5.14 In Clause 12, sub-clause (1), delete the words, "Tobacco sponsorships" where they first appear and substitute the words "Subject to section 11, tobacco sponsorships".
- 5.15 Also in Clause 12, delete sub-clause (2) and substitute the following, "(2) A person who engages in any activity prohibited under section (1) commits an offence and is liable: (a) on

- summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment”.
- 5.16 In Clause 13, delete sub-clause (3) and substitute, “(3) A person who contravenes subsection (1) commits an offence and is liable: (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment”.
- 5.17 In Clause 15, delete sub-clause (3) and substitute, “(3) A person who contravenes this section commits an offence and is liable: (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment”.
- 5.18 A decision was taken to delete Clause 16.
- 5.19 The Committee agreed that Clauses 17 to 20 and Clauses 22 to 24 should be amended according to the list of amendments presented by the technocrats.
- 5.20 Delete Clause 25 and substitute the following, “25. All information on a tobacco product shall be in English only”.
- 5.21 In Clause 27, delete sub-clause (3) and substitute, “(3) A person who contravenes this section commits an offence and is liable: (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment”.
- 5.22 In Clause 28, in sub-clause (1) delete the word “twenty” and substitute the word “ten”.
- 5.23 Also in Clause 28, insert the following sub-clause, “(4) Subsection (1) expires two years from the date of the proclamation of this Act.”
- 5.24 For Clauses 30, 31, 32, 33 and 34, it was agreed that a sliding scale for penalties would be applied (see list of amendments).
- 5.25 It was agreed that Clause 35 would be amended as stated in the list of amendments.
- 5.26 The Committee agreed that Clause 36 is to read as stated in the list of amendments.
- 5.27 Clauses 40 to 44 are to be re-worded accordingly by the legislative drafting department.
- 5.28 Members agreed that Clauses 45 and 46 should be merged.
- 5.29 It was agreed that the officer from the CPC department would review Clause 47 and redraft that Clause accordingly.
- 5.30 Clause 48 is to be amended according to the list of amendments presented to the Committee.
- 5.31 The Committee agreed to delete Clauses 50 and 51 accordingly (see verbatim notes).
- 5.32 Members decided that in Clause 52, sub-clause (1) paragraph (d) should be deleted.
- 5.33 It was agreed that Clause 56 would be amended to indicate that the regulations be subject to negative resolution of Parliament.
- 5.34 There was a general agreement that Clause 57 should be amended as suggested in the list of amendments submitted to the Committee.

ADJOURNMENT

- 6.0 The Committee agreed that the Secretary proceed to prepare a Draft Report to be circulated to members so that the final report could be submitted for the Senate's consideration on Tuesday December 09, 2008.
- 6.1 The Chairman expressed her gratitude to the Members of the Committee, the Parliament staff and to the technocrats from both the Ministries of the Attorney General and Health for their continued dedication and hard work, which resulted in a successful outcome.
- 6.2 There being no further business, the Chairman adjourned the Meeting.
- 6.3 The adjournment was taken at 3:51p.m.

We certify that the above Minutes are true and correct.

.....
Chairman

.....
Secretary



**SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED
"THE TOBACCO CONTROL BILL 2008"**

A P P E N D I X VI

VERBATIM NOTES

APPENDIX VI

**THE FIRST MEETING OF THE SPECIAL SELECT COMMITTEE OF
THE SENATE APPOINTED TO CONSIDER AND REPORT ON A BILL
ENTITLED “TOBACCO CONTROL BILL, 2008” HELD IN COMMITTEE
ROOM NO. 2, OFFICE OF THE PARLIAMENT, THE RED HOUSE,
ABERCROMBY STREET, PORT OF SPAIN, ON TUESDAY, NOVEMBER
25, 2008 AT 11.25 A.M.**

PRESENT

Mr. Danny Montano	Chairman
Mrs. Hazel Manning	Member
Mr. Jerry Narace	Member
Dr. Emily Dick-Forde	Member
Miss Dana Seetahal SC	Member
Miss Cindy D. Sharma	Member
Mr. Neil Jaggassar	Secretary
Miss Katharina Gokool	Asst. Secretary

Mr. President: Good morning everybody, let me call the meeting to order. You all have been invited here because you were appointed to serve on a Special Select Committee with a mandate to consider and report on a bill entitled, "The Tobacco Control Bill, 2008. Now I have now just realized that there is no Chairman and in accordance with Standing Order 73 which states, except as it is otherwise provided by these Standing Orders or by special directions of the Senate, a select committee may elect a Chairman from among its Members, so I am here to facilitate that. So, can I have a nomination?

Mr. Narace: Mr. President, I would like to nominate Mrs. Hazel Manning to chair the committee.

Mr. President: Do I have a seconder?

Seconded by Dr. Emily Dick-Forde.

Mr. President: Do we have any other nominations? There being no other nominations, I now declare Mrs. Hazel Manning the duly elected Chairman of the Special Select Committee of the Senate appointed to consider and report on a Bill entitled, "The Tobacco Control Bill, 2008."

I wish you success in your deliberations. Thank you and excuse me.

Madam Chairman: Good morning and thank you very much for nominating and selecting me as Chairman. I would like to say to the committee that the Tobacco Control, 2008 is before us. Our aim is to ensure that this Bill is dealt with as quickly as possible so that it gets back on the agenda of the Senate and that we take a decision maybe before the end of this year and therefore to do that, I would like to start the business almost immediately. To be able to do that, we will have to determine a quorum and Members the first order of business is that we determine the quorum for our committee. The usual quorum of a select committee is three Members inclusive of the Chairman. The authority for this is Standing Order 73(5), and I am therefore proposing that our quorum be three Members inclusive of the Chairman. Are we all in agreement?

Members: Yes.

Madam Chairman: "There being no objections, the quorum of this committee will be three inclusive of the Chairman", and therefore, the terms of reference for this particular Committee is to consider and to report on the Bill entitled, "The Tobacco Control Bill, 2008", and to report back to the Senate as quickly as possible.

The committee is not empowered to discuss the general merits and principles of the Bill, but only its details. The committee has the power to make such amendments to the Bill as the committee thinks fit. The amendments could

include new clauses, new schedules which must be relevant to the subject matter of the Bill. I would like to take this opportunity to start discussions and then we get to other business. The floor is opened for discussions.

Mr. Narace: We need to clarify the terms of reference.

Madam Chairman: To consider and report on the Bill entitled, "The Tobacco Control Bill, 2008 and to report back to the Senate, and I included as quickly as possible. Those are the terms of reference, so could we commence and could we have discussions on the Bill? Could we decide how we would proceed?

Mr. Narace: Madam Chairman, I would like to suggest in order so we that can—the issue is, if we do not treat with this expeditiously this Bill will die, and therefore, in the circumstances, I would really think that it would be quite useful if we can get all of the recommendations from all Members of this select committee in terms of the areas of concern that they have. We started an informal exercise, so we are up to No. 7—seven areas. I would really start by getting all of the areas of concern, so at least our people can take a look at it. I know that we were concerned about the penalties, whether it was summary convictions or indictable offences. Well, it should be an indictable offence. I know we looked at page 8, smoking in the homes, whether people were entitled to do that. I know we looked at clause 6, the qualifications and certifications of someone who will be made an Inspector and go into homes and so on.

Miss Seetahal SC: Seeing that was not in a committee, I can say we know we looked at that, but I think we have to start looking at it.

Mr. Narace: When I say so, I know that these are some of the items. I said so, but if you wish, you can formally present it again.

Miss Seetahal SC: I think we need to do that again.

Mr. Narace: Okay, thank you very much.

Madam Chairman: I will want to agree. Yes, we could have a formal presentation of the concerns.

Miss Seetahal SC: Actually, what happens is, I was going through—just a little background for who do not know, some of the specific areas of concern that I see in the Bill which would raise red flags of constitutionality, disproportionality and inconsistency which in terms of the penalties, I feel very strongly about and that. You want to have a Bill that people would have some feeling that they want to follow. If it is that people generally agree to tobacco control, but you are penalizing persons for minor offences with a penalty on indictment of five years imprisonment or \$1 million and you are having jury trial, the enforceability would come into question because no jury in my view is going on indictment to convict someone if they know that is the penalty for just not displaying certain things. So that is a kind of back drop as to the penalty situation that I was concerned with.

I have to say that I have much more materials. I did not think that we were going into it detail. I have some things in my car. one I think we need to look at is the convention, to ensure that what we have here is truly representative of what the convention requires because what we are saying is that the purpose of this Bill is to implement the requirements of the convention. And when I look at the convention, I saw the first thing in the convention was speaking about public awareness education and those things which in my view to begin with, the Bill does not focus on as it should. There should be more specific focus on it in terms of a demand on the Minister or the Ministry concerned or schools or whoever to deal with that. I think there should be either a board, group or something focused on promoting awareness concerning children—all the materials that you all know about and have, that people do not have, including how to stop smoking. To me if this is what the Bill is about, eventually you will need to have that. To kind of tuck it away in the end there—*[Interruption]*

Mr. Narace: Page 7.

Miss Seetahal SC: No, page 7 is a genetic thing. Clause 55 at page 27, this is talking about carrying out evidence-based programmes to inform the public, the Minister—there are many things on the Minister, but what I think you need is some kind of commission or something, some permanent kind of group, organization or something whose business it is to do that. Maybe you could accomplish that, by regulations, I do not know. In carrying out—

Madam Chairman: Business of public awareness.

Miss Seetahal SC: Yes, all of these things, Madam Chairman, which are itemized at clause 55, the Minister shall establish and carry out evidence-based programmes to inform the public of the dangers and addictiveness, the benefits—you see the thing is there, it is stated what the Minister shall do, but apart from it being towards the end, my concern is that there is no real demand of the Minister, it is just left open, and I think if you were to create a commission or some body that will have this focus, then that would start off on the first thing that the convention focused on. So that is one of my concerns to begin with, in terms of my issues.

Now, the next point is that this Bill does not criminalize smoking or having possession of tobacco products. Even if you may want to do it, but the fact is it does not and that is a recognition of my view that it is considered less dangerous innately than say, cocaine, marijuana and heroine obviously, and it is less immediately dangerous than alcohol. Like if you take a swig of vodka or whisky and you drive down the Churchill Roosevelt, you will be weaving in and out, which happened in a recent matter that I was doing and could cause people to be in danger. So therefore, you are talking about a long-term use and you want to prevent that from happening to people who use it and people who are innocently affected and to stop it from young people. But that being said, I do not understand

why the penalties therefore should be disproportionately more serious than for drug trafficking.

Now the penalty for trafficking drugs—first of all, persons who are charged for trafficking drugs and possession of drugs may be entitled to a summary trial. Under the legislation, there is an election or a recommendation by the prosecution. In this Bill, most of the offences are indictable, meaning, it says on conviction and I will just point to one example. The first penalty is clause 12 which deals with sponsorship, where there is a prohibition of sponsorship, and then:

"A person who engages in any activity prohibited under subsection (1) commits an offence and is liable...on indictment, to imprisonment for five years and a fine of one million dollars."

Now, there is a total prohibition on sponsorship which is another point I will deal with in terms of disproportionate and it may be found to be so constitutionally in terms of freedom of expression. But dealing with the fine alone, that does not give this person the option to be tried before a Magistrate. That means that the person will have to go through a preliminary enquiry; incur one set of fees and everything; wait for the Magistrate to see that a prima facie case is made up; then you go upstairs, meaning in the High Court, before a judge and jury and then you are liable to this. The penalty of \$1 million is the highest fine that I know of in the country.

Mr. Narace: I just want to make a point. You do realize that the maximum penalty in summary trial is \$15,000?

Miss Seetahal SC: Where?

Miss Roopchand: For summary is it not \$15,000.

Miss Seetahal SC: Where?

Miss Roopchand: In the Magistrates' Court.

Miss Seetahal SC: I practise in the Magistrates' Court, I know what the penalty is and what you are saying is not true.

Mr. Narace: What is it?

Miss Seetahal SC: The maximum penalty for any offence is as stipulated in the statute. Okay? If you are talking about possession of drugs, the maximum penalty would be whatever the Dangerous Drugs Act says it is, so the Dangerous Drugs Act will say “on summary conviction to a fine of twenty thousand dollars and five years imprisonment”. That is on summary conviction, or it could say as it had before, “to a penalty of ten years imprisonment and three times the value of the drug”. That is whatever Parliament says it is, so there is no fixed anything.

Mr. Narace: So what do you suggest the minimum, maximum summary fine could be in the Magistrates' Court for tobacco violations of this kind?

Miss Seetahal SC: No, no, I am saying in the first case—

Madam Chairman: Could I just ask that we stay with the concerns first and then we will come to the solutions after?

Miss Seetahal SC: I agree because I have a listing.

Madam Chairman: So, in the first instance if you could list the concerns.

Miss Seetahal SC: In the first instance you do not have an option of summary trial for most of the offences. Okay, it goes straight to indictment, so I think that is a concern. Whereas people who are drug traffickers for heroine and so on, have that option.

The second concern is that the excessive nature of the penalty for some of these offences, for example, sponsorship itself, the maximum fine is \$1 million which is exorbitant being the highest fine that I have found in any criminal offence. And while you might like the sound a bit and it shows how serious the Government is, the average citizen out there would find it is proportionate and you need to get the support. In my view a Bill like this, something new, you need to have the

support of persons in the system. Coming back to the other things, specific clauses, my concern is the definition of “workplace” at page 7 which is the last paragraph of clause 4, the definition of "workplace" in my view should not include private residences. That is all.

The next concern is clause 6, which deals with the persons who are authorized to carry out inspections. Unlike the Canadian legislation, which is one of the things I think we should look at, there is a requirement for those persons to have a certificate so when they go to your place, you can see it and so on. We do not have any such requirement. And further there is need for indication of the training of these persons and anything of that nature and the qualifications and requirements. So you could just—I am not saying you will, but under this if it passed the Minister—appoint persons in his Ministry to do this.

Now, if you are going to give these persons all of the powers as you have in a later clause, entry and so on, you are giving them in many cases wider powers than the average police officers. You cannot just give it to anybody, so that clause to me, you need to have much more clarity on that. In terms of a license fee and all of that, I do not see it in the Act upfront, but there might be.

In terms of clause 8, I am saying I believe that you should exempt Private Members Club. Where you enlist all of the enclosed places: offices, factories, health institutions, education and so on, I think that should not—

Now (*o*), I do not know what that means. I think that should be cleared up.

Madam Chairman: Could you go back to clause 8? You are saying exempt—

Miss Seetahal SC: We are dealing with clause 8(2)(*i*). I am saying that (*i*) is one of my concerns and (*o*)—"facilities that employ paid personnel": what does that mean? To me it is a little too wide. It is not clear enough.

Madam Chairman: Could you just explain, I want to go back to (*i*) when you say clubs.

Miss Seetahal SC: It is all clubs here and I am saying Private Members Clubs, in terms of people's rights to privacy and so on, that should be exempt. In other words, Private Members Club, my feeling is that they should not be one of the places where people should not smoke. What you could do is to say as another clause somewhere, that where you have like Private Members Club or any other private kind of situation, not home, but where people want to smoke, you should have areas designated for smokers. That is what I think is a more proportionate response to the—

Madam Chairman: So you are separating public places from Private Members Club in this instance?

Miss Seetahal SC: Yes, I am saying private—well public in its widest definition in law, a public place means any place to which the public has access. But the convention asks you to look at, not parks for instance, not the streets, but enclosed places. So I am saying a Private Members Club is an enclosed place, but it is still private by definition. I think that could be excluded, but you could have another clause where you can control it within that situation by having designated areas.

Dr. Dick-Forde: I would like to get some clarification, could I interject?

Miss Seetahal SC: Yes.

Dr. Dick-Forde: Madam Chairman, I would like to find out, do we need to say Private Members Club which means a very specific thing or should we not be saying clubs where people choose to be members. Is that not what you are trying to get at, if somebody chose to be a member of a place, so that you have a subscription or you—do you understand what I am trying to say?

Miss Seetahal SC: Yes, I understand what you are trying to say, but I think we can work it out later.

Dr. Dick-Forde: I just want to say rather than use the very specific term "Private Members Club" which has a specific meaning, are we not speaking about if someone chose—[*Interruption*]

Miss Seetahal SC: I just used that as an example.

Dr. Dick-Forde: Yes, I know. I just wanted that to be clarified.

Madam Chairman: You mean that we need to define it.

Miss Seetahal SC: You need to clarify that later on, but I was using that in terms of your right to privacy. And then I made the point that in (*o*)—facilities that employ paid personnel, I am not sure—[*Interruption*]

Mr. Narace: What exactly is happening?

Miss Seetahal SC: Yes, where we are going with that.

Dr. Dick-Forde: It seems to be consistent with the definition for “workplace”, so that is why it is probably there.

Miss Seetahal SC: Yes, why do we have to add it on because it is there already? So that is one of my concerns and we need to look at it again.

“(p) Any other facilities that are accessible to the public.”

Meaning any other enclosed place. I think that needs to be cleared up too, because it starts with the why there.

Mr. Narace: Yes, enclosed facilities.

Miss Seetahal SC: In clause 8(3), you need to specify any place for providing services primarily to children under the age of 18. It is too wide. This section has been held to be too wide I think in some other countries, or any other such places. Suppose children congregate in the Botanic Gardens—of course the Botanic Gardens being a Government thing, you are entitled to put a sign “No Smoking”, but let us say they congregate in the Queen's Park Savannah, what does that mean? It is too wide here.

Madam Chairman: It says here primarily for children, so that the savannah or the zoo—

Miss Seetahal SC: Or at any other outdoor place where children congregate, it does not say primarily. It could be anywhere, Minister, anywhere at any given time.

Dr. Dick-Forde: Such as playgrounds does not help to clarify—*[Interruption]*

Miss Seetahal SC: It does help, but it could be Aranguez Savannah, Eddie Hart Savannah, anywhere you are having a Carnival fete whatever it is. The point is this thing you need to have probably more examples of what you mean there or more clarity. We need to discuss this more because as it is now you need to probably identify the places—what you are talking about is the ejusdem generis rule which means, if you have like things you mean things similar to it, but playgrounds alone does not lend to that, it is just one place. So you probably need to do that.

I do not understand subsection (4). Why is it necessary at all to say that? If you are prohibiting smoking in an enclosed place, why are you saying nothing shall require an owner to do this?

Dr. Dick-Forde: I understood this to mean that while some people would in fact set up designated areas for smoking, that the Act will not compel people to do so.

Miss Seetahal SC: Yes, but then you do not have to say anything then. If an Act is not compelling, it is not prohibiting, you never put anything. If I am not prohibiting you from putting your bag here, why do I have to say nothing in the Act prevents you from doing it? You do not normally say that.

Dr. Dick-Forde: Not prevents, but this is "shall require".

Miss Seetahal SC: Yes, I know. What I am saying is an Act only tells—*[Interruption]*

Mrs. Persad-Salick: Prescribes.

Miss Seetahal SC:—prescribes what you would prescribe. Prescribes things that you are saying not to do or do not do, but it does not say, we are not saying that.

Mr. Narace: I see the point you are saying.

Dr. Dick-Forde: So it is not necessary?

Miss Seetahal SC: I think subsection (4) is not necessary, but if we are going to go with private clubs and so on, then we might want to redo this for those kinds of clubs.

Madam Chairman: To say we are required to.

Dr. Dick-Forde: But if you say you are required to, if there are some people who do not want people smoking at all, what is their position?

Miss Seetahal SC: No, in relation to private clubs only. I think we could redo subsection (4) for private clubs if we are going to say that they could do it there. That is my view.

Mr. Narace: Just for the record, Madam Chairman, in the case of England, Canada and a number of countries, there are no smoke rooms when you go in these public places, they are smoke free.

Miss Seetahal SC: I was looking for the club there and I did not see it.

Mr. Narace: In fact you are only concerned about the private clubs, nothing else?

Miss Seetahal SC: Well, I am saying you are talking about the right to privacy and that is the one—[*Interruption*]

Mr. Narace: So, your only concern is private club?

Miss Seetahal SC: My only one is (*i*), (*o*) and—[*Interruption*]

Mr. Narace: And when we say private clubs, we do not mean private clubs as we know them, but places where people should—

Madam Chairman: No, she is going to have a definition.

Miss Seetahal SC: That is really that that is too wide.

Madam Chairman: We are coming back for a definition.

Miss Seetahal SC: Now, I am also interested, I have a concern about 8(9):

"A person who contravenes this section..."

Now, let us the go back to what the section is. The section says:

"No person shall smoke or hold a lighted tobacco product in any enclosed place..."

And then you say here:

"A person who contravenes this section commits...is liable, on summary conviction, to a fine of ten thousand dollars."

Now, this is so weird because if you sponsor, you are liable to five years and \$1 million, but here if you are breaching this, you are liable to \$10,000. Why?

Mr. Narace: Because one is a corporate citizen. WITCO could afford it and the other one is an individual.

Miss Seetahal SC: No, it does not say corporate citizen.

Mr. Narace: The person who will be sponsoring is normally going to be a corporate entity. I do not believe it will be an ordinary citizen that will be sponsoring. It will be some big, huge company.

Miss Seetahal SC: Well, I can see why you said might say that, but it may not be. In Trinidad and Tobago we do not have Philip Morris and so on, you have little advertisers and so on, but the point I am making, I think it is kind of inconsistent. But also you should say a fine of \$10,000 or two years imprisonment. You should always have an alternative. "Or" not "and", maybe that would just make it—

Mr. Narace: That is subsection (9) right?

Miss Seetahal SC: Yes, I am just itemizing my concerns, not recommendations.

Dr. Dick-Forde: But you are saying then we should look at this in conjunction with the point about the \$1 million to see—*[Interruption]*

Miss Seetahal SC: Yes, the balance—

Madam Chairman: But I have heard the Minister say that this might be a big company, and therefore she has added on to it.

Miss Seetahal SC: If one looks at the convention, this is like a big thing—
[*Interruption*]

Dr. Dick-Forde: Where the individual reaches.

Miss Seetahal SC: Yes, but he is saying that is—[*Interruption*]

Miss Narace And we have also taken the point and the fact.

Miss Seetahal SC: So that is that. Now coming down to the next point, clause 9 is too wide. There is no hearing given to anyone. Usually, you would only have such a section which would say where something is ambiguous then in terms of interpreting the provisions, then you will give the benefit to the non-smoker, but you cannot just say offhand. It is much too wide and it could be unconstitutional. What you are saying here is:

“...any question that may arise as to whether...permitted in any given situation shall be resolved in favour of protecting non-smokers.”

Now, if it is that you have a question arising and you are a non-smoker and I am either a smoker or a person with a house or whatever and you challenge me, but the legislation is clear and in my favour, what this is saying is that it will resolve in her favour because—

Madam Chairman: Non-smoker.

Miss Seetahal SC: It should mean—

Madam Chairman: So what is wrong with that?

Miss Seetahal SC: Because the legislation is clear on my side. If the legislation is clear—

Madam Chairman: On your side, the smoker?

Miss Seetahal SC: Yes. What I am trying to say is this, if there is a question and you are looking at the section and the section is basically clear in law, but because

she is not non-smoker and she challenges it, you are saying now that it must be resolved for her. She gets the benefit of it even though, otherwise, it is clear on my side. What I am saying is that clause 9 is too wide; it shifts the whole burden of proof and everything. It should say something like where the provision is ambiguous.

Miss Sharma: Makes a decision before you have any kind of dialogue about it.

Miss Seetahal SC: Exactly, anything, there is no hearing given to the other side. It should relate to where the provision is ambiguous because that is when you will resolve it. If it is ambiguous, you will resolve it that way, but you cannot just say everything, so you might not have anything in the law then.

Mr. Narace: Noted.

Miss Seetahal SC: Now clause 10:

"All persons shall have the right to be free from all forms of tobacco advertising, sponsorship..."

But normally you only give a right when you want somebody to take action on it. You give a right where somebody could sue. Can people sue for this? Can I just sue and say, I want my rights to be free, do I sue the State? This is what is normally right, the rights to sue the State. So if it is that I see a big billboard in the street and I am offended, I could sue you because I am not for it.

Dr. Dick-Forde: Permission to put up the sign.

Miss Seetahal SC: No, but suppose you put it up without permission that means you have violated my rights. Can they sue?

Mr. Narace: Noted.

Miss Seetahal SC: What actions could they enforce?

Madam Chairman: That is what rights is all about?

Miss Seetahal SC: Well, not necessarily, because you have a right against your neighbour, like in terms of negligence of certain rights, but you cannot say that the

Minister or the Government should be responsible for somebody who breaches the law and then I offended and I sue you based on this. It should not be.

Mr. Narace: Noted this.

Miss Seetahal SC: Yes, but I am going through in terms of that. In terms of clause 11, I think that clause 11 would be enough because you are banning promoting the product by means of advertisement.

Mr. Narace: [*Inaudible*] clause 10.

Miss Seetahal SC: That is what I would think. You may need to look at that. Now, if it is that you are saying you could advertise if you send some money by mail and so on, what becomes of clause 10 then? Supposing I am a smoker and you advertise duMuarier by mail, but at clause 10, it does not say all non-smokers. It says all persons, so I could still be offended and sue under clause 10.

Dr. Dick-Forde: You mean as a smoker?

Miss Seetahal SC: Yes, it does not say only smokers. Look at clause 10, "all persons shall have the right..." So supposing I am a smoker, but I still do not want advertisement. The thing it is really not—[*Interruption*]

Mr. Narace: Miss Seetahal, one other thing. In going through the Bill, the idea is to make a radical change to a smoke-free environment. And what we have observed based on the information that is made available to me is that where the efforts to ban smoking had many loopholes if you will and it was not as strong, heavy hand of the law, in fact it did nothing, and therefore, it just did not work. And therefore, in order for it to be effective, it needed some strong force, but we have noted it and we will look at it.

Miss Seetahal SC: Well, actually I am just going through the clauses, but what you need now is justification for it.

Mr. Narace: And we do have some legal opinions.

Miss Seetahal SC: My point is—I am sure you do, but I have looked at other countries' legislation and I have seen where they have pointed out—[*Interruption*]

Mr. Narace: And each one of these, Madam Chairman, through you, we are going to go back and check back with the legislations in other areas and we will come back.

Miss Seetahal SC: Other countries and also the cases and bear in mind we would like to see this committee—because I have heard general statements about legislation working and not working, but my understanding is that when you have in particular, the criminal legislation, it has not been successful because people just go outside and hide and smoke.

Mr. Narace: What we do know—[*Interruption*]

Miss Seetahal SC: So I think we should bring it to the committee.

Mr. Narace: Yes. If something is not done to intercede on smoking as it is right now, the health system will become completely unsustainable and the workforce will be greatly affected and the future of the country will be greatly affected particularly with the incidence of diabetes and all those other things.

Miss Seetahal SC: I am not making a play not to control it, you know—

Madam Chairman: I just want to go on with the concerns. Let us go back to the concerns. Thank you.

Miss Seetahal SC: I am not doing that, I am saying you need to focus on education. Clause 11(2)(c), defines what young people is. You might think you know and I might think I know. Under the Summary Courts Act and the Children Act, they are different. We have a piece of legislation that says young people or a child is a person under 18. We have another piece of legislation which says a young person between 14 and 16, so you need to define—

Madam Chairman: Define what a young person is.

Miss Seetahal SC: Well, yes, what you mean there. I think you mean 16. Now clause 12(1), sponsorship is prohibited:

"...sponsorship, advertising and other promotion of tobacco"—products—
"in which the name of a sponsorship entity is publicized, are prohibited."

That is an extreme provision. It has been held to be so and to me it is also inconsistent with clause 11(2). Sponsorship in which the name of the sponsoring entity is publicized. It you are sending somebody something by mail, surely it would mean that the name of the person sending it would be there. So that general prohibition to me is extreme.

Clause 13(1) and we need to look at that.

Dr. Dick-Forde: It may be.

Miss Seetahal SC: It may be, I do not know. I am just saying we need to look at that because you have your own thing.

Dr. Dick-Forde: I think we were trying to get something different, but it is not worded differently.

Miss Seetahal SC: It does not make sense. Clause 13(1), freedom of expression could be offended.

"No person shall sell, display for sale, supply or advertise any non-tobacco product or service that contains, either on the product, or in any advertisement of the product a depiction of a tobacco product."

So if you have an ad with somebody who has a pack of cigarettes somewhere or there is a thing—you are not smoking, this may be a movie or if you have a t-shirt—[*Interruption*]

Mr. Narace: Do you know that is another form of advertising?

Dr. Dick-Forde: And that is one of the major forms for inducing—[*Interruption*]

Miss Seetahal SC: I am giving you an example of the thing.

Mr. Narace: That is in fact—[*Inaudible*]

Miss Seetahal SC: Right now you have on Ariapita Avenue, a man with a whole big building called Herb and it is herb and marijuana thing, like the drawing of the marijuana and everybody goes around with a thing saying, "Herbs". Do you know there are t-shirts? I do not know if you all know that? So I am saying there is that again inconsistency with what happens. There is no prohibition for that in marijuana. You want to stop people from desiring cigarettes so you do not have it on a t-shirt, on a movie, on a sign in the street, but the more dangerous drug which is marijuana, you do not have any prohibition on it.

Mr. Narace: I know we are not discussing the issues here, but let me tell you the difference. Everyone knows that marijuana is an illegal substance. Children do not know that cigarettes are in fact illegal.

Dr. Dick-Forde: Not illegal, harmful.

Miss Seetahal SC: You see, that is a slip of the tongue.

Mr. Narace: Sorry, sorry, cigarettes are harmful, and therefore, when they see Cary Grant and all of these people who are paid to thing the cigarettes in the movie and so on, they think it is fashionable and it is a fancy, and therefore, that is a very covert and subliminal way of teaching people to smoke. And I know for a fact that movies get paid to put the Coca Cola bottle there, they get paid to put the Johnny Walker Black there, all the various—[*Interruption*]

Miss Seetahal SC: Yes, we know.

Madam Chairman: So we would accept clause 13 to consider?

Miss Seetahal SC: The point I am making is here that it is disproportionate. So like if you have no prohibition, people could go around carnival day or any other day with a t-shirt, look at it in that light. I know the arguments to it and why. There is the R.J. McDonald case and I am sure you are probably familiar with the Canadian case which deals with this and held that it was disproportionate. Well, the same argument will apply to reverse advertisements.

Madam Chairman: What is that?

Miss Seetahal SC: Clause 14. So you need to consider the two, how you would accommodate it.

Mr. Narace: Clause 14(1)?

Miss Seetahal SC: Well, yes, clause 14(1). We are moving on to 16(1). I would be tempted to say leave it there—all consumers shall have the right to be informed fully and other effects, et cetera—and if you do not do all of those things under clause 15, I could sue the Minister or the Government. And I could bring many clients—*[Interruption]*

Mr. Narace: Under clause 16?

Miss Seetahal SC: Yes, under clause 16. But the same situation applies in relation to the other one. This is a right that you are giving me, can I sue for it?

Mr. Narace: Noted.

Miss Seetahal SC: So it is how you are going to accommodate that to this. This legislation means much work, hand in glove in the Ministry. Clause 18(2) was struck down in the Canadian court.

“Prescribed messages shall be unattributed.”

This is in terms of labelling.

Mr. Narace: That is 18(2) right?

Miss Seetahal SC: Yes. 19(1) and (2), that was struck down in the Canadian courts, which is why they had to replace it. It is all well and good to have a strong Bill when you are looking at this kind of thing.

Clause 25, you see the way it is phrased:

“All labeling information shall be in English.”

It sort of suggests that it should not be in any other language. So if you put it in Spanish, then you might fall under the general penalization. Just a thought.

Clause 27, freedom of expression.

“...tobacco products that will be exported from Trinidad and Tobago shall not be required to meet the labelling”—standard other than—“requirements...”in the absence of the labeling requirements.

Mr. Narace: Which one is that, sorry?

Miss Seetahal SC: Clause 27—“shall apply fully to exported...and any”—requirements.

Same labelling situation. There is somewhere a penalty for selling a cigarette or something that appears to be a cigarette. I cannot remember, I forgot that, you know those fake cigarettes, where is that?

Mr. Narace: Which clause?

Miss Seetahal SC: How you could accommodate that is to just ban the importation of those things. Where is it? I cannot remember, but there is a thing about there is a thing about selling sweets. So why do you need to put that if it sound so extreme rather than just ban it.

Miss Roopchand: It is banned. There is something that prevents sales—
[Interruption]

Miss Seetahal SC: It is something about selling it, but I am not talking about selling it, I think you just need—*[Interruption]*

Miss Roopchand: It is 36(1).

Miss Seetahal SC:—the importation of this. Sell, display or supply any sweets—
[Interruption]

Mr. Narace: If you ban the importation, what about local production?

Miss Seetahal SC: Do they have this locally?

Mr. Narace: Yes. I mean they could have it.

Miss Seetahal SC: Well, I think somewhere you need to prevent importation rather than that.

Mr. Narace: Importation and manufacture?

Miss Seetahal SC: Yes, and I think the prohibition for that is extreme and this will alienate people. They will say that lady down the road selling a little thing, she could be liable to five years imprisonment and \$1 million. The sale. I am not talking about the manufacture, the sale part.

Mr. Narace: You never see improvisation of manufacturing, what you see is the manifestation of the—*[Interruption]*

Miss Seetahal SC: I agree, but maybe you should separate the two. Maybe you should separate the manufacture and the importation, ban that and then the sale should be a different offence.

Mr. Narace: If you wanted to really give Coca Cola pressure, you would not destroy the factory in Macoya. You would destroy all the little distributors all over the country and then you would destroy Coca Cola. Because if you destroy the factory, you will find an alternative source of supply and they would do the distribution and that is the real danger. Many times in Trinidad and Tobago, we have heard people saying, “The little small man selling two joint, whe all yuh harassing him for?” That is the real mess. That is the person you really need to take out.

Miss Seetahal SC: Well, we will agree to disagree on that one. Not that I want to take out Coca Cola anyway, there are many people who like it. They no longer have any cocaine in it.

Going back to clause 33, that is prohibition on public displays. It says that if you incidentally display a product—I find it is too extreme. If you take out your cigarette in a park and you put it on the seat, that is a public display. That is not incidental, it is there. It is not like you intending to advertise, but it will fall under this clause.

Mr. Narace: It is not intended this way.

Miss Sharma: But it says that it does not apply incidentally.

Miss Seetahal SC: Yes, I am saying it may not be incidentally. Incidentally mean that you just have it there. You raise it up and it shows up incidental. But if I take out my cigarette and put it on the seat next to me and I am smoking in some place—[*Interruption*]

Madam Chairman: That is not incidental—

Miss Seetahal SC: No, it is not.

Madam Chairman:—that is deliberate.

Miss Seetahal SC: Yes, but it is deliberate not to advertise. It is deliberate for my accessibility to it.

Mr. Narace: Noted.

Miss Seetahal SC: That is expected in clause 36. Clause 40:

“Every manufacturer and importer...shall submit to the Minister...reports containing the information required by this Act, as well as any other information...”

That provision is extreme and irrational, “...as any information, the Minister may prescribe”, so every manufacturer—let us say you are WITCO and you are supposed to supply reports containing the information, what information? It needs to be more specific—[*Interruption*]

Mr. Narace: To be more specific.

Miss Seetahal SC:—it needs to be tighter and I also want to know how this decreases cigarette smoking? The aim of the legislation is to decrease cigarette smoking.

Mr. Narace: There is a regulation to accompany this. That Bill—[*Interruption*]

Miss Seetahal SC: I agree, but I think the reports containing the information required by this Act and also this clause, if in your regulations you prescribed a whole heap of things, it could be too wide and disproportionate and more irrational. Supposing you have a personal vendetta—not that I am saying that you

do—against cigarette companies, you could probably prescribe anything, you know. This is irrational and how does it decrease cigarette smoking? It is just to penalize them to make life difficult. That is how I view section 40.

Dr. Dick-Forde: I want to disagree. I think if you want the information with respect to adjectives and other business information, it certainly is for the information—I see this as part of the public education, a mandate of the Minister. What I would say about clause 40 is that it needs to be better clarified rather than to see the irrational. I think it needs to be better clarified because I see it as information that will go into public education.

Miss Seetahal SC: Maybe we could discuss it when we come, but that is how I think it is irrational, the way it is and also does it serve the greater purpose. Because if you look at clause 44, you have another requirement, to me that accomplishes much of what you are talking about. Look at clause 33—

Madam Chairman: Additional information.

Miss Seetahal SC: Yes, that is additional. That is the kind of thing that you are talking about. That should be the thing.

Madam Chairman: I just want to say that I think we are talking here the basic information at clauses 40, 41 and the additional may be something else. But again we will discuss that—

Miss Seetahal SC: I think we need to look at clauses 40 to 44 and make them work together.

Madam Chairman: Yes.

Miss Seetahal SC: Because you might be duplicating other things.

Madam Chairman: Yes, I agree. That is how we deal with that.

Miss Seetahal SC: In clause 47, what does retaliate mean? How do you know it will be retaliation? That is a creation of an offence because this is an offence. The generic penalty at clause 57 is \$500,000, which is a great deal of money for

retaliating against an employer. I think you need to tidy up that offence. I have never seen any offence like that created in this way, no person shall retaliate. You should say:

“Where it is shown that an employer as a result of...”

That is how you do normally now. Somebody might tell you we took this from somewhere else, but they might have a history of how they interpret this and so on. Our legislation is much more conventional and it is not stated in this kind of very vaguely.

Clause 48(1) comes back to those authorized officers and it gives them all of this power to enter at any time during business or at any other reasonable or necessary time, which means any time. Customs has the power when you are dealing with illegal substances and smuggling some of it, but they do not have power as wide as (g). Subsection (1)(g) is totally out of line:

“to stop, search, and...any craft ships...or other means of transport or storage in which the authorized officer reasonably believes tobacco products are or were contained or conveyed...or examine—“

Mr. Narace: So, your concern is (g)?

Miss Seetahal SC: In particular. The others are all right, but (g). This is actually the kind of power you give police officers for legal drugs. Here this is so wide. If I have a pack of cigarettes, it is caught under that you know.

Mr. Narace: It is like a ship rider.

Dr. Dick-Forde: We might have to vet the document to make sure that we do not have an underlying assumption that tobacco is illegal.

Miss Seetahal SC: That is where many things are—[*Interruption*]

Dr. Dick-Forde: [*Inaudible*]

Miss Seetahal: Yes, but it does not relate—this section. It is clauses, it has nothing to do with smuggling.

Madam Chairman: It gives a sense of illegal activity.

Mr. Narace: This is really smuggling—

Madam Chairman: Yes.

Miss Seetahal SC: It does not say so.

Mr. Narace: I agree, it should say so.

Miss Seetahal SC: I can be stopped in my car if I have a thing and you do not know many people when they have a little bit of power, especially people who are not full police officers—check any SRP, they will arrest you right away for just saying one word. Whereas a regular police officer would—*[Interruption]*

Miss Sharma: *[Inaudible]*

Miss Seetahal SC: I had a client who they stopped on Carnival Sunday, they searched him and he said, “What the f...”. It was an SRP and they arrested him. They went to the Magistrates’ Court and he was sentenced to thirty days. It felt like years and it was a first time offender too. The point is you might have some these over zealous ones encouraged by the desires. So those are the main sections.

Madam Chairman: You had started with clause 55, so we end with clause 55.

Miss Seetahal SC: Yes, I am saying in clause 55, I think that we need have something to balance that and how this is going to operate. I think there should be a greater focus on that whole education thing.

Madam Chairman: Thank you very much. Any other comments? Miss Sharma?

Miss Sharma: I think the only one I had to look at was referring to clause 7 in terms of the time for licensing, which is six months. I felt that should be lengthened and something could be put in place in terms of if you are having an educational component, there should have been something with respect to a two-year period in terms of giving some businesses time to create facilities for external seating, that kind of thing.

Madam Chairman: Okay.

Miss Sharma: Clause 7, I do not think there is anything related to giving an opportunity to provide recreational areas if somebody wants to sit down outside and smoke.

Miss Seetahal SC: Yes, I think so, that is another thing outside.

Miss Sharma: And they usually give them a two-year period and during that two-year period, you have the educational component working hand in hand with it.

Madam Chairman: Okay. Anything else?

Mr. Narace: This system could—*[Interruption]*

Madam Chairman: No, it will come after.

Miss Seetahal SC: Right now we are just identifying—

Madam Chairman: Could we now go to Mrs. Dick-Forde? Mrs. Dick-Forde, any comments? Any clauses you want to identify for us?

Dr. Dick-Forde: I do not. Mine is always a broader picture and I think that we will need to look at the Bill to ensure that the main ideas, the main philosophy behind the convention and behind what the Bill wants, in fact runs through and certain other things that would have come up, specifically anything, what I have noted here is that we have to vet the Bill, any underlying agenda to make tobacco look like or be treated with as an illegal drug that we will want to ensure that that is not in there. That is all I want to say because I really did not come expecting that we will go through it in details.

Madam Chairman: I think we needed to do this. Mr. Narace, anything or you are okay.

Mr. Narace: Clause 5 will be changed “to the Minister”.

Madam Chairman: Okay, clause 5, a change “to the Minister”.

Miss Seetahal SC: That is the perspective we are just dealing with concerns now.

Mr. Narace: My only concern is, the Ministry would really look at all of these

things and I want you all to recognize as well, we will look at all of the other international Bills that we can look at—

Madam Chairman: Well then let me sum up. I want to bring the meeting to an end—

Miss Seetahal SC: Madam Chairman, I have some colleagues who are sending me some materials. So of it might be the same, but in the next meeting or before that I—

Madam Chairman: I am saying even before that. That is what I wanted to say. We have identified the concerns and I would like the Secretariat to list the concerns for us. But more importantly, between now and the next meeting that we do some research on all of these concerns. Just some guidelines:

1. I liked very much what I heard Mrs. Dick-Forde speak to, the philosophy. The philosophy of the convention and I only want to say the philosophy of the country. If it is that we are putting laws in place, I think we need to have a clear sense and guidance as to why the laws are the way they are and I think we need to speak to those philosophies.
 - (i) of what the country wants to achieve;
 - (ii) this particular convention that we are dealing with.
2. That we need to research all these items. Miss Seetahal SC has promised that she will collect some data and analysis for us that we can look at. I would want to suggest that even before the next meeting, I would like the Ministry of Health to support us with some research so that the next time—and if you can do before the next meeting—we are here we can read up, and therefore, be able to take decisions at the next meeting as to what the changes are.

12.25 p.m.

Miss Seetahal SC: Madam Minister, I have some material and I expect some of it would have already been in the Attorney General's Department but I think all of us should be supplied with a copy of the Convention and a copy of the Canadian Bill because a lot of our legislation would have been based on that. I also have the Australian Act, which I have not looked at yet and I think it was one of the States in the US—so if we look at it, we would get an idea—

Madam Chairman: I agree with Sen. Seetahal that all literature and research documents can be passed on to the relevant person who will give us copies.

Miss Seetahal SC: I can give you it, I got it on line; the Convention, the Canadian Act, I am sure the AG's Department has it. Do you have the Australian Act too?

Madam Chairman: We have some items identified and whatever you have that can guide us. Are there any other comments before we close?

Sen. Seetahal SC: The date of the next meeting.

Madam Chairman: Can I do the date after "Other Business", Mr. Jaggassar, or can I do it now?

Mr. Jaggassar: [*Inaudible*]

Madam Chairman: So we do not have to do "Other Business"? Good. How long will it take you to pull all this together and do the research, Ministry of Health, a week, two weeks?

Mr. Narace: The problem is I am out of the country on Saturday and you are out next week. I return on December 07, 2008 but if we have to meet and then go to the Lower House, it means that the Bill will clearly die.

Madam Chairman: Can we come back on Tuesday, December 09, 2008?

Miss Seetahal SC: On December 09, I have Court of Appeal.

Madam Chairman: I am not rushing it you know.

Dr. Dick-Forde: I think the sooner we deal with it, the better.

Mr. Narace: I would like to recommend on Friday morning, we would be ready on Friday, this Friday.

Madam Chairman: This Friday, the 5th? This Friday is the 28th.

Miss Seetahal SC: It is impossible for me to make it this week.

Mr. Narace: If you want Friday 28th, that is fine.

Madam Chairman: Sen. Narace, Friday 28th is two days from now and there is a lot of work to do. So we are suggesting Friday, December 05. Is that a problem?

Mr. Narace: I am out of the country.

Miss Seetahal SC: What about Monday, December 08, 2008 at 1.30 p.m.?

Madam Chairman: Okay, Monday, December 08 at 1.30 p.m. Just to bring closure, I ask if we can get those documents that would guide us before the end of the week so we can read and discuss before Monday, December 08.

Thank you very much, the meeting is adjourned to Monday, December 08, 2008 at 1.30 p.m.

Mr. Narace: Madam Chairman, before we adjourn, could we agree that all the work will be circulated and all the drafting?

Madam Chairman: It has to be discussed first.

Mr. Narace: I know, I am trying to work out the agenda. How long will it take?

Madam Chairman: We have to discuss first before we conclude and by December 08 when we have agreed to whatever is on the table, then we can—

Mr. Narace: I am saying if we agreed on December 08, I am asking the question—

Madam Chairman: I think what he is trying to find out is could it go back to Parliament by the next session.

Mr. Narace: The next sitting.

Madam Chairman: The next day will be December 09? When is Parliament going on the retreat?

Mr. Jaggassar: I understand we might prorogue on December 12, 2008.

Madam Chairman: Could we take it back on December 12?

Mr. Jaggassar: If there is a sitting on that date.

Mr. Narace: It would just be the committee stage, so it could be a short sitting.

Mr. Jaggassar: A report will come from this committee and it would be debated and if it is adopted by the Senate, then there will be the third reading of the Bill itself.

Mr. Narace: So what is the time frame for that?

Mr. Jaggassar: If the meeting is December 08, the next scheduled meeting of the Senate will be December 09 and if it is going to be prorogued on December 12, I do not see a next meeting of the Senate.

Miss Seetahal SC: I know that in another committee we saved the work and it came back on the first day, they re-laid it and we continued.

Mr. Jaggassar: You can save the work of the committee, but the Bill itself will lapse.

Miss Seetahal SC: Then you just lay it.

Mr. Jaggassar: In the report we could ask that the work of this committee be saved and any committee appointed in the next session to consider that work.

Miss Seetahal SC: Right. It could be the same committee and then we can relay it whatever date.

Mr. Jaggassar: But the Bill itself will lapse.

Miss Seetahal SC: All right, but I knew in the past we had done it, because we did it with the Summary Courts Act and we passed it. I am just saying based on the time and everybody's agenda, that might be something we should look at. You always need to have a contingency plan.

Mr. Narace: Suppose the ministry can complete the work by Friday and we can have a meeting could we consider that? If we did not make it, then we did not

make it. This is very critical to our ministry, so let us try, if we make it, we make it. We will address all the concerns, go into overtime and work this out. Once we agree on Friday 28, we have that week for the drafters, and when I return, we can take it from there if we are fortunate.

Miss Seetahal SC: I think we should still go with December 08, but I have a serious matter on November 28.

Mr. Narace: We have taken your issues into account. What time would be good for you?

Miss Seetahal SC: I thought December 08 was a good time. I went through my diary and we came up with that. My point being though, despite the fact that you have taken my issues into consideration, when you are doing things in a select committee you have to suggest how you are going to work on things. It is not like you could just take issues and do it, so I do not see how the ministry and your advisers would be coming up with written suggestions. It could not happen unless they work every single day and night.

Mr. Narace: Let us try for Friday and see what happens and if we do not get through, what is the most convenient time for you on Friday?

Miss Seetahal SC: I just want to hear what the Chair has to say about that, I do not know if it is possible.

Madam Chairman: We can try for Friday but if we do not, we go for December 08.

Mr. Narace: What time on Friday are we looking at?

Madam Chairman: It would have to be 11.00 a.m. because there is a sitting in the afternoon.

So meeting adjourned to Friday, November 28 at 11.00 a.m.

12.35 p.m.: *Meeting adjourned.*

**THE SECOND MEETING OF THE SPECIAL SELECT COMMITTEE
OF THE SENATE APPOINTED TO CONSIDER AND REPORT ON A
BILL ENTITLED “TOBACCO CONTROL BILL, 2008” HELD IN
COMMITTEE ROOM NO. 2, OFFICE OF THE PARLIAMENT, THE
RED HOUSE, ABERCROMBY STREET, PORT OF SPAIN, ON
FRIDAY, NOVEMBER 28, 2008 AT 11.05 A.M.**

PRESENT

Mrs. Hazel Manning	Chairman
Mr. Jerry Narace	Member
Dr. Emily Dick-Forde	Member
Miss Dana Seetahal SC	Member
Miss Cindy D. Sharma	Member
Mr. Neil Jaggassar	Secretary
Miss Katharina Gokool	Asst. Secretary

Madam Chairman: Let us start our second meeting of the Special Select Committee of the Senate appointed to consider and report on the Tobacco Control Bill 2008.

We would deal with correspondence and ask the Clerk to identify all the pieces of correspondence submitted because we have quite a lot.

Mr. Jaggassar: We received correspondence from the Managing Director of West Indian Tobacco Company Limited, and I was directed by the Chairman to liaise with Sen. Dana Seetahal and Sen. Sharma. She had discussed it with Ministers Narace and Dick-Forde and we agreed to ask them to send their concerns in writing because they had asked to

appear before the committee. I did that and they have responded and it has been circulated.

We also received correspondence from Havana Hut in which they submitted comments and we have just received correspondence from Mr. Balliram Maharaj, President of the Supermarket Association requesting to appear before the committee.

Madam Chairman: I have received something from Sen. Seetahal. What do you want to term it, correspondence?

Miss Seetahal SC: That is from Sen. Drayton and if I may say, I handed to the Minister submission by Sen. Baptiste-Mc Knight, I do not know if he has it here.

Mr. Narace: It is included in the response.

Miss Seetahal SC: I had given it to you on the last occasion.

Mr. Narace: I had given it to the ministry as well. Share the copy.

[Document given to Asst. Secretary to make copies]

Madam Chairman, all the information that was sent to me was given to the ministry.

Madam Chairman: I would like to suggest to the Clerk of the Senate that we do the same procedure with the one from the President of the Supermarket Association of Trinidad and Tobago, very similar to what we did with the West Indian Tobacco Company so that they can submit their statements to us.

Could we now go to the minutes?

Mr. Jaggassar: The minutes of the first meeting held on Tuesday, November 25 at 11.25 a.m. Page 1, any corrections or omissions? Page

2, page 3?

Miss Sharma: There is a spelling error of the word “disproportionate” at 5.2.

Miss Seetahal SC: There is one thing with respect to clause 55; it was not that there should be greater focus on the whole education aspect, but that it should be a paramount consideration in the legislation because in the WHO Convention, that was one of the primary goals at first.

Madam Chairman: See if you can change what is stated here to speak to the fact that Miss Seetahal spoke about paramount consideration.

Miss Seetahal SC: In line with the convention.

Madam Chairman: Page 4, page 5, any errors or omissions? Just the two corrections, therefore, could we accept?

Moved by Miss Sharma.

Seconded by Miss Seetahal.

Thank you very much; we can now do Matters Arising out of the Minutes. We can go to page 3, Discussions. I would like at this point to call in the technocrats because the Minutes have been confirmed and I am sure that these clauses identified would have been looked at by the technocrats. So maybe I can call them in and speed up our approach to getting this job done quickly. We can ask them to respond to each item.

Can I ask a question—at what point do we stop taking comments? What if someone sends one next week, and another the week after?

Mr. Jaggassar: That is for the committee to decide.

Madam Chairman: I think we need to come to some decision on that. I will suggest that we ask them to send in writing, but give a deadline. What

do we do if we get another one next week?

Miss Seetahal SC: How do people know that it is time to send it, or that there is a deadline?

Madam Chairman: We should make it public.

Miss Seetahal SC: I think we should let them know we are entertaining submissions up to a certain time.

Mr. Jaggassar: Usually what happens is that the committee would take a decision and we would put out notices in the press stating the deadline for submissions.

Mr. Narace: Can I indicate that we had consultations and this exercise had already been done. In fact, what West Indian Tobacco sent to me yesterday was sent on several occasions, but let me wait on my technical people to confirm that. So, therefore, out of an abundance of caution, we can now say that it can be extended up to Wednesday as an additional advertisement.

Officials

Miss Bhabie Roopchand	Legal Adviser, Ministry of Health
Ms. Karlene Seenath	Assistant Solicitor General, Solicitor General's Department, Ministry of the Attorney General
Miss Andrea Yearwood	Director, Policy Research and Planning
Mrs. Nalini Persad-Salick	Assistant Chief Parliamentary Counsel (Ag.), Office of the Chief Parliamentary Counsel,

Ministry of the Attorney General

Mr. Narace: Miss Roopchand, could you just indicate whether this Bill was subject to consultation?

Miss Roopchand: Yes, it was. We met with the tobacco company, the Cancer Society—

Mr. Narace: And we allowed people to write in and so forth?

Miss Roopchand: Yes, and we made a lot of compromises along the way.

Mr. Narace: If you wish, Madam Chairman, I would be more than happy to put an ad in the newspapers and allow until Wednesday for any additional pieces of information.

Miss Seetahal SC: It is one thing to say that you have met with the tobacco company and the Cancer Society and no doubt they are stakeholders, but bear in mind that if this Bill becomes law, it is going to cause significant changes, as we would want, in the lifestyle of how the citizens of Trinidad and Tobago operate.

In my view, this Bill should have gone out for public comment as we have done with other pieces of legislation; we should have had a White Paper. Some years ago when they were going to change the law with respect to the press, it was done, and these are such fundamental changes that tomorrow or at the end of the year we pass this, many people may not know. Of course, there is a day for proclamation for some clauses. I am saying that the people who would be more directly affected—and I am not talking about the cigarette companies to make their money—I am talking about the average person who is going to be affected in a positive or

negative way, beneficially or not and I am saying those are the people who were not consulted because there was no White Paper, therefore, that part of consultation was not made and that should be corrected.

Madam Chairman: Could we get a response from the technical team? We are being told that there was no White Paper and no consultation for this document that we have before us, is it that the consultation came before maybe at the Green Paper stage?

Miss Roopchand: There was no Green Paper or White Paper, however, the Bill was drafted based on the Framework Convention on Tobacco Control (FCTC) which was signed in 2003 and later ratified in 2004, and on a number of occasions before we signed, when we ratified the Minister signalled the intention that he was going to bring legislation to the House.

Madam Chairman: So you are saying that it was made public, along the way statements were made and it was in the press and that you received comments from the public?

Miss Roopchand: Yes, and we received comments from the public.

Madam Chairman: On this particular Bill, not a stage before?

Miss Roopchand: On the Bill.

Miss Seetahal SC: Was it published for the public to see and make comments, Miss Roopchand?

Miss Roopchand: No, it was not.

Miss Seetahal SC: That is the point. Usually, when you have a Green Paper or a White Paper, you have the Bill so people can make comments. Bear in mind that nobody is not wanting the legislation to go through, the idea of this legislation is a good thing but you have to be careful in terms of

the significant impact, because this is the first time we are passing, in my view, a piece of legislation where we are not criminalizing the activity, but a lot of surrounding things. Because of that—it is as if you say no marijuana, no this, you cannot have it; that is easy. Everything else that flows from that will be illegal, but it is not that you are saying cigarette possession or smoking is illegal in itself.

So there are so many attendant things to know about, and even though the Minister may have telegraphed to the public—and we all know this was coming and we had signed a convention. The signing of the convention is irrelevant in my view in terms of public knowledge because we sign a lot of conventions and the public who have computers would not just go to the website and look up the conventions.

I am merely pointing out that because there are people who will be affected significantly in their lifestyle, and because of all these penalties, and there are so many criminalization of attendant activity, the average member of the public would have had to—

Madam Chairman: So what time line are you suggesting?

Miss Seetahal SC: I am saying that we should factor it. I do not want to presume to give a time line; I am saying that those are things that should be factored in when you are asking for comments.

If you listen to the average person talking now that they are hearing about it, there are comments coming from people. It might be too late, I do not know, but in the past when we have had a piece of legislation of significance, there was a symposium, a one-day event and people came forward and made their presentation. Now that it has gone so far, it may

be a little late, I do not know, but just open it up for more than two days.

Mr. Narace: May I suggest that the ministry will put out an advertisement today that will ask for submissions to be closed by Wednesday?

Madam Chairman: Parliament would have to do it.

Miss Seetahal SC: What about the Bill, what about printing comments without the Bill, you will have to print the Bill.

Mr. Narace: Normally we would refer them to the Bill which will be available on our website. That is not a problem.

Madam Chairman: So this Bill is on your website?

Miss Roopchand: It is on Parliament's website.

Miss Seetahal SC: Madam Chair, is it not only 15 per cent of people in Trinidad and Tobago who have computers?

Madam Chairman: I do not have to have a computer to get access to.

Miss Seetahal SC: All I am saying is that in the past we had printed different things. If it is going to be seen as too expensive, that is a fact but that is one way—

Madam Chairman: So let us agree that the Parliament would advertise it.

Dr. Dick-Forde: Is it that every Bill has to be printed and published in that way? Does that happen with every Bill?

Mr. Jaggassar: As Sen. Seetahal was saying, usually when a piece of legislation has such impact, the normal way a committee would deal with it is to have thousands of copies printed at the Government Printery, circulated and we use different ways of circulation like lodging them at

post offices, police stations, various Government ministries, Warden's Office and advertise in the press that members of the public can collect them there, then you give a deadline for submitting comments.

Mr. Narace: Madam Chairman, those were the days when we did not have access to websites. When was the last time we did one?

Mr. Jaggassar: The last one was on the reform of the police service, about three years ago, there were three bills.

Mr. Narace: I would like to suggest that they can have access to it at any library in Trinidad and Tobago. So we can include that in the advertisement and give them up to Wednesday if we are going to keep our deadlines.

Madam Chairman: Let us take a decision on this and ask the Parliament to advertise with a deadline of Wednesday and to access the Bill through the Internet.

Mr. Narace: Inform people in the advertisement that they can access the Internet service at any public library in Trinidad and Tobago.

Miss Seetahal SC: There may not be enough time.

Mr. Jaggassar: If we go to the newspapers today, it would be very difficult to get a slot over the weekend.

Mr. Narace: We can also do a press release that would go right away and the ministry would also undertake to assist by putting out its own press release and ensure that the ministry is free to place an advertisement in the newspaper and we will get space.

Mr. Jaggassar: The ministry cannot advertise a Bill.

Mr. Narace: The ministry will not be advertising a Bill; it will be

advertising an update of the Bill on what is happening. Can we do that?

Mr. Jaggassar: No, that will be contrary to the Standing Order.

Madam Chairman: It seems as though we have come to some kind of conclusion. Let us look at it and take a decision on it; one that the Parliament advertises and it would go out as soon as it could; secondly, we would tell the public they can have access to the Bill on the Internet and identify libraries.

Miss Seetahal SC: I think Friday is a reasonable time if you want to be fair, bearing in mind that you are passing legislation that—

Madam Chairman: Could I ask what are the implications for Friday?

Miss Seetahal SC: I am saying you give an extensive time.

Madam Chairman: I am asking if we do it on Friday what are the implications.

Dr. Dick-Forde: You mean in terms of our timing? In addition, I see we have West Indian Tobacco—

Madam Chairman: They have submitted, somebody called Havana has also submitted.

Dr. Dick-Forde: So some of the major stakeholders have already submitted information?

Madam Chairman: We have been told that it is the same information as before, there is nothing new. Let me just find out the implications of a Friday deadline and then we will take a decision.

Mr. Jaggassar: As far as I am aware, Parliament is to be prorogued on December 12, so if we give them a Friday deadline the committee will have to meet Saturday and Sunday to finalize a report to go before the Senate on

December 09 unless there is going to be a sitting of the Senate on the 11th if the House is not meeting on the 12th.

Mr. Narace: The House is meeting on December 12. Then there will be a time frame to get the Bill back to the Lower House.

Mr. Jaggassar: In any case, it is a Senate Bill and it definitely will not be able to pass.

Mr. Narace: Why?

Mr. Jaggassar: Because if you give up to Friday when is the committee going to meet? If we meet on weekends, we can submit a report, it would have to be debated and passed in the Senate on Tuesday. If you think that is possible and we get it to the House.

Mr. Narace: That is why we are suggesting that Wednesday is the deadline.

Dr. Dick-Forde: Do you not think if people have burning issues they will make it a point to get their submissions in by Wednesday?

Mr. Jaggassar: If they see the advertisement.

Mr. Narace: At any rate, we can take the burning issues at the committee stage so it would not matter, they would have an opportunity.

Madam Chairman: So the decisions taken are that one, Parliament would put out an advertisement as soon as possible, a press release today, and an advertisement as soon as possible that we have a deadline. If the press release goes out today, can our deadline be Wednesday?

Miss Seetahal SC: If the ad goes out this weekend maybe, but if it does not go out until next week.

Madam Chairman: It does not have to be a big advertisement, so I am

sure you can find space for it. We will attempt to put the advertisement this weekend, a press release today and a deadline of Wednesday.

Miss Seetahal SC: What is the size of the advertisement?

Madam Chairman: That is for the technical people to tell me.

Miss Seetahal SC: Okay, because we want something so people can see.

Madam Chairman: Let us go to item 50 on page 3. That is really an introductory statement. Do you want to say anything on it, or we use that as an introductory statement to go into details thereafter?

We should go into 5(1) of the WHO Convention. Could we get a response from the Ministry of Health? Are we in agreement that we implement the requirements of the convention and place more emphasis on public awareness?

I think your document might be able to give us a response.

Mr. Narace: 5(1) is which clause?

Madam Chairman: I do not think it is a clause. It is an introductory statement and we are trying to marry it with the document you have given us and we are looking at the WHO Convention of public awareness. Where in your document you made a statement on that?

If you did not make such a statement, are we in agreement that we need to do it?

Mr. Narace: She said what was required was some sort of commission or permanent group. That is issue No. 3 on your document.

Madam Chairman: Okay, let us go through issue No. 3, the creation of a Tobacco Commission.

Mr. Narace: Our response is that the Minister is constitutionally

responsible for the public health of the nation and, as such, feels very strongly that this responsibility must reside with the Ministry of Health. In order to execute its mandate, the ministry intends to establish a dedicated unit to handle its commitments under this Act and the framework convention.

Madam Chairman: So issue 3, response to 5(1) and it is in agreement. **Sen.**

Seetahal: So where is it in the Act? My point, however, since I am responding, is that the preamble to the Bill is stated among all the other things—the Act is to do all of these things: to create a national coordinated institution for tobacco control and provide for other related matters and purposes. My point being—and perhaps I did not make it clear enough—that this is the preamble to the Bill and one would expect to see that in the Bill. This is one of the purposes of the Bill, as I understood it, to be that. So my question which I asked—

Mr. Narace: We did have it in and the CPC indicated it was not necessary to put it in, but we will again raise it with the CPC.

Miss Roopchand: It just says at clause 5 what the Minister would be responsible for.

Sen. Seetahal: My point is, if you put it in the preamble; if we all look at the preamble we would see it there, you know. It is one of the things. We have attended to a lot of other things, and to my mind—

Miss Roopchand: The AG's position is that there is already an institution called the Ministry of Health which would be responsible for carrying out the mandate of the FCTC and if you look at clause 5, it speaks to the responsibilities of the ministry.

Sen. Seetahal: I am not dealing with the ministry and I am not dealing with that, my point is this and I wanted to finish making it; that we have a preamble to the Bill and it is customary if the preamble says you are dealing with all of these things, one would expect that in the legislation. That is one thing. The Ministry of Health is an overall organization, We are talking about a specific institution. The Tobacco Convention that I asked people to look at—I know this is “Matters Arising”, but if you look at the Tobacco Convention, you would see the first matter that is stipulated there is the question of public awareness and all of these things. My feeling is that this has not been given—you know, if we do not even have the group; whether CPC says. CPC is supposed to carry out the policy of the Government. They feel that it is not necessary. I do not know that that is the end. All that I am saying is—

Madam Chairman: But I am seeing here that she has said that they are willing to put a Tobacco Commission in place.

Mr. Narace: Unit.

Madam Chairman: Well I see here, a commission.

Mr. Narace: Issue No. 3.

Madam Chairman: That is the issue. “And that the Minister is responsible for public health and feels very strongly...In order to execute the mandate, the ministry intends to establish a dedicated unit to handle its commitment under this Act.” So, therefore, I think we are saying the same thing. You are asking for a special space for this and I am seeing here that they are in total agreement with what is being said.

Miss Seetahal SC: Madam Chair, I do not think we are in conflict and I want to make it clear that I am not in conflict. I am pointing out that if one looks at the WHO Convention, Article 1 is the definition article; Article 2 deals with in

order to better protect human health, and it goes on, in terms of implementing measures. Article 3 is the objective, and the first thing is: “The objective of this conviction and its protocol is to protect present and future generations from the devastating health, social, environment and economic consequences”, and so on.

Madam Chairman: You are saying that we should just repeat that in our document? Let us hear what she is saying. My sense of what she is saying is that we need to repeat what is mentioned there, in this.

Miss Seetahal SC: I am not saying that at all—

Madam Chairman: Well then tell us clearly what it is.

Miss Seetahal SC: I thought I was being clear. I am saying this is the primary purpose of this convention. I am saying in our Bill we do not have it as the primary promotion but we have it as necessarily one there, included in the general consensus, and one of the stipulations is to create this national coordinating institution. Whether or not the Ministry says it will establish a commission, all that I am saying is that I have found if you do not put it in the Act itself, it will take some time to get done. That is a voluntary thing outside of the Act. It is not in the Act like other measures. That is all.

Madam Chairman: We are in full agreement with what you are saying but somewhere along the line I am getting a little bit confused, because I am hearing them saying we are in agreement with you and I really want to get from you exactly what you want in the Act.

Miss Seetahal SC: They are not saying that they are going to put it in the Act, you know, Madam Chair; that is not what I am getting—

Madam Chairman: That is not what you are saying?

Dr. Dick-Forde: Madam Chair, I think I have a point. The objective—this is article 3, you mentioned, right; the objective of the convention and its protocols is to protect present and future generations and so on. Now what I think, Sen. Seetahal, you are saying, you are equating this objective largely to public awareness, which I cannot see that that is the case. That is not what this is saying. Public awareness is one of the ways to protect present and future generations, but I believe that the entire Act is, in fact—in fact, the Act, based on your submissions, goes too far in its attempt to fulfill the objective of the convention. This objective does not speak only or largely to public awareness; it speaks to the protection of present and future generations from the devastating health. In fact, this objective actually supports the heavy-handedness of the Bill. Not that I agree that the Bill should go as it is; I believe a lot of the things that you have raised, but I think you are trying to force a point of public awareness and give it a place of prominence that, I think is not justified by what you are using. You are using this objective; you are saying, this is saying; that is the main objective, but it is not specifically only public awareness. The objective is to protect and it is a very strong statement that supports the Bill in its present form.

In fact, what I believe the Minister of Health is saying is that there are, in fact, going to ensure—because you did make the point about the public awareness last time which we understood, and I believe that in the Ministry's attempt to address that, they are saying they would have a dedicated unit which they did not have before. But I do not think that there is justification to look at these words at Article 3 and say that the main purpose is public awareness. So I am just trying to—

Mr. Narace: If I can just add, through you, Madam Chairman, I take the point—and let me say that, in fact we have just established our CNCD council and prevention and health promotion and all those are going to be critical elements of the Ministry. Therefore, instead of setting up a commission for everything, we are now trying to really get greater penetration, greater pervasion so that we can achieve exactly that objective, and we are going to achieve that objective.

Miss Seetahal SC: Let me just respond to that and this is my final word on it. First of all, I did not say the main purpose of the law was for public awareness. I said that if one were to look at the convention, like for instance the Canadian law, one would see that ultimately the end result is to protect the public and a lot of different things, and to do that, you have to educate; you have to help them to stop smoking, and all of these things. It is not a generic kind of public awareness. And if you want to look at the convention—I did not want to get into it—the objective is Article 3, but Article 4 is the guiding principles which says: “Every person should be informed of the health consequences—addictive nature.” And you know that. This is something that you are talking about.

All that I am saying is that I find in the Bill you have specific provisions for many things but you have generic provisions for that and it is not located as a duty for which somebody could be charged. I do not mean charged criminally, but come to task. You can count to people who are not enabling, who are sponsoring and all of these things, but when you are talking about public awareness and the addictive nature and giving them alternative remedies and ways of dealing with it, and if you are talking about people who are generations of smokers, I think that is so critical to have this thing, that I

am merely saying—I do not want to have a commission for everything, you know; I find we have too many commissions for a lot of things. I am saying when you are talking about a big issue like this, for how many donkey years people have been smoking, and you are moving it from a whole lifestyle to a next, you need to have something in the Act, in my view, which would cause that to be a reality.

I appreciate what you are saying that your unit—or you will create one, but if a Minister were to create a unit, if you are no longer the Minister of Health next year, is it going to bound another Minister? Is it going to bind him to do it? Those are the issues and that is what I am saying and that is it. I think by now I should have made it clear. It is not my personal thing to have this; it is that I see it as necessary if this thing is going to work. What we will have is a piece of legislation on the books and it will probably be obeyed with the breach more than the thing, otherwise.

Mr. Narace: Just to add to that. I take your point and we also have to remember Canada is a much different size of country than Trinidad and Tobago; they have many provinces, and so on. In Trinidad and Tobago we are not exactly the same. Clause 55(1):

“The Minister shall establish and carry out evidence-based programmes to inform the public of—

- (a) the dangers and addictiveness of tobacco smoke;
- (b) the benefits of and strategies for quitting;
- (c) information on the tobacco industry and on health, economic, and environmental effects of tobacco...;
- (d) such other information as he determines to be effective in mitigating against the health effects, social, and environmental

costs of tobacco and for increasing public and consumer awareness of pertinent tobacco related issues.”

I mean, there is a lot of it here; it will just take up our time. So I would like to stick to our position, Madam Chairman, if you do not mind.

Madam Chairman: So we have to vote on these things Mr. Jaggassar?

Because this issue here, we took what was suggested; we did not agree to the establishment of a Tobacco Commission. Instead we agreed to the establishment of a dedicated unit and Minister Narace has just identified that a number of clauses—could you call the number?

Mr. Narace: Clause 55 and clause 5.

Madam Chairman: It is really embedded in the Act what the activities are that would deal with research, data analysis, collection of data analysis and making sure that the marketing and the information is outside there. So we have agreed to the establishment of a dedicated unit.

Miss Seetahal SC: I disagree and I want my position to be noted. I think that there is no enforcement of the matters the Minister specified and that is why I disagree. I just want to make that point; because there is no enforcement. Okay?

Mr. Narace: Madam Chairman, I would like to request that we have divisions on these matters and on each matter.

Madam Chairman: So could we vote?

AYES

Narace, J.

Miss Seetahal SC: “Yes” to what?

Madam Chairman: “Yes” to the maintenance of this dedicated unit and its commitment and the—

Miss Seetahal SC: Instead of a commission?

Madam Chairman: Yes, and to agree to the public awareness that has been itemized in clause 55 from (a) to (d).

Dr. Dick-Forde: What are we doing?

Madam Chairman: We are taking a division.

AYES

Dick-Forde, Dr. E.

Miss Seetahal SC: I am not disagreeing with the formation of a unit at all, to deal with public awareness, but I am disagreeing with not having a commission so that those provisions can be enforced. That is my position.

Madam Chairman: But how do you know that a unit would not enforce those provisions?

Miss Seetahal SC: Because it is not in the Act, Madam Chair.

Madam Chairman: Could we ask how do you get it—

Mr. Narace: Madam Chairman, procedurally, we are at a division which calls for whether we are going to vote “yes” to the position that the Minister would establish a unit in the Ministry, taking cognizance of clause 55 and clause 5. To me, the answer to that division is either: “Yes, I agree”; “No, I disagree” or “I abstain”. I have voted “Yes”, and I know that Dr. Dick-Forde has voted “Yes”.

Miss Seetahal SC: That might be your position that it is a straight yes or no, but I do not share your view and I have been in these select committees before and we have been able to maintain our different positions in the way that I have, without there being a division. It is not a division and the vote of a clause to a bill or in that order where you say no. It is not a proposal written in

writing where you have a specific section where you would say: “I do agree with that”, or “I do not”.

You have come with a proposal which is designed, in your view, Minister, through you, Madam Chair, to deal with a situation that I saw as a problem and I do not agree that the proposal fully answers it. So it is not a question of a division.

Miss Sharma: I just want to add my little piece here in the spirit of compromise, one. I think at this point in time the dangers or health hazards of smoking have permeated widely throughout the public at all levels. The Minister of Health has done that. We have had a lot of information about that. I think what is lacking is information about the need for this kind of legislation. I would like to think that while we need to have a body, I do feel maybe the powers of the unit need to be perhaps stated more explicitly. I really do not see the need for a commission at this point because smoking as a health hazard has been widely distributed. I mean, that information is known. I think what is not known is why it is we are moving to have it banned in public areas. For me, I think if you create that unit and it is specifically given that power to repeat that message, then we would achieve our aims.

So that is why I do not feel we need the commission itself because I do feel—I mean, the average child I meet in a school knows that smoking is bad for one’s health, but that does not mean they stop it. They know marijuana is bad; people know cocaine is bad and they still choose to do it at times, but we try to limit their choices, for example, when it is an illegal substance. But in terms of something like smoking where they already know it is legal from early, they know it is bad.

I have taught for over 10 years; it is a topic I teach every year, especially with my Forms 4 and 5 students. We engage in debates and I have never met a class that does not tell me that they do not know about the dangers of smoking, hence the need for a unit. I could see the strong need for a unit, but to say we need a commission, I would like to compromise on that issue.

Madam Chairman: What does that mean; that you are voting yes or no?

Miss Sharma: It is not a simple yes or no, as she says, because that is not her point. Her point was, she agrees with having a unit, so you cannot have that as a yes or no. She wants the unit, and I think we both agree with that. It is having a commission; that is where it could be a simple yes or no.

Madam Chairman: Could someone tell me what a commission would do in a situation like this? What is a commission?

Dr. Dick-Forde: I think your point is really the matter of enforcement. I wanted to say, Sen. Seetahal, that the counsel here has said that it was in and CPC took it out, so I was asking her why not let them just put it back in, which can happen.

Miss Seetahal SC: You see, it does not need to be called commission; it is anything that deals with enforcement. [*Crosstalk*] It is not just that smoking is bad for your health; it is also people who want to stop smoking and to also parents who are smoking and what impact they have on their children. People do not know about those things.

Madam Chairman: And we are in agreement with the enforcement and we are saying—

Miss Seetahal SC: It is really enforcement I am looking at, you know.

Madam Chairman: Yes, that is what I gathered and we are going to make sure—

Mr. Narace: So we are going to include in the legislation: “The Ministry shall establish a unit to be responsible for” and we are going to take that on board.

Madam Chairman: And the enforcement would be taken on board. Okay. So let us move on to item 5(2)

Pause.

Miss Roopchand: Senator, we have a concern, that if we put an enforcement against that particular provision, it means someone can bring an action against the Minister or the Ministry for failing to do any of those functions listed under clauses 5 and 55.

Miss Seetahal SC: It is how you phrase it, though. You can phrase it in many ways. You can bring an action to force the Minister to have the unit. Supposing it goes on for 10 years and every—

Miss Roopchand: Oh, to have a unit?

Miss Seetahal SC: Yes. But you do not charge him for not having it. It is like a mandamus. You can say: There shall be a unit, so, so, so.

Madam Chairman: Let us move on to the other one.

Mr. Narace: Madam Chairman, before we go on to the other one, forgive me, procedurally, I would like Mr. Jaggassar to advise us if it is okay to call for a division and it is okay for the Chairman to say, “Are you for, against or abstain”. I would like to know.

Madam Chairman confers with Mr. Jaggassar.

Madam Chairman: Yes, procedurally it is right.

Mr. Narace: Thanks. I just wanted to make sure; not that I do not mind us compromising on this one.

Madam Chairman: Okay. 5.2, and here we are talking about the Bill did not criminalize smoking or the possession of tobacco products; it was a recognition in her opinion that smoking cigarette or use of tobacco was considered less dangerous. So could we see what your response is?

Mr. Narace: That is the first issue; issue No. 1: All fines of \$1 million to be reduced to \$500,000; all offences to be tried summarily and indictably. Sorry, it will be “or”. The fines started a lot higher than this, eh; it is now down to nothing.

Madam Chairman: Okay. So we have agreed that the fines would be reduced to \$500,000, or? Are we saying that?

Mr. Narace: It could be summarily or indictably.

Madam Chairman: “Or” or “and”?

Miss Seetahal SC: It must be “or”. You cannot have a trial both ways. In practice, if you are trying a matter summarily, you would say: On summary conviction, a penalty, and on indictable conviction, a penalty, and the summary conviction penalty would be less. That is how it is.

Madam Chairman: So we have accepted that.

Miss Seetahal SC: No, you have not yet.

Mr. Narace: We have to put it in.

Miss Seetahal SC: All I am saying is that when you have an alternative—if you look at the Children Bill you will see it, you know. All of those things are alternatives. You have to create a penalty. You say, on summary conviction to maybe two years imprisonment and \$200, or whatever it is, and indictable to so and so or so and so. That is how it is done. I want to point that out.

Madam Chairman: So would you make the adjustments?

Miss Seetahal SC: But you have to agree on the amount. Now, \$500,000, it sounds good, but I think we need to look at this thing, which is something I thought was a very good thing, from Witco. If you look at the back at 5, you will see a comparison. Because if you go with disproportionate penalties, you tend to find that the Court of Appeal or the criminal courts; the constitution courts could say, in contrast to legislation like the Children Bill where you have lesser penalties, this is disproportionate. So you have to look at that too.

I see people who are bringing children in to view sex and so on, the fine there is so much less. So look at those things. I am just suggesting that you need to look at these things and bring some proportionate fines to what operates internationally, because when you bring it back there, people who do not agree in the Senate and in the House, when they look at this and they compare it to the Children Bill and it is raised in the public and people who are already against the Bill would be able to say, what ridiculous—I am telling you what is happening. You see, the thing is, do not imagine that the whole country is going to support it. People will easily pull it out and you will find people ridiculing it and saying: “Look, this is what you have for sex or bringing somebody in a brothel” and look, this is what you have for this—

Madam Chairman: And for cigarettes we have more. Okay. We have heard you and we would look at it.

Miss Seetahal SC: Yes, but you really need to look at this comment.

Madam Chairman: Okay. Clause 4; which issue deals with clause 4? Health?

Mr. Narace: Companies should be allowed to sponsor—

Madam Chairman: Which page?

Mr. Narace: Page 3.

Madam Chairman: Page 3, issue 4.

Mr. Narace: Yes. “Companies should be allowed to sponsor and also take credit for it.” Our response, Madam Chairman, is that research shows that the tobacco company sponsorship of cultural and sporting events is a very effective form of—

Madam Chairman: I think we are in clause 4, the workplace.

Mr. Narace: Issue 4.

Madam Chairman: We are looking at this here.

Mr. Narace: Okay.

Miss Seetahal SC: I did not say anything about this, you know—

Dr. Dick-Forde: Page 4 of your document, issue No. 5.

Madam Chairman: “The definition of workplace should not include private residences.” And the Ministry supports the recommendation that the definition of “workplace” be amended. As such the words, “or are places of employment of domestic workers”, should be deleted.

Mr. Narace: Agreed.

Miss Seetahal SC: I just want to point out that in some of the legislation we have you would see how they draft that provision. That is for your own edification.

Madam Chairman: Okay. Clause 6. You need tell me beforehand which clause is clause 6.

Miss Seetahal SC: That is the one with the inspections.

Madam Chairman: Give me a page. I do not know if we have a clause 6.

Mr. Narace: Yes, we do; page 12. Clause 6 is the last one: The designated officers should be trained persons. We agree that designated officers should

be police officers, customs officers, trade inspectors and public health inspectors. We agreed.

Miss Seetahal SC: The power to enter, I see here it says it should remain as is; there it is not unconstitutional. But the point I was making is, not that it is not unconstitutional, but that police officers under the current law could only enter vehicles and so on, if you are looking for firearms and for drugs, which are illegal substances. If tobacco is not illegal, do you not think that (g) is giving power which could be abused? How can you enter a vehicle to search for tobacco when tobacco is not illegal? Look at that.

Miss Roopchand: We amended that 55 to include bulk. You told us that we should make it very clear that we were dealing with smugglers so we amended that particular provision to add “bulk” in.

Miss Seetahal SC: What you have here is, “It should remain as it is”. That is what you have at page 12, so that is why I am raising it.

Dr. Dick-Forde: I do not get the impression that clause 6 is about looking for tobacco as much as to inspect the premises for the—

Miss Seetahal SC: I think they have joined up the two. Clause 6 deals with the actual officer and I was saying that they did not designate the officer, and the Minister has answered that. Now tied in with that is the powers at clause 48(1) and insofar as all the powers are concerned, my point was that (g) of that clause is a very wide provision and I am saying this kind of power is given to police officers and customs officers sometimes in specific legislation when they are dealing with illegal products.

12.05 p.m.

Miss Seetahal SC: It does not say smuggled or bulk. The Minister says that that remains. If you have a pack of cigarettes—

Miss Roopchand: It is to check to see if the labelling is correct; taxes are paid and whether they have endorsements and tobacco is coming from the underground, you will have to get a warrant before you enter.

Miss Seetahal SC: That does not say that. If this Act gives the power you do not have to get a warrant. This section is giving the authorized officers special powers. In the police service when they want to stop a car in the road, do they have a warrant? No. They can stop to search for drugs, ammunition and firearms without a warrant.

Mr. Narace: If a van is carrying a couple hundred boxes, how do you separate it?

Miss Seetahal SC: If you have reasonable suspicion that somebody is transporting that amount, you should be able to do that. If you have reasonable suspicion that I have a pack of cigarettes, under this law you cannot stop me. Anybody could abuse it.

Madam Chairman: That would be modified.

Clause 8, that issue with private members' club should be exempted.

Mr. Narace: The ministry does not support this recommendation as it would be very easy to escape this provision. All those recreational clubs and what you call rum shops that operate under the name recreational clubs and casinos are private members' clubs. We are holding firm to that one.

Miss Seetahal SC: I said that it should be amended to say private members' clubs.

Mr. Narace: Private members' clubs are recreational clubs.

Miss Seetahal SC: Under item 6, page 5, you have my recommendation was that "clubs" should be deleted. That was not my recommendation.

Mr. Narace: I understand your point. We are holding firm on this one.

Miss Seetahal SC: This morning, I looked at some of the legislation in other jurisdictions.

Mr. Narace: In Trinidad private members' club can be nearly establishment. It would defeat the purpose of this Bill.

Madam Chairman: Could I ask for a pause? It is a bit urgent. I have the news release. We have to get it to the newspapers now. I would read it and whether or not you are in agreement, you would let me know.

The Parliament of the Republic of Trinidad and Tobago

Special Select Committee of the Senate

Tobacco Control Bill, 2008

The above named committee was appointed on November 18, 2008, to consider and report to the Senate on the Tobacco Control Bill, 2008 and to report within 21 days.

The Members of the committee are Mrs. Hazel Manning Chairman; Dr. Emily Gaynor Dick-Forde; Mr. Jerry Narace; Miss Dana Seetahal SC and Miss Cindy Devika Sharma.

The text of the Bill is available in all public libraries and on the Parliament of Trinidad and Tobago website, www.ttparliament.org. Members of the public are invited to make submissions on the Bill and may do so as follows, via email njagessar@ttparliament.org; via mail, the Secretary of Special Select Committee of the Senate, the Tobacco Control Bill, 2008, Office of the Parliament, Red House, Abercromby Street, Port of Spain.

All submissions should be received by the secretary to the committee by Wednesday December 3, 2008 at 4.00 p.m.

Is that okay? There is something about 21 days. It is Wednesday. We are

okay with that.

Mr. Narace: We were on issue 6. The ministry is holding firm to that position.

Miss Seetahal SC: Could the Minister, his advisors and the committee look at the Smoke Free Environment Act 1990 of New Zealand, sections 12 and 13(a) and (b) to see how they dealt with the issue? There are similar provisions.

Mr. Narace: We are holding firm but we will take a look at it.

Miss Seetahal SC: If you are holding firm, taking a look at it would not be of any use.

Madam Chairman: You are saying that the ministry does not support this recommendation. It would be very easy to escape this provision. Most businesses as bars and restaurants can then charge a nominal fee to their users making them members' clubs. We are saying no to this. You are recommending we look at the Act. Could you give us a sense of what the Act says?

Miss Sharma: They have itemized it. On page 26 they have smoking in restaurants, casinos and application of the Act to bars. Maybe, they are suggesting that more information could be given in our legislation. They are saying that no person may smoke in any of these places, once it is not an open area. I see nothing where they talk about a private area.

Madam Chairman: They agree with us.

Miss Sharma: Maybe we could add that.

Mr. Narace: That is why I said that we would look at it.

Miss Seetahal SC: In closed areas one would expect that, but in different parts like bars they have open areas outside.

Mr. Narace: Even though we say that we are holding firmly, when we check back if we find something at committee stage in the Senate, we would take a look at it.

Madam Chairman: Next is facilities that employ paid personnel. It is not clear enough and is too wide. This is consistent with the definition of work place. All work places are to be smoke free.

We have consistency with other pieces of legislation. I know the Ministry of Education and the Ministry of Health and all public places—we keep this one.

Subclause (3) with children, any place that provides services primarily to children under the age of 18. It is too wide and can lead to a certain degree of ambiguity.

The response is agreed. The amendment in the fourth line is to read, any outdoor public places which primarily caters to children, such as children's playgrounds, amusement parks and video arcades. That is accepted.

Subclause (4) is not necessary. It is self-evident and as such should be deleted.

Miss Sharma: In the Canadian legislation it is there as well.

Mr. Narace: We will take a note of that.

Madam Chairman: Subclause (9) does not carry a term of imprisonment. In response to subclause (9), we insert “or two years imprisonment” at the end of the statement.

Clause 9, ambiguity in interpreting any provision in this Act, the rights of non-smoking members, et cetera. They have accepted clause 9 and made the adjustments where there is ambiguity in interpreting any provision.

Miss Seetahal SC: You will redraft the entire section.

Madam Chairman: Yes because it is too wide.

Clause 10. We have agreed to this. It is not necessary and they are saying that it is an onerous responsibility on the state and as such should be deleted.

Miss Seetahal SC: I notice that you are quick to amend those, Minister.

Mr. Narace: You do not have to talk to me twice.

Madam Chairman: Clause 11.

Miss Seetahal SC: We are deleting that entirely?

Madam Chairman: Yes.

In clause 11, we replace the words, “young persons” with the word “children” and define the word “children” to mean “persons 18 years and under”.

Miss Seetahal SC: Where will you define it? Do you not have an interpretation section in the Act? You define “child” not the plural.

Madam Chairman: Agreed.

Miss Seetahal SC: If it would be passed before the Children Bill, you have to look at that.

Madam Chairman: Yes.

We have agreed that clause 12 should be subject to clause 11.

Miss Seetahal SC: Why do you not say, “persons under the age of 18” instead of having to get into all that.

Madam Chairman: Yes.

Clause 12 agreed to and subject to clause 11. Subclause (1) is an extreme provision and is inconsistent with clause 11.

Clause 13 offends the freedom of expression of individuals.

The response is that it does not offend the right of individuals to freedom of expression. However, it does infringe on the right of the manufacturer who holds the trademark with the name WITCO. Consequently, the clause will have to be redrafted to allow the Tobacco Company to continue to use its name.

Miss Seetahal SC: That is the same thing as freedom of expression. I do not understand the point. You can say that it may offend.

Madam Chairman: Clause 13(3).

Mr. Narace: We have reduced the fine there.

Miss Seetahal SC: That does not make sense. You have indictment.

Dr. Dick-Forde: We are changing all.

Miss Seetahal SC: You must have two alternatives. If you have one year it is summary. You need to look at that.

Mr. Narace: We will amend it appropriately.

Miss Seetahal SC: Bear in mind I think that \$400,000 is too much.

Mr. Narace: Clause 14 is about no person shall use the brand name, trademark or other sign, symbol, logo or similar matter in whole or in part, commonly associated with a non-tobacco product, except for tobacco products for which a trade or brand name of a tobacco product or a service was in use prior to the coming in force of this Act.

Miss Seetahal SC: My position is that I am raising those because they were raised in other cases. You have to look at the fact that if it is past, maybe it can go somewhere and they may want to strike out certain provisions. It is possible to sever those and leave the rest of the Act. The ministry proposing this Bill must be very careful. What is the point of going through all this trouble and then the next year, this legislation—I feel strongly about that.

That section has been challenged. Section 18 was struck down. I see you have agreed to a redraft it.

Mr. Narace: Clause 16, issue 15. We agree. Issue 16, we also agree. We had nothing about clause 17. Could we look at clause 17, please?

Thank you very much.

Madam Chairman: Clause 19. The decision was appealed and the Tobacco Company lost. Clause 19(1) and (2) were struck down.

Miss Seetahal SC: Are we going with clause 18?

Madam Chairman: Yes. We need to reflect that message.

Miss Seetahal SC: Bear in mind that it does not prevent our courts from going to another jurisdiction. When you are drafting it, if there were any comments in the Canadian case, you should take those on board. You do not want to repeat it.

Mr. Narace: We will take a note of that.

Madam Chairman: Issue no.18, we agree to that. Clause 25 should be redrafted.

Clause 27

Mr. Narace: What is the issue on 27?

Miss Roopchand: Whether or not we have it, if you want to export to another country you have to abide by their rules.

Madam Chairman: Clause 33, we agreed. Include the words “or accidentally” after the word “incidentally”.

Mr. Narace: We agreed with you.

Madam Chairman: Clause 36.

Sen. Seetahal: The toy candy.

Mr. Narace: We will include manufacture.

Miss Seetahal SC: They were talking about the little lady selling it on Duke Street.

Madam Chairman: Are we okay with that?

Mr. Narace: Yes.

Miss Seetahal SC: Seeing that this is toy sweets, should the penalty be as onerous for labelling? I think that would be disproportionate. You cannot have all of them across the board being the same.

Mr. Narace: We will agree to look at all the fines a second time.

Sen. Seetahal: Many people use it as a substitute for cigarettes to help them stop smoking. You do not know that?

Dr. Dick-Forde: No.

Sen. Seetahal: I am informing you.

Madam Chairman: Are we agreeing to this?

Mr. Narace: Issue 20, clause 36, we have agreed to amend to include manufacture.

Madam Chairman: Clause 40 we agreed to delete the words, “as well as any other information the Minister may prescribe by regulations”.

Clauses 41 to 44. These are unnecessary and should remain as they are. They need to be looked at and to make them work together. The Chief Parliamentary Counsel should advise on this issue.

Miss Seetahal SC: What is unnecessary?

Madam Chairman: We felt that each provision dealt with something different. We will look at them.

Miss Seetahal SC: You will say reports from the minister should include (a), (b), (c), rather than all these different things.

Mr. Narace: Could we make a note of that?

Madam Chairman: Clause 47. Replace the word “retaliate”.

Mr. Narace: We agree to be redrafted. The suggestion is an employer whether or not a public authority shall not dismiss...

Miss Seetahal SC: Look at similar legislation in the trade union law and see how they work.

Mr. Narace: No problem.

Madam Chairman: We dealt with clauses 48 and 55. What remains?

Mr. Narace: Issue no. 26, the grace period for the application licence is too short. We agree on nine months to replace one year? Sen. Sharma, are you okay with nine months?

Miss Sharma: Probably, you have more experience than I.

Madam Chairman: Let us ask the lawyer why she said nine months.

Miss Roopchand: There is one manufacturer. Retailers are not required—there are few distributors and we are developing the protocol in terms of the instrument for the inspection and other protocols that will support the inspector. The ground work has already started.

Miss Sharma: In that case, nine months are okay.

Miss Seetahal SC: Normally, in legislation, you will have one year, two years, six months. Nine months are an oddity.

Mr. Narace: We do not want to go back to six. You must have some determination for this to work. Much work is being done in the ministry. Our health care system is unsustainable. Everybody is killing themselves and blaming the Minister of Health.

Miss Sharma: I will like to see a poster in every school.

Mr. Narace: You send me all that you want.

Madam Chairman: We have a policy document.

Miss Sharma: You have policy documents, but people do not implement everything you put out. We have all the right things.

Madam Chairman: A poster will not make the difference. We need to go deeper than that.

Miss Sharma: It is a step in that direction.

Madam Chairman: The last one here.

Mr. Narace: Clause 28. We agree to modify that cigarettes may be sold in packages of 10 units. However this...has a life of two years from the enactment of the Act. After that it is out.

Miss Seetahal SC: It is not to prohibit easy sales. You do not want to sell one and two. You prefer nine months because it is a shorter period. I am concerned with the consistency of all that is going on.

12.35 p.m.

Mr. Narace: You send me all that you want. I just want to say the Ministry will look at any other information as we prepare to do the report on the new Bill. I know we have the opportunity at the committee stage to make final amendments.

Miss Seetahal SC: What about Sen. Drayton's and Sen. Baptiste-Mc Knight's—You have it. I want to make sure. I do not want them to think that—

Madam Chairman: Thanks very much to committee Members. Mr. Jaggassar whispered in my ears that he wished all committees could operate like this—full agreement. The acrimony was not there. There was a pleasant atmosphere, full agreement and willingness to work together. We would now ask the Ministry of Health—

Mr. Narace: I would like to make a comment before you ask me anything.

Just to respond to Mr. Jaggassar. Maybe it had something to do with the Chairman and members of the committee.

Madam Chairman: We now ask the Ministry of Health to take all comments and work with the CPC to redraft the legislation. We do not need to meet again; we go straight to Parliament.

Miss Seetahal SC: We have to meet—

Madam Chairman: We have to meet to sign off.

Mr. Narace: I suggest that we agree that we leave the authority with the Chairman to decide if we need to bring anything back. We also have the option of committee stage. I would like to recommend that.

Madam Chairman: We will meet on Thursday afternoon at 1.30 p.m. to sign off.

Mr. Narace: We just want to agree that we are just redrafting the list of amendments, not the entire Bill.

Madam Chairman: And that we will meet on Thursday afternoon at about 1.30 p.m. Is there a problem?

Mrs. Persad-Salick: I want clarification with respect to the protocol. Are you saying that you are putting a list of amendments into the report of the committee?

Mr. Jaggassar: As an appendix to the report, the committee will recommend these amendments to the Bill. The report is what will be debated and once the Senate adopts the report—

Mrs. Persad-Salick: The list will be part of it.

Miss Seetahal SC: Because the Bill is laid already.

Miss Sharma: About the Thursday meeting, my final school board meeting that afternoon is at 3.00 p.m. Can we possibly meet earlier in the morning?

Madam Chairman: We have Cabinet.

Miss Sharma: I do not care to be absent, but—

Mr. Narace: What about Wednesday afternoon and get out by 4 o'clock?

Miss Seetahal SC: No. You have to get it, put it together—

Mr. Chairman: Wednesday is the last day for submissions. So Thursday at 1.30 p.m. and we will finalize it and send it forward.

Thanks very much for a very efficient and cooperative committee.
Lunch is served.

12.39 p.m.: *Meeting adjourned.*

**THE THIRD MEETING OF THE SPECIAL SELECT COMMITTEE
OF THE SENATE APPOINTED TO CONSIDER AND REPORT ON
A BILL ENTITLED “TOBACCO CONTROL BILL, 2008” HELD IN
THE PARLIAMENT CHAMBER, THE RED HOUSE,
ABERCROMBY STREET, PORT OF SPAIN, ON THURSDAY,
DECEMBER 04, 2008 AT 1.35 P.M.**

PRESENT

Mrs. Hazel Manning	Chairman
Dr. Emily Dick-Forde	Member
Miss Cindy D. Sharma	Member
Mr. Neil Jaggassar	Secretary
Miss Katharina Gokool	Asst. Secretary

ABSENT

Mr. Jerry Narace	Member
Miss Dana Seetahal SC	Member

Madam Chairman: Let us start; we have a quorum of three. Miss Sharma, would you come closer to us, please.

Let us get a confirmation of the Minutes of the second meeting. We are now about to start our third meeting. *[Interruption]* *[Members peruse Minutes]* We start with correspondence, according to the Chairman's procedural brief.

Remember we publicized that this committee was meeting and asked the public to submit comments. We have received over 41 comments; we have just received another one, so it is 42; even though it was outside the deadline we accepted it. We have received 42 comments, and I thought that was very good; one from a law firm, 16 from business organizations, and

with the one we just received, that makes it 17 from business organizations, and 24 from individuals. That gives us a good number of 42 comments from the public.

Do you have a sense of how many of the comments sent agreed to ban and how many agreed not to ban? I was just skimming and I saw a number of them which just said do not ban or ban.

Mr. Jaggassar: I do not have that information, but the technical team—

Madam Chairman: So we have a clear sense of who is saying what? They were very short, concise statements either in favour or against. We will ask the technical team to give us an assessment of what was submitted.

We are now into the agenda and we would like to confirm the Minutes. You have the Minutes before you. Page 1, any omissions or errors that we may need to correct in the first instance? Page 2, errors, omissions?

Dr. Dick-Forde: Madam Chairman, 2.0; the third to last line at 2.0 says: "There was consensus that the company be written to informing them"—rather than "inform them".

Madam Chairman: The third last to last line, "to inform" rather than "to informing". The Secretary is advising me that the sentence should read:

"There was consensus that the company be written to informing them to submit their concerns in writing."

Any other? Page 3?

Dr. Dick-Forde: Page 3, 4.2, where it says, "Ms. Seetahal SC was of the view that if the Bill become law".

Madam Chairman: It should be "if the Bill becomes law". Page 4? I do not know if in 4.8 if Miss Sharma would want to make sure that really represents what she said. Page 5? I think in 4.14 where it says, "was to wide", it should be "too".

Dr. Dick-Forde: Permit me, please, page 4, 4.7, the third line from the bottom, but we need to go to the fourth line from the bottom where it says, "Ms. Seetahal SC did not vote, state", she agreed with the creation of the unit, so it would not be "stating". Page 5?

There being some amendments and corrections, and with the hope that these would be noted, could we now confirm the Minutes?

Confirmed by Miss Sharma.

Seconded by Dr. Dick-Forde.

Madam Chairman: The Minutes are duly confirmed and seconded. We go to the next item on the agenda, which would be "Matters Arising out of the Minutes". There are matters arising out of the Minutes.

Do you have any before we move on to the documents that were submitted to us from the Attorney General's Office and from the Ministry of the Health? Could we call them in at this point? Do you have anything else you want to do or to discuss, to put on the agenda, before we call in the technical team?

We are going to call in the technical team, and we will look at the adjustments coming from the Ministry of Health and the Attorney General's office. *[Interruption]*

[Officials enter the Chamber]

ATTORNEY GENERAL'S OFFICE

Mrs. Nalini Persad-Salick	Assistant CPC (Ag.) Office of the CPC
Ms. Karlene Seenath	Asst. Solicitor General Solicitor General's Dept.

MINISTRY OF HEALTH

Ms. Bhabie Roopchand	Legal Adviser
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Ms. Andrea Yearwood Dir. Policy Research and Planning

Madam Chairman: We welcome the technocrats from the Ministry of Health and the Attorney General's Office.

We are just at the point of Matters Arising out of the Minutes. We have before us two documents, the Tobacco Control Bill, 2008, the list of amendments to be moved, and this was submitted by the Attorney General's Office, and we have comments from the public. This was done by the Ministry of Health. We are going to go through them to make sure that we are faithful to the discussions that we had a few days ago.

I am thinking to make it tight and more concise, that we take the clauses, Mr. Jagassar and members of the committee, so that we have a pattern to follow, but you will have to guide us. Do you have copies? *[Interruption]* You will have to guide us, Ministry of Health, as when we need to consider the public's comments.

Following the pattern we have here, we start with clause 4 and the amendment, "Insert in the correct alphabetical order the following definition—'child' meaning any person under the age of 18. Delete the word 'ministry' and substitute the word 'Ministry' with a capital "M". That is the first item on the first clause. Are we being faithful to the discussions that we had.

Miss Roopchand: By clause 4, yes.

Madam Chairman: Any comments from the public on this? In the definition of "workplace", "Insert the word 'enclosed' after the words 'means any' and delete all the words occurring after the words 'private residences'." What would it read like, just to be clear?

Mrs. Persad-Salick: "in which persons perform duties as employment or work and includes private offices, common areas and any other area which

generally is used during the course of employment or work, but shall not include private residences." So it would start rather, "'workplace' means any enclosed place in which..."

Miss Roopchand: Does that mean that private dwelling that is used for commercial purposes is now exempt, because that is not the intent? You could have a private home and you could have a business downstairs the private home or part of the area. The decision was to exclude homes where domestic workers were employed.

Madam Chairman: So what are you suggesting?

Miss Roopchand: Our suggestion was to delete the words, "or are places of employment of domestic workers".

Madam Chairman: So you would not put "enclosed", you would not stop at residences, but you would continue, "except to the extent that they are used for commercial purposes or are places of employment"?

Miss Roopchand: So we are just taking out "or are places of domestic..."

Madam Chairman: So where do you stop then, at "purposes"? Give us a sense.

Mrs. Persad-Salick: Enclosed here in the latter part of the definition that I had taken out—in the sense that if you have workmen or people working at your home, let us say a painter, he cannot smoke it would seem, if you do not put enclosed, if he is outside painting your home. He would not be able to smoke, because it is not enclosed.

Madam Chairman: If he is outside painting, then he cannot smoke with this?

Mrs. Persad-Salick: He cannot smoke with this. But anybody who is working in an enclosed area—I was trying to be faithful to the New Zealand legislation; they were all talking about open spaces and enclosed areas. I

was trying to get to that; this is the reason why. What New Zealand did too was that they exempted dwelling houses, that where the employer—where there was any workman in that dwelling house, that dwelling house was exempted.

These were the documents we were asked to refer to. I am just saying what I used and I do not know if this is the policy, if we really are in keeping with it; if not, we will have to change it.

Miss Roopchand: You may have a building that is not fully enclosed, but partially enclosed. We would like it to fall within the definition.

Madam Chairman: Could you give us a sense of what you are saying? You are saying that it does not stop at "include private residences" it continues to "except to the extent that they are used for commercial purposes"?

Miss Roopchand: No, we take out "or are places of employment or domestic workers" and then it would read, "However an enclosed workplace is a partially or fully completed building structure including"; we could take out "including a mine or tunnel". We stop at structure.

Mrs. Persad-Salick: Let me re-read it so we can have it:

"'Workplace' means any place in which persons perform duties of employment or work and include private offices, common areas, and any other area which generally is used during the course of employment or work, but shall not include private residences except to the extent that they are used for commercial purposes. However, an enclosed workplace..."

It makes sense, because you are saying an enclosed workplace.

Miss Sharma: It is connected because that last part of the definition
[Inaudible]

Mrs. Persad-Salick: But workplace is being defined, and now you are talking about an enclosed workplace, which is different to what you are defining about. So in interpreting this, Madam Chair, respectfully, we would have a difficulty unless we put the word "enclosed" above.

Madam Chairman: That is what you did.

Mrs. Persad-Salick: That is why I put it at the start there. Perhaps, if we take the words "or are places of employment of domestic workers" and I take the word "enclosed" and move it back above, we could probably work with that and delete all the words occurring after "structure". Would that be okay?

Miss Roopchand: We would like it reflected that it could be a partially or fully completed building enclosed.

Madam Chairman: What is the final reading? "That means any enclosed place"? Do you put enclosed at the beginning?

"...in which persons perform duties of employment or work and includes private offices, common areas, and any other area which generally is used during the course of employment or work, but shall not include private residences except to the extent that they are used for commercial purposes. However, that an enclosed workplace is a partially or fully completed building structure."

Mrs. Persad-Salick: We would go with that.

Madam Chairman: That is separated from the outdoors, we leave that out? Are you sure you do not want to put that it is separate from the outdoors?

Mrs. Persad-Salick: A little mischief we are trying to prevent here.

Madam Chairman: That a person who is outside painting should not be held? It is clear here. If you leave it out, I do not know. It is clear that enclosed is separated from the—

Mrs. Persad-Salick: So it adds more clarity.

Madam Chairman: Yes. Are we in favour?

[Members nod]

Madam Chairman: That is one. So we have agreed to three things here. We go down to clause 5, "Delete the word 'Ministry' and substitute the word 'Minister'. The Ministry shall be responsible for..."

Miss Roopchand: We said, "The Ministry shall establish a unit to be responsible for" or "which will be responsible for"; we had a lot of debate on this issue, and that was our concession.

Mrs. Persad-Salick: Originally I had "The Minister shall be responsible for..." and the discussion was that the unit would be set up within the Ministry to do all these things. So you want the words "The Ministry shall be responsible for setting up a dedicated unit..."

Miss Roopchand: Or just say, "The Ministry shall establish a unit which would be responsible for", something to that effect, but I recall that there was a lot of argument and Miss Seetahal SC insisted that we must put it as an obligation to the Ministry to establish that unit. *[Interruption]* *[Crosstalk]*

Dr. Dick-Forde: My recollection is that the concern was beyond just having a unit, but that the Minister must be responsible. In fact, there was even a discussion that there should be some kind of sanction of the Minister to make sure the Minister does it. I do not recall what was conceded, because it is not in the Minutes, what was agreed in the end, but I recall that the point was that it should be the Minister. What is the difference if you have Minister or Ministry, once we say that we have included the unit? I am just asking.

Miss Roopchand: I am sure she conceded to that, but she wanted us to go further which was to include a penalty and we said no. She said that it

depended on how you phrased it, that it may not be that you would be penalized, but you could seek mandamus to compel him to establish the unit. She said that there was nothing in here as is which would mandate him to establish the unit. We are saying that is our intention; she wanted it reflected in the Bill, so someone could ask for mandamus compelling the Minister to establish the unit.

We did indicate that was the concession and she said yes, that the Ministry shall establish the unit.

Madam Chairman: We have something on page 18 and maybe we could look at it. At the bottom of page 18 where this is being said by Miss Seetahal SC:

"I appreciate what you are saying that your unit—or you will create one, but if a Minister were to create a unit, if you are no longer the Minister of Health next year, is it going to bound another Minister? Is it going to bind him to do it? Those are the issues and that is what I am saying and that is it. I think by now I should have made it clear. It is not my personal thing to have this; it is that I see it as necessary if this thing is going to work. What we will have is a piece of legislation on the books and it will probably be obeyed with the breach more than the thing, otherwise."

2.05 p.m.

Madam Chairman: Miss Seetahal on page 20:

"I disagree. I want my position to be noted. I think that there is no enforcement of the matters that the Minister specified and that is why I disagree. I just want to make that point because there is no enforcement. I am not disagreeing with the formation of a unit at all to deal with public awareness, but I am disagreeing with not having a

commission so that those provisions can be enforced. That is my position.”

Mrs. Persad-Salick: On page 24, Miss Seetahal said:

“It is how you phrase it, though. You can phrase it in any way; you can bring an action to force the Minister to have a unit. Supposing it goes on for 10 years...

Miss Roopchand: Or to have a unit?

Miss Seetahal SC: Yes, but you do not charge him for not having it. It is like a mandamus. You can say there shall be a unit, so, so, so.

Madam Chairman: Let us move to the other one.

Mr. Narace: Before we go to the other one, forgive me. I would like you to advise us if it is okay to call for a division for and against.”

We did not get a sense of what was voted on, because earlier on in the other page you were saying that—we were looking at the matter of enforcement with respect to how do you enforce what the Ministry—

Madam Chairman: What do you advise us, then, since we did not conclude—

Mrs. Persad-Salick: I do not see a difficulty in saying that the Minister or the Ministry shall establish a unit. What you want to call it, a Tobacco Control Unit?

Madam Chairman: I do not know if that is the issue; I think the issue here is whether it is Ministry or Minister.

Mrs. Persad-Salick: They are saying that it should be the Ministry, but I got the sense earlier on—

Miss Roopchand: But in terms of drafting, what is the correct—because we were told by—

Mrs. Persad-Salick: It should be the Minister.

Miss Roopchand: Well then we put the Minister.

Madam Chairman: And that we are going to establish a unit. And that you are going to make sure whatever is drafted that enforcement can take place.

Mrs. Persad-Salick: Yes.

Madam Chairman: Do we have all of that?

Dr. Dick-Forde: I am not sure you need to put the agreement on the enforcement, but I think the Minister part actually addresses the concern that was raised, that the Minister should be named as being responsible, rather than just say the Ministry. But there was no agreement on putting any enforcement on—so nobody should be able to sue the Minister—

Madam Chairman: And that is what you were saying. Yes, I know you said that.

Miss Roopchand: And she basically agreed and that is why she said: “If you leave, I want to know that somebody can bring a mandamus compelling the Ministry to establish this unit.”

Madam Chairman: Okay. So what are we agreeing to now?

Miss Roopchand: The Minister shall establish.

Madam Chairman: Delete the word “Ministry” and substitute the word “Minister”.

Mrs. Persad-Salick: And we will include the words, “shall establish a unit which shall be responsible for”.

Madam Chairman: Page 23. Okay. So we are okay with that.

Clause 6: To delete clause 6; what will trigger these authorized officers to call to whom and where.

Miss Roopchand: I think in clause 6, Miss Seetahal wanted to actually identify that he can appoint from, and we did agree that he will appoint from police officers, custom officers, trade inspectors and public health

inspectors. So clause 6 would have to be modified. However, we would like it to also read: “or any other fit and proper person”, because if you are establishing a unit, you will have individuals in that unit that you will want to fall under this Act for enforcement purposes.

Mrs. Persad-Salick: So it would be specific now: “The Minister may appoint any police officer”—

Madam Chairman: I think I heard her say the word, “certified”. Would certified not have covered all of them, and then you define certify?

Mrs. Persad-Salick: You could use the word “authorized” officers.

Miss Roopchand: Yes, but her contention was that they must be certified. She wanted to see certified people, and that is why we said that was our intent. Our intent was for pull from this pool and she agreed, so I will expect that she would want to see it in the Bill that says this is the pool of people.

Madam Chairman: So you want us to list all the names in the Bill?

Miss Roopchand: We do not have to list it here, but we can say, “an authorized officer means”, and put it in the interpretation section.

Madam Chairman: So how do you make the adjustments here?

Mrs. Persad-Salick: There is a minute—

Madam Chairman: What page?

Dr. Dick-Forde: On Page 5, 4.10. The designated officers should be police officers, customs officers, trade inspectors and public health inspectors. So there was no use of the word, certified.

Mrs. Persad-Salick: I agree, because when she talked about that contentious “G” in clause 55 with the search and seizure, that is why we needed the police powers there. If we define “authorized officers” to include customs, police, trade and public health inspectors, we could probably work with it that way.

Madam Chairman: Yes, and define it.

Miss Roopchand: But we needed to reflect that it could be any other certified person.

Dr. Dick-Forde: Any other fit and proper person we said.

Mrs. Persad-Salick: Yes. It is police, customs, trade, public health inspectors or—

Dr. Dick-Forde: Or if we say tobacco inspectors?

Mrs. Persad-Salick: We do not have that—

Miss Roopchand: But if we are establishing the unit, that is on the drawing board.

Mrs. Persad-Salick: No, no, you can only do what this legislation has on it.

Miss Roopchand: So then we need to say something, “or any other fit or proper person.”

Madam Chairman: Okay. Clause 7: Delete the words “six months” and substitute the words “one year and nine months”.

Mrs. Persad-Salick: Well we had agreed to nine months.

Madam Chairman: Yes, I remember that.

Mrs. Persad-Salick: The reason being, that has a proclamation clause and this is going to be staggered—the proclamation. Therefore, I was saying that in the end there was a suggestion why not leave the six months and the nine months being an oddity and why not a year or two years and all of that. The fact is that when there is a proclamation, this is already in the public domain, so you could leave the six months. Time is already running. People ought to be sensitized.

Madam Chairman: You mean leave the nine months?

Mrs. Persad-Salick: The committee will have to decide.

Madam Chairman: I thought we took the decision of nine months.

Dr. Dick-Forde: We took the decision for nine months.

Madam Chairman: Yes, I remember they were saying nine months.

And continuing along that clause we have here: In subclause (6) delete the words “the Minister with responsibility for trade.”

Mrs. Persad-Salick: Madam Chair, the entire clause deals with the Minister of Trade. The last subclause which is (14), defines the Minister as the Minister with responsibility for trade, so it really is superfluous here, having the Minister with responsibility for trade in (6).

Madam Chairman: So what do we do?

Mrs. Persad-Salick: The Minister in this entire section is the Minister of Trade, so we do not need to change anything. We are just cleaning up the Act as we go.

Madam Chairman: Okay, sure. All the amendments we have done, did we get any comments from the public on any of these things including here that we did.

Mrs. Persad-Salick: No.

Madam Chairman: Clause 7(13), substitute the following: “A person who contravenes this section commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars or six months or on indictment to a fine of five hundred thousand dollars or one year imprisonment.” That is again clause 7(13). Are we okay with it?

Miss Roopchand: I am okay with this.

Madam Chairman: So we have lowered the fine and we have included or so many months imprisonment.

Dr. Dick-Forde: But the note at the bottom, has that been taken into consideration?

Mrs. Persad-Salick: That is for the consideration of the committee. I did notice, though, in clause 52(4) and (5) that there is an attempt to actually lift the veil of incorporation in (4) but yet (5) is talking about the corporation being held liable as a corporate person. It does not seem to make sense if you are trying to lift the veil and then in (5) you are saying the corporation is held liable as a public person. So it is a little bit confusing, because by the time I got down to clause 55 I saw this clause—so I am to be guided; I do not know what the position is.

Dr. Dick-Forde: I think if you want to meaningfully sanction any corporation you have to get at the agents. To lift the veil you have to get at the agents, who are the people actually making the decision and contravening the law. We have gone into a time now when we are no longer hiding, looking at the body corporate; we are looking at the agents behind the corporation.

Mrs. Persad-Salick: But it is there in (4), but (5) will make it—

Dr. Dick-Forde: Which means we will have to make it consistent.

Mrs. Persad-Salick: The difficulty and for proportionality is that these kinds of things are only done like in financial institutions. It is a little bit severe here, and remember this is not an illegal drug, or anything like that. So that is the difficulty I am just flagging. So perhaps the high fines for the corporation—but there is already existing in the draft the lifting of the veil in certain circumstances. And I think we could leave that, except that (5) now makes it ambiguous because then you are going back in (5) to say you will be dealt as a corporation, which does not—

Dr. Dick-Forde: But then a decision needs to be taken and then be consistent across—

Madam Chairman: what do you advise CPC?

Mrs. Persad-Salick: I would leave the fines and leave that section that is dealing with lifting for penalties, lifting the veil in certain circumstances for licences and other things that they are required to do according to the convention and so on, that you could probably lift—where they are trying to evade duties and taxes, we can lift the veil in those circumstances.

Madam Chairman: Okay, let us go that way. Do you have a problem, Miss Roopchand?

Miss Roopchand: Not at all.

Madam Chairman, we have had communications with the Ministry of Trade and they are quite reluctant to be the licensing body for this under this Act. We have had discussions with the Ministry of Finance, Customs. Customs already has a system in place for licensing for alcohol and they were quite prepared to take this responsibility. I do not know if you could make that switch, that rather than it being the Ministry of Trade that it be the Ministry of Finance.

Madam Chairman: CPC, do you want to guide us?

Mrs. Persad-Salick: Madam Chair, that is a policy decision.

Madam Chairman: Does that mean that we have to go back to Cabinet, or we can take a policy decision here—

Miss Roopchand: I do not think the Minister will want that, so let us go with it as it.

Madam Chairman: You mean leave Trade?

Mr. Roopchand: Yes, leave Trade.

Dr. Dick-Forde: And any change that needs to be made, the Minister can then—

Miss Roopchand: At the committee stage.

Dr. Dick-Forde: Yes. Or even bring it to Cabinet if it is a major change.

Madam Chairman: In subclause (14), delete the word “minister” and substitute the word “Minister”.

Clause 8(1): We have created a right to be free from exposure to tobacco smoke therefore a person ought to be able to sue if this right is infringed. Any comments on this?

Miss Roopchand: Is it that the decision was to delete clause 8(1)?

Mrs. Persad-Salick: Whatever you find in the square bracket, this would be for your consideration now, because these things may have been omitted and it is something that I came across. The Act is going to bind the State and when you read 8, 6 and 7, you might be shooting yourself in the leg, because subject to subsection (7) if a person contravenes (2)(a), (b), (c), (e) and (o), the employer is deemed to have contravened that section and is liable for the contravention and the employer could very well be the Government. As a public officer if I wanted to smoke in my building, I am making my Attorney General and therefore the State, liable: You see what is happening here. Then it goes on to say: “it is a defence to a charge under subsection (3) or (4) if the manager, owner, lessee or employer, as applicable, demonstrates that he exercised reasonable care and diligence to prevent the contravention”.

Now, I do not know what would be deemed reasonable care and diligence; if putting up posters in the building and that kind of thing would be reasonable care and diligence. But if it is not done, you can actually pass legislation that can really make you liable if one of your employees—public officers—decides to smoke. I am just flagging it because it is something—

Madam Chairman: It is very serious.

Dr. Dick-Forde: Yes, very serious, because it is a problem which I am familiar with, because some people, you can encourage them how much you

want; you can warn; you can tell them, they would still smoke. It is not so easy to give up.

I recall, though, at the last committee meeting, there was an attempt to remove all indications of the State being liable for anything.

Miss Roopchand: Not as an employer.

Dr. Dick-Forde: Not as an employer, but where those could actually do something.

Madam Chairman: How could we address this, CPC?

Dr. Dick-Forde: The only way it might be addressed is like taking away the right, which is not the—the intention is to give people the right to be smoke-free.

Miss Sharma: I think, if I remember, Madam Chair, Sen. Seetahal had made the point that you do not have to give people a right to be free from smoking because you already have that right. It is not a right you can give. So I think that is why (1) should be deleted in clause 8. “All persons shall have the right to be free from any voluntary exposure to tobacco smoke.”

Dr. Dick-Forde: You mean it is not necessary to articulate it.

Miss Sharma: She said it is not necessary to articulate that. So that is to be deleted.

Mrs. Persad-Salick: That is why I am saying, if, as we have it here, which she was also saying, then what do you do if you feel that your right to be free from smoke has been breached? Who do you sue? You sue the Attorney General through the State. So we are shooting ourselves in the leg if we keep some of the provisions.

Madam Chairman: But then how would the rest read?

Mrs. Persad-Salick: Well, it is difficult when you take that—because it is such an integral part of the structure of it, if you like clause 8(1), (6), (7), (4), you see what we are doing to the entire clause. It is a little bit difficult.

Dr. Dick-Forde: I think from that quick read I did just now, that you can remove clause 8(1) and not interfere with what you really want to say down there. That is my view from reading it. “All persons shall have the right to be free from smoke” et cetera. But (2) then actually puts in place what you need to make (1) happen and therefore you do not need (1). You can say: “No person shall smoke”, and that way you do not articulate the right in the Act. CPC?

Mrs. Persad-Salick: Yes, I agree. But what happens to (6) and (7) later on?

Madam Chairman: Subject to subsection (7) if a person contravenes subsection (2)(a)—

Dr. Dick-Forde: That is (2)(a); that is okay. Is that not (2)(a) as in clause 8(2)(a)?

Madam Chairman: Yes.

Dr. Dick-Forde: All right. So it is not referring to (1).

Mrs. Persad-Salick: No, no. I am not talking about the reference, you know. The employer is deemed to have contravened that section and is liable to the contravention.

Dr. Dick-Forde: So then now we have to change that too. We now have to address subclause (6) as a separate thing. Moving (1) does one thing.

Mrs. Persad-Salick: No, it does not.

Dr. Dick-Forde: So moving (1) does the thing of removing the articulated right, but then when we go to (6), it is another issue.

Miss Roopchand: Sorry, I have a concern. Why are we treating the State differently from any other employer? I think we are going to run into problems in the Lower House.

Miss Sharma: I agree, because I believe people will look at it as an attempt by the State to protect themselves yet penalize private business owners and you cannot be unfair in your treatment.

Mrs. Persad-Salick: Madam Chair, I also have difficulty with the whole mens rea issue and the fact that you are causing liability on someone else. Do we need to have the employer liable for what the employee does? Should it not be personal liability?

Miss Roopchand: If I may, in terms of enforcement, this is the best way and all the evidence suggests that if you want to go after smokers, you have to go at the establishments and not the employers, because it is very difficult. Then it means that those individuals are the ones who will enforce the Act for you on the ground.

Dr. Dick-Forde: So this is a way to induce employers.

Miss Roopchand: Yes.

Madam Chairman: I gather that is what they do with PSs now. PSs are made responsible.

Miss Sharma: We do not have to include that information here.

Madam Chairman: Miss Roopchand is saying that it should be.

Miss Roopchand: Here we are saying the employers will be liable, just like in the other provisions where we said the bar owners would be liable, because we prefer to take one action against a bar owner than 10 people smoking cigarettes. The enforcement becomes extremely difficult.

Miss Seenath: Having regard to the liability, normally in cases that are brought against the State, sometimes you have to prove that the State is

vicariously liable; it is not automatic. We have a lot of cases in which police officers are doing acts supposedly in the course of their duty, and we say, “No, it is not in the course of their duty”, and we have to dispute that and show that there is no vicarious liability. This actually gets rid of that by saying you are automatically liable. There is no need to prove that the employer is liable. So it gives almost an automatic right.

Madam Chairman: So what conclusion do we come to, Miss Roopchand?

Miss Roopchand: That we remove clause 8(1) and we leave the other provisions as is.

Dr. Dick-Forde: I am really concerned now, especially from your explanation, because what your explanation just did is make the connection between clause 8(1) and those other subclauses, because these subclauses now entrench 8(1). They bring it to life. I understand what you are saying that in the same way that we are holding bar owners liable, employers should be as well. I am not sure how we can resolve that, because the enforcement part is important.

Miss Roopchand: Let us stick with the defence like we did with the bar owners. It shall be a defence if they put reasonable measures in place. There is a defence at 7.

Madam Chairman: “It is a defence to a charge under subsection (3) or if the manager or owner, lessee or employer”—

Dr. Dick-Forde: What clause are you looking at?

Madam Chairman: Seven—“as applicable demonstrates that he exercise reasonable care and diligence to prevent the contravention.”

Miss Sharma: I have a question. Do you need to, probably at this point explicitly say what kind of defence is reasonable defence, in terms of putting up a sign, or something, at this point?

Miss Roopchand: I think it would be too cumbersome. What may be reasonable in one environment may not be reasonable in another. But I suggest that we should leave it as is.

Dr. Dick-Forde: I think you should have a defence in this. Do you know why? Because I know of cases where persons would have been warned by letter and so on, saying “stop smoking” by the employer and the person has not stopped. So you have a problem where a person continues to smoke and the staff continues to complain and sometimes the employer cannot fire the person because they may not have hired him in the first place. There are situations like that. It is difficult to explain.

Madam Chairman: So we leave 8(1) as is?

Miss Roopchand: But we also ensure that the individual himself can be charged.

Madam Chairman: And that is part of 8(7)? You are putting in something that would make sure—where do you put that in?

Miss Roopchand: The CPC will have to—

Mrs. Persad-Salick: Madam Chair, if I may, because what happens is when we are reading the minutes, it becomes very difficult to decipher what—so we have 8(1). Are we keeping or are we deleting?

Madam Chairman: That is why I have paused here and I am waiting. I have been hearing the discussion and the debate and I am hearing that we seem to be in favour of keeping 8(1). Everybody seems to be in favour of keeping 8(1). Miss Roopchand?

Miss Roopchand: I am in favour of keeping 8(1).

Madam Chairman: The AG’s office is not in favour of keeping 8(1)?

Dr. Dick-Forde: I thought we had agreed we would move 8(1), because 8(1) establishes a right that would put us in some problems. I am not just

talking about the State. And we also discussed that it was not necessary in the light of what was established in 8(2) and so on, because 8(2) actually creates the environment to protect the non-smoker.

Madam Chairman: Could I ask Health, why 8(1)?

Miss Roopchand: I am okay, you know. I thought we had backtracked a bit.

Madam Chairman: No.

Miss Roopchand: I am okay with 8(1) moving but I want 8(7) to remain.

Madam Chairman: We all want 8(7) to remain as a defence. We take off 8(1) and keep 8(7).

Mrs. Persad-Salick: We will keep our (6) and (7). However, we had agreed earlier to delete (4), which we did and in subclause (3) words were actually given to us to include.

Madam Chairman: Yes. That was the first thing we said.

Mrs. Persad-Salick: Right. So that is okay.

Madam Chairman: "Child" means any person under the age of 18. Is that what you are talking about?

Mrs. Persad-Salick: No. On the list of amendments, on II, we are agreeing that we will delete subclause (1); that entire square bracket at the top, we are deleting that paragraph. We are going to subclause (3) and we are now dealing with that.

Madam Chairman: Okay, we agree with that.

Mrs. Persad-Salick: Then we had agreed to delete subclause (4).

Madam Chairman: Yes. Are we all in agreement?

Mrs. Persad-Salick: Yes.

Madam Chairman: In subclause (8): If there is no charge, what would be the trigger? Subclause (8), subsections (5) and (6) apply whether or not the person who smokes tobacco or held a lighted tobacco or any other person, is

charged with contravening subsection (2). The question was: If there is no charge, what will be the trigger? That is what I am reading here.

2.35 p.m.

Madam Chairman: Subclause (8), if there is no change or charge, what will be the trigger?

Subsections (5) and (6) apply whether or not the person who smokes tobacco...is charged with contravening subsection (2). If there is no charge, what would be the trigger?

Mrs. Persad-Salick: The sections apply whether or not a person who smoked tobacco or held the lighted tobacco or any other person is charged with contravening subsection (2). If a charge is not the trigger, what would be the trigger?

Madam Chairman: Is sub (8) necessary?

Mrs. Persad-Salick: It does not make sense.

Madam Chairman: Could we delete?

Mrs. Persad-Salick: Yes.

Madam Chairman: Subsection (8) to be deleted.

Subsection (9), to insert after “ten thousand dollars”, the words, “or two years imprisonment”. We agreed to that.

Delete subsection (9), this offence, the presumption of innocence interferes with the burden of proof and fetters the Judiciary. The rights of known smokers prevail. We delete this.

Mrs. Persad-Salick: We delete (8), (9) and (10).

Miss Roopchand: I recall that we indicated where there is a conflict. Remember where there is ambiguity in interpreting the provisions of the Act then this will kick in.

Madam Chairman: I have it written too wide and should be where there is

ambiguity.

Mrs. Persad-Salick: The onus of the Judiciary is to interpret all legislation. Once there is ambiguity, they will determine it according to the law. If we fetter the Judiciary's role by telling them how to interpret the law, we, the Executive or the Legislature are fettering the Judiciary and we ought not to do that.

The presumption of innocence which is constitutionally enshrined is being tampered with here. We are playing with the burden of proof. I thought about this long and hard and my humble suggestion is to delete it. They can take out whatever parts they find offensive.

Madam Chairman: We delete section 9. Do we delete 10?

Mrs. Persad-Salick: Yes.

Madam Chairman: Clause 11, delete "young person" and substitute "a child".

Miss Roopchand: The recommendation was to use "a person 18 and under". There was different legislation carrying different age for children.

Mrs. Persad-Salick: "Child" means a person under the age of 18.

Madam Chairman: In 12(1) delete "tobacco sponsorships, advertising and other promotion of tobacco sponsorship" and substitute "subject to section 11, tobacco sponsorships". Clear that for us.

Mrs. Persad-Salick: Where they first appear, delete tobacco sponsorship. We are putting "subject to subsection (11)", tobacco sponsorship.

Madam Chairman: Delete subclause (2) and substitute the following, "a person who engages in any activity prohibited section 1 commits an offence and is liable to (a) and (b) summary conviction and indictment". You are okay with that.

Any comments from the public?

Mrs. Persad-Salick: We have addressed all. The comments were with respect to the domestic homes, sponsorship and advertising.

Madam Chairman: Clause 13(1) insert after “depiction of a tobacco product” “except where the person held the intellectual property rights to that product prior to the commencement of this Act”. Are we in agreement?

Mrs. Persad-Salick: Yes.

Madam Chairman: Delete subclause 13(3)? “A person who contravenes subsection (1) commits an offence and is liable on summary conviction on indictment”. We delete all that or include that?

Miss Roopchand: Yes.

Mrs. Persad-Salick: In subclause (3), we had agreed on (4). The reason I did that is subsequently we have 5, 5, 5 as the standard. I wanted to standardize.

Sen. Seetahal had indicated other forms of promotion. She made a suggestion of 250 which we did not take. Perhaps we can standardize (4) and (5).

Madam Chairman: I saw a letter where the guy spoke of one figure and increasing it if you do not pay.

Mrs. Persad-Salick: We have a continuation and it is \$500,000 for every day that it continues.

Miss Roopchand: For sponsorship and smoking in public places, it should remain at five. There are others that we might be able to compromise. I do not think that the continued offence could be \$500,000 per day. We have to be reasonable.

Madam Chairman: We are agreeing that we standardize at five. When we come to continuing offence, \$10,000 a day.

Mrs. Persad-Salick: The clause is to ensure whether you are dealing with

individual or corporate person.

Madam Chairman: We are in agreement with \$500,000 and further down, we get to \$10,000.

Clause 15, delete subclause (3) and substitute, “a person who contravenes this section commits an offence...”

Delete clause 16? It speaks to all customers should have the right to be informed fully of his health and other effects of tobacco use and risks to others from exposure to tobacco smoke.

Miss Roopchand: We deleted 16.

Madam Chairman: Clause 17, delete subclause (3).

Clause 18 is the same. Clause 19 is the same. When you take this out, what are you saying?

Dr. Dick-Forde: You are detailing it better.

Madam Chairman: Clause 20, delete and say the same.

Clause 22, delete and say the same.

Clause 23, delete and say the same.

Clause 24, “A person who contravenes this section commits an offence and is liable...” The same.

Miss Roopchand: Before we move on, we had an amendment at 25. All labelling information shall be in English. Information required to be on the label or package of a tobacco product must be in the English language.

Miss Sharma: The point was that all labelling information shall be in English. If you import a brand that has another language on it, you still have the English next to it. If you have it this way it means you cannot have any other language on it. That is the gist of the statement. You need to say that it should include or something to that effect.

Miss Roopchand: All the requirements in the Bill must be in English.

Anything else could be in another language.

Madam Chairman: If you buy cigarettes from Venezuela what will happen?

Miss Roopchand: You cannot sell it.

Madam Chairman: Spanish is our first foreign language.

Dr. Dick-Forde: Clause 25 means that you cannot have Spanish as well.

The way it is written means that those products where you have English and Spanish labelling is prohibited as well. All labelling information shall be in English. We buy products with two and sometimes it is Chinese. They have English on it. Whatever language is on it, the important information that we are seeking is English.

Madam Chairman: I am getting a sense that it is only one.

Miss Roopchand: The Act says what you must have on the label and when we have it like this, there is a loophole where you can have the other information in another language. The entire package must be in English.

Mrs. Persad-Salick: All labelling information for a tobacco product required under this Act shall be in English.

Miss Roopchand: We do not want that. All information on the package must be in English.

The tobacco company has 50 per cent of the packing and they could do what they want. They could decide to put something else on that 50 per cent. That must also be in English. That may not be labelling information as prescribed here.

Mrs. Persad-Salick: According to the labelling information prescribes everything that the package has on it.

Miss Roopchand: We are looking at the space that is not covered there. You could have other information that the manufacturer wants to put. He

could put it in another language.

Miss Yearwood: We refer to it as health messages. Here we are getting confused with the labelling and messaging. We want the messages in English and all other information on that pack also in English.

Miss Sharma: You want all the information on the package to be in English. If we import something from another country we will not be able to sell it.

Miss Roopchand: Yes.

Mrs. Persad-Salick: I thought if we said, all information.

Madam Chairman: Let us take what she is saying. It means that Spanish cigarettes cannot be sold here. If you have Spanish and English it cannot be sold.

Miss Roopchand: You put a heavier burden on the manufacturer to manufacture for your market.

Dr. Dick-Forde: Some people say you must have special packaging for their jurisdiction.

Miss Roopchand: We are taking out the word, "labelling". All the information must be in English. That is the principle.

Mrs. Persad-Salick: My colleague on my left is talking about the Free Trade Agreement.

Madam Chairman: The sense is that they want to stop smoking. Do not let cigarettes come here, the better.

Dr. Dick-Forde: That has to be checked.

Miss Roopchand: That is the same standard.

Madam Chairman: Our people will live longer.

Miss Persad-Salick: It will be "all information on a tobacco product shall be in English only".

Madam Chairman: We had said okay to clause 27.

Clause 28(1), delete the word “twenty” and substitute the word, “ten”; smoke tobacco products with the exception of cigars which may be sold as individual units, so long as they are in individual label, as required...shall be in packages of at least 10 units.

Delete the word “twenty” and substitute the word “ten”. We will put somewhere that it is only for a short time.

Miss Roopchand: This provision is only to last two years. Beyond two years it goes back to 20. You are amending that section to have a transitional period.

Madam Chairman: Clause 29.

Mrs. Persad-Salick: We have to put something to say that this clause will expire at the end of two years from the date of proclamation.

Madam Chairman: Clause 29(3), do you want the indictable option here?

“A person who contravenes this section commits an offence and is liable on summary conviction to a fine of twelve thousand dollars and imprisonment for six months.”

Do you want clause 30 here?

Dr. Dick-Forde: Sen. Seetahal explained indictable offence as having two different levels. It is not necessary.

Mrs. Persad-Salick: Because the value of the fines in 29 is \$12,000, it is more or less that we leave it at the summary level.

Madam Chairman: We are agreeing to it.

Clause 30(1), the same. We are leaving it out there too?

Miss Roopchand: Did we deal with clause 30? We are looking at the retailers.

Madam Chairman: That is sale to minors. What do you want to do?

Mrs. Persad-Salick: We need to be consistent with the six months; \$100,000 and six months and on indictment, \$500,000 and one year.

Miss Roopchand: Here we could have reduced it because of the small businessman to \$250,000.

Madam Chairman: This is where it happens.

Miss Sharma: I think that you are being harsh from the beginning. If you need to make amendments later to become harsher you can do that. To start being very harsh in this way, almost overnight, to the small businessman or somebody with a little parlour under a house, that is pretty harsh. You are criminalizing people who are not technically criminals because they are not selling an illegal substance like cocaine or marijuana. I agree with reducing it and the term of imprisonment.

Madam Chairman: This is where it happens.

Miss Sharma: I will not want to put my neighbour away for five years.

Madam Chairman: This is what this Bill is all about. The average person starts smoking from going to buy in the neighbour's parlour next door.

Miss Sharma: I do not disagree with that, but six months or even a year imprisonment is quite severe enough.

Madam Chairman: What is this Bill all about? We are wasting time.

Mrs. Persad-Salick: All the fines and terms of imprisonment stated in any Bill would be the ceiling. The judges in their discretion—

Madam Chairman: They do not necessarily have to give you—

Mrs. Persad-Salick: We take the maximum. When you look at the circumstances of the case, they would know if it is not a man of means and cannot afford.

Madam Chairman: Every case is different.

Miss Roopchand: With all due respect, I accept that. It comes as if you are

equating the man in a parlour with the manufacturer. The manufacturer's fine is \$500,000.

Mrs. Persad-Salick: I agree with the \$250,000 and the lesser amount. I am making the point that it is the upper ceiling. Your neighbour will not necessarily go for five years.

Miss Sharma: I agree with your point. It equates the manufacturer with the retailer. That is a little unfair.

Madam Chairman: This is where it happens.

Miss Yearwood: Madam Chairman, I support you there. We are looking at the young and that is a protective clause. I agree with you that the weight of emphasis needs to be therein.

Madam Chairman: In all that we are doing this is where the action is. I do not want to put my neighbour away, but on the other hand, my son is smoking, hooked on it and moves on as a gateway drug to other drugs, because I feel sorry for the guy next door.

Miss Sharma: This is not cocaine or marijuana.

Madam Chairman: It leads to sometimes.

Miss Sharma: Sometimes is the problem. You cannot say 100 per cent of the time. We do not have any evidence that we have a percentage figure that conclusively shows how many people go on to the further use of another harsher drug. We cannot make that retailer so heavily responsible for something that he or she may not be able to control. If somebody is selling to a minor the charge should be there. To say that it should be similar to someone who is high and harsh, especially when we have not had a time period here for people to get acclimatized to the changes or provided other options for people who are smokers. You know this is a different kind of culture in rural areas in Trinidad. We need to be aware of the level of

literacy among these people. We need to be a little less harsh here.

Madam Chairman: We all agreed not \$500,000. It is to what we are agreeing?

Miss Sharma: What were the fines in other jurisdictions for something similar to an offence of this nature?

Miss Roopchand: They were low. The demand factor is very high. They are way on the other side.

Miss Sharma: Is it like £1,000 or 1,000 Euros or something like that?

Miss Roopchand: Yes.

Miss Sharma: If someone sells alcohol to a minor, what is the fine?

Mrs. Persad-Salick: \$10,000 Canadian. It is approximately TT \$60,000 or \$70,000. In Western Australia, it was not as high as \$500,000.

Madam Chairman: What are they charging their manufacturers compared to what we are charging?

Miss Roopchand: \$12 billion.

Madam Chairman: We started this Bill with \$12 million.

Dr. Dick-Forde: The comparison across jurisdictions with respect to fines is a little problematic. From living in other countries there is a high level of compliance with the law. The whole notion of a fine which is supposed to act as an inducement to obey the law—remember the law is for the lawless not those who obey. The level of a fine tends to be to encourage people to obey the law. How high is about trying to enforce and entrench a practice.

I heard Sen. Sharma: with respect to the fact that some people might not be literate enough to understand. The Ministry of Health would certainly have to do a major educational campaign. It is not just educating the public, but also a special education programme for retailers. I agree that it should go down but not as low as what we are hearing elsewhere. I have lived in

countries where people do not blow their horns because it seems to be offensive to hit your horn at somebody else. Over here we hear horns blaring all the time. There is a cultural element to things and the fine needs to be enough to induce people to not do it, especially when it comes to sale to minors. My thing is not so much about the transition job, but the health problems of smoking is tremendous, especially to non smokers. I know somebody who worked among smokers and he was the first person to come down with cancer. None of the other smokers had cancer.

3.05 p.m.

Madam Chairman: That is my concern.

Dr. Dick-Forde: It is not so much about the transition—[*Inaudible*] The health problems of smoking are tremendous especially for non-smokers. I know someone who worked among smokers and he was the first person to come down with cancer.

Miss Sharma: What is the fine for someone selling alcohol to a minor for example?

Mrs. Persad-Salick: It is not that high.

Miss Sharma: Can we settle on \$100,000 for this or—

Member: I think it should be more.

Mrs. Persad-Salick: Madam Chairman, you asked about the fines in the various jurisdictions. For the record, in section 43 of the Canada Tobacco Act, for offences and punishments, a person guilty or who contravenes that section, on summary conviction is liable to a fine of \$100,000 or imprisonment for a term not exceeding one year or both.

The Tobacco Control Act, British Columbia, another province, has for a first offence, a fine of not more than \$2,500 or imprisonment for a term not exceeding three months or both the fine and imprisonment.

In Saskatchewan, for the first offence, \$3,000.

Madam Chairman: [*Inaudible*]

Mrs. Persad-Salick: A second time \$5,000; this is Saskatchewan and a third offence, not more than \$15,000. Then in Western Australia, first offence \$10,000; second, \$20,000; body corporate \$40,000 and second offence body corporate, \$80,000.

Madam Chairman: It keeps getting worse. I like that.

Dr. Dick-Forde: We can build ours all the way up to about \$250,000.

Madam Chairman: I saw one that started at \$400,000; Canadian at \$100,000, that is \$400,000. Could we do that on a sliding scale? We can leave you to work out the slide.

Member: Going from \$100,000 to \$300,000 or \$100,000 to \$500,000?

Mrs. Roopchand: \$300,000 is sufficient.

Madam Chairman: I think we should have a third.

Mrs. Persad-Salick: We can go from six months to one year.

Madam Chairman: Six, nine, 12?

What about 32? Should we do the same for 32? "Prohibition on self-service displays".

"No person shall sell any tobacco product in such a way that a consumer may handle the product without the assistance of a sales clerk or other employee."

So it has to be under the counter hidden away somewhere. This looks like real marijuana now.

"A person who contravenes subsection (1) commits an offence and is liable..."

Mrs. Persad-Salick: The sliding scale should be from 30 to 33.

Madam Chairman: Do you use the same figures?

Mrs. Persad-Salick: Yes.

Madam Chairman: Clause 34. “Prohibition on vending machines, Internet and certain other sales of tobacco products.”

Miss Sharma: We cannot say “over the Internet”.

Madam Chairman: We should say “mail or the Internet”.

Miss Roopchand: It would be by mail. That will take care of the Internet purchase.

Madam Chairman: So put “or mail and/or automatic vending machine”.

Dr. Dick-Forde: If you want to prohibit local persons from selling on the Internet, you are not going to do that. The fact that you cannot force international persons—

Madam Chairman: The Finance Bill is going to make transactions easy. I can stay home and ask someone in Port of Spain somewhere and pay.

Dr. Dick-Forde: If your intention is to ensure that local retailers do not sell over the Internet, then you cannot take it out.

Mr. Chairman: We are about to bring that Finance Bill, so we should keep it.

Mrs. Persad-Salick: We said from 30 to 34 would have the same sliding scale.

Madam Chairman: Clause 35 talks to the prohibition on sales of tobacco products in certain places.

“...facilities where health care service are provided...
sports...recreational facilities.”

Continue to clause 35 then? Clause 35(2):

“A person who contravenes subsection (1) commits an offence and is liable...”

So you do the same thing with that one.

Clause 36: "Prohibition on toy or candy cigarettes". What are we doing with this one?

Mrs. Persad-Salick: This is the one, Madam Chairman, I said I tweaked a bit because they wanted to deal with the importation of manufacturing separately from distribution. I have that from the minutes of the meeting so I redrafted 36 to read:

"No person shall import or manufacture, sell, display for sale or distribute..."

I put in the word "distribute" because they had supplied originally "any sweet, snack, toys, or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products".

I did it like that because in the penalty section there are different penalties for persons who contravene 1(a). In other words, there is a higher penalty for the importer and manufacturer than for the person who is just displaying or selling.

Madam Chairman: Any comments or concerns?

Mrs. Persad-Salick: I have square bracketed \$12,000. Are you okay with that?

Miss Roopchand: Maybe we can go at \$10,000 to be consistent.

Madam Chairman: Clause 40, "Reports of constituents, additives and certain business information". The report on a monthly basis is onerous. Perhaps quarterly is more realistic. Will you accept these reports electronically?

Miss Sharma: I like quarterly.

Mrs. Persad-Salick: Later on they say that by regulation they will say the manner in which they are to be submitted so [*Inaudible*] will deal with the electronic part.

Madam Chairman: 40 to 44 will be in the regulations. That is the report to the additional information required and those details you say you will be put in the regulations?

Miss Roopchand: We would like 40 to 44 to remain in the Bill. There is a suggestion that it be in regulations. It needs to be streamlined. If it remains, perhaps we can deal with it in a more itemized way. This is the kind of thing we put in— [*Inaudible*]

Miss Sharma: Madam Chairman, I believe these all relate to the report itself. Sen. Seetahal wanted one clause with different subsections to tidy it up.

Miss Roopchand: I agree because we want to implement this Bill and if we pull things out, it will further delay the implementation.

Madam Chairman: We keep it in and present it differently. You will work together on that.

Clause 45(2).

Miss Roopchand: I would like us to say that at least the executive summary should be published.

Madam Chairman: The report shall be made on the basis of products prepared and tested in accordance—

Miss Roopchand: Public information is okay because people can come and view. With respect to the *Gazette*, maybe we should take that out.

Madam Chairman: You are saying that subclause (2): “Reports shall be published in the *Gazette*” should be taken out and put in at least one daily newspaper?

Miss Roopchand: We can say the “executive summary” rather than the “report” and we can put two daily newspapers.

Mrs. Persad-Salick: You mentioned annual report. This says report. That

is very onerous. That will cost the Ministry a lot of money.

Miss Roopchand: We want the information to influence workers.

Madam Chairman: What are those reports going to say?

Miss Roopchand: These reports are going to be on the Ph acidic level, the filter efficiency and those kinds of things.

Miss Sharma: If I remember, the executive summary should be brief, just to give us a picture of everything.

Madam Chairman: Could we say executive summary and annual report.

Dr. Dick-Forde: What is the purpose of publishing the report?

Madam Chairman: For information.

Dr. Dick-Forde: Then I think the executive summary will do. It will pull together the information you want, plus whatever the Ministry of Health wants.

Mrs. Persad-Salick: We will be doing a disservice. Again, we will be shooting ourselves in the leg. We will have to say “report by West Indian Tobacco Company”. We will be giving free advertising.

Madam Chairman: What are you suggesting then? That the Ministry of Health does an analysis and report back.

Miss Roopchand: Let us not make it an obligation on the Ministry. We have it as public information and then the onus is on us to release information. So we take the one off and say, “Report required shall be published”. When you are fixing it, you may not even have a 45.

Mrs. Persad-Salick: I suggest that you take off subclause (2) and let us remain with 45 which will no longer have 45(1) but will start “Reports required shall be public...”

Madam Chairman: We are now on clause 47.

Miss Roopchand: Maybe we can merge 45 and 46. We have a

recommendation on clause 47 that we change the provision to read differently. The CPC is now saying that it is not necessary to have this provision.

Madam Chairman: Do you want to silence the [*Inaudible*] principle?

Miss Roopchand: We had suggested that it be redrafted to say:

“An employer whether or not a public authority shall not dismiss, suspend, discipline harass or otherwise disadvantage an employee or deny that employee a benefit because he notifies a government authority or testifies in court regarding any activity on the part of his employer that violates or allegedly violates any provision of this Act.”

So it is a protection on the employee. The CPC's position is a different position.

Mrs. Persad-Salick: Madam Chairman, I understand the need for the protection of employees. The way I understand this was like the principle of a silent whistle, but that is not what is envisaged here. How are you going to prove causation for dismissal if someone has squealed on the employer and subsequently been dismissed? I understand the need for protection, but it is going to be difficult. I think this was probably put in to indicate to employees that they are going to be protected and that now they could be a little watchdog to ensure that it goes through and employers are faithful to the law. There is difficulty in enforcing that. How are you going to prove causation?

Miss Roopchand: I saw it differently. If I caused a court matter and I am fired by my employer, to me, there is a nexus there. At least the court will take notice of an action against the employer brought by you.

Mrs. Persad-Salick: The court cannot mandate you to re-employ. The terms under which you may have been dismissed could have been for gross

incompetence and they would have their files. The court cannot tell the employer that they have to reemploy. That is a difficult proposition.

Dr. Dick-Forde: There is an amendment that sought to address a number of these things; where we tried to move the word “retaliate” and come up with a different form. Where is that?

Miss Roopchand: It is what I just read.

Madam Chairman: What did it say?

Miss Roopchand: “An employer whether or not a public authority shall not dismiss, suspend, discipline harass or otherwise disadvantage an employee or deny that employee a benefit because he notifies a government authority or testifies in court regarding any activity on the part of his employer that violates or allegedly violates any provision of this Act.

Madam Chairman: What is he saying?

Miss Roopchand: Even if it gives employees comfort, it may be debatable.

Mrs. Persad-Salick: How do you prove that you did not dismiss the employee because he was incompetent? I do not know how you prove it.

Madam Chairman: So you are suggesting that we remove this?

Mrs. Persad-Salick: I understand the need for comfort [*Inaudible*] As the draftsman, I do not ever think that any clause [*Inaudible*] but we cannot put in something we know will be ineffective.

Madam Chairman: Do other jurisdictions have this?

Miss Roopchand: This is from our local legislation.

Member: [*Inaudible*]

Madam Chairman: It is insider trading.

Dr. Dick-Forde: You say that it does not do anything?

Mrs. Persad-Salick: You can put it in. I understand the need so that

employees will feel that they can indicate if the employers did wrong and that they are protected in some way, but they really are not protected.

Miss Roopchand: I think that we are being presumptuous because the employee may very well be able to prove that there is a connect between his dismissal and—He may have had great staff reports before; he brought an action and he was dismissed.

Madam Chairman: Does this happen often?

Miss Roopchand: The employer can tell him in the presence of others that he should not have done this, so he can go home.

Madam Chairman: So this is a real thing?

Miss Roopchand: An employer may not go behind the veil of this to say—this may be difficult to prove. He may think it is in the law, so he should not do it. As lawyers, we may think differently because we are looking at the entire spectrum.

Madam Chairman: So we put this back.

Mrs. Persad-Salick: Madam Chairman, we will meet and redraft. I will look at the date, protection and the context in which that was drafted.

Madam Chairman: Now we are at clause 48. Insert after the words “reasonably believes” the word “bulk”. This is for trafficking. What sanctions are envisaged for the breaches of subclauses (3) and (4) and which extends to my government official. This will exclude public officers.

We are now at 52.

Mrs. Persad-Salick: Madam Chairman, in the discussion of the [*Inaudible*] clause in 57, penalties where none are prescribed, you will say that (3) and (4) [*Inaudible*] because a person who contravenes the provision of this Act for which there is no prescribed penalty commits an offence and is liable on summary conviction to a fine of \$500,000.

So, if you obstruct, it is \$500,000 and an authorized officer will be \$500,000 as well. But when I said see clause 52(1)(d), this one refers to the removal of office and it specifically has the words “government official”. I do not know how this will be done. Madam Chairman, you are a government official and I am a public officer. I do not know if the intention was to say “authorized officer or other public officers or officials”.

Madam Chairman: Maybe we should take this off. We are taking off 52(1)(d). Integrity would be less money or more money?

Member: More money.

Madam Chairman: Clause 50. Is this not a bit unreasonable to put these reports into the public domain as soon as the investigation is completed, knowing that you run the possible risk of—protection and investigation reports collected pursuant to inspections and investigation. Is this normal in other places?

Mrs. Persad-Salick: When you are dealing with intellectual property, you cannot put that into the public domain. These are people's trade secrets. From the time the investigation has concluded, these documents are now public documents.

Madam Chairman: Does it happen in other jurisdictions?

Mrs. Persad-Salick: Unless the documents are part of a court process and become a public document, in certain circumstances the companies would ask for certain things to be held in camera, so those things are not disclosed.

Miss Roopchand: I would recommend that it be removed if it is dangerous.

Madam Chairman: 51 is unnecessary. We agreed to that. Did we? Subclause (4)? So we are accepting this?

3.35 p.m.

Mrs. Persad-Salick: Madam Chairman, should we delete (5) then?

Madam Chairman: Where the person committed any violation as a corporate director—we delete (5) because we are dealing with the person. Fifty-seven—applies to clause 48. Do you want the option here?

Miss Roopchand: I know the Attorney General had sent a note to me in Parliament indicating that the regulation should be subject to negative resolution at 56.

Madam Chairman: Say that again.

Miss Roopchand: The regulations should be subject to negative resolution.

Madam Chairman: Anything else?

Miss Roopchand: At 57, we should also include an indictable offence; to be consistent.

Mrs. Persad-Salick: And we use the six months and one year.

Madam Chairman: And it would be \$500,000. Have we missed out anything? Could I ask again, anything here that you think that we have not—

Miss Roopchand: Someone indicated that the word “wholesaler” should be defined, seeing that wholesalers need to be licensed. I think there is no harm in doing a definition, taking the dictionary meaning of wholesaler.

Madam Chairman: Anything else? Somebody said that he will stop smoking cigarettes because of fines and smoke marijuana instead. Really, I think the next Bill should be a Bill that would talk to illegal substances.

Miss Roopchand: But we have the Dangerous Drugs Bill that addresses fines a lot.

Mrs. Persad-Salick: It is here. Possession of and trafficking—a person who has in his possession dangerous drugs is guilty of an offence and is

liable on summary conviction to a fine of \$25,000 and to imprisonment of five years.

Madam Chairman: We need to change the fines.

Mrs. Persad-Salick: And on conviction, on indictment of \$50,000 and imprisonment to a term that shall now not exceed ten years, but not be less than five.

Madam Chairman: We should have changed it in this one.

Mrs. Persad-Salick: This is 2000. We are in 2008, almost 2009.

Madam Chairman: So we can make adjustments?

Mrs. Persad-Salick: We can make adjustments.

Madam Chairman: I think we need to. Having done this, I think we need to do that.

Miss Roopchand: We could flak that in our presentation.

Madam Chairman: Yes, I think we need to do that. What is the process to get that?

Mrs. Persad-Salick: Dangerous drugs would be the Ministry of the Attorney General.

Madam Chairman: Would that be the Ministry of National Security? The Attorney General?

Miss Roopchand: You have the AG, Health and National Security.

Mrs. Persad-Salick: The first time it was brought, the Attorney General had piloted it.

Madam Chairman: In 2000?

Mrs. Persad-Salick: No, this is old. That is the last amendment. The first time this came was in 1999.

Madam Chairman: You said that the Attorney General did something

on dangerous drugs?

Miss Roopchand: No, she is saying the AG would have to pilot this.

Madam Chairman: So, what is the process to get her to do that; we just ask?

Miss Roopchand: A Cabinet Note.

Madam Chairman: I think we need to because that is one of the statements we have been getting all the time.

Miss Roopchand: It could come from the Ministry of National Security.

Madam Chairman: Any other comments? Are we okay? So, we could come to an end and you can guide us as to what our next steps are.

[Discussions held between Mr. Jaggassar and Madam Chairman]

Next Tuesday is December 09? We are working out the report and I am being advised by Mr. Jaggassar that we need to finalize the report and send it forward and we have choices. The Senate closes on December 09, that is next Tuesday, and the House of Representative on December 12, that is next week Friday. He is suggesting that we complete this document and lay it in the Senate and the other House—and debate it in the Senate. *[Pause]* Do you want to explain?

Mr. Jaggassar: If it is not going to be debated in the House of Representative, my advice is that this committee do a saving report and ask that the work done by this committee be considered by any other committee appointed in the next session, so that all the work that has been done here could just come before that committee, but if the—

Madam Chairman: Are we not going to debate—If this is completed; and it is completed now in the House of Representative—it is on Tuesday?

Mr. Jaggassar: It would be debated in the Senate on Tuesday, but if it is not going to go forward to the House of Representatives and they debate it, you would have to start all over again if the Bill is reintroduced in the next session.

Miss Roopchand: Can I just say that Minister said that he has a commitment that the Bill would be debated Friday in the Lower House.

Madam Chairman: Tomorrow, Friday?

Miss Roopchand: No, no, when it is through on Tuesday in the Lower House. He—

Madam Chairman: But I just got a text here saying that everybody may not be there.

Mr. Jaggassar: The Bill is a special majority Bill.

Madam Chairman: That is true. Just one last question, could we do both? Could we kind of strategize, so that in case one happens, in case Friday happens, we do and if Friday does not happen that it is saved for the next session? Could we do both?

Mr. Jaggassar: You cannot do both. It is either you are going to save the work in the Senate or you go through with it in the Senate and it goes to the House and if it is not completed—

Madam Chairman: We could not debate it and save it?

Mr. Jaggassar: No.

Madam Chairman: CPC?

Mrs. Persad-Salick: Madam Chairman, I have a very different take on the whole thing. I am all for saving the work of the committee, because a lot of work has gone into it and we have a nice redraft of the Bill and tightened it up a lot; so I am all for saving, if the Bill lapses and all for

bringing back all of these amendments in a new (No. 2) Bill. I do not know how—

Madam Chairman: If you save you do not have to bring back.

Mr. Jaggassar: No, you would not have to do over the work. What would be done is that we debate it in the Senate and it is passed. Then, if it lapses, because it is not debated in the House, when you all are bringing back the Bill, you bring the Bill with all the amendments included. It would not be a (No. 2) Bill, because it would be 2009, so it could be a 2009 Bill. A new Bill will be coming before the Parliament.

Mrs. Persad-Salick: But you have to go back to the Senate.

Madam Chairman: You have to go back to the Senate?

Mrs. Persad-Salick: It was introduced in the Senate.

Mr. Jaggassar: The new Bill; you would be bringing it with the amendments included.

Miss Roopchand: There is no guarantee that it would not be debated. It would be debated. The same issues would come up again.

Mrs. Persad-Salick: It would not.

Miss Roopchand: Do not say that. The politics would—

Madam Chairman: Let me go through the paces again. If we make all the adjustments now and we are able to debate it on Tuesday, what happens after that, and we cannot debate it downstairs, what happens?

Mrs. Persad-Salick: It lapses.

Madam Chairman: Even though you would be saving it, it would still lapse?

Miss Roopchand: Because we are not saving it. To save it means that you do not go and debate it.

Madam Chairman: Save it now?

Mr. Jaggassar: The report would still be debated even if you save it.

Madam Chairman: On Tuesday anyhow, we have to debate it?

Mr. Jaggassar: Yes.

Madam Chairman: To be able to save it?

Mr. Jaggassar: Yes. My advice is to debate the report, have the Bill read a third time and passed in the Senate and if it lapses, when it comes back in the next session, you come back with a 2009 Bill that would incorporate all the amendments that were made here.

Madam Chairman: What are we debating then, not the amendments?

Mr. Jaggassar: You would be debating the report of this Special Select Committee.

Madam Chairman: Let us go with that. Let us debate the report.

Miss Roopchand: Is there no way you can save the report without debating?

Madam Chairman: We have to do that. We have to debate the report.

Miss Roopchand: We cannot lay the report asking that the work of the committee be saved without going into a full debate?

Mr. Jaggassar: It must go into a full debate. It will be a Motion on the Order Paper to adopt the Report of the Special Select Committee.

Miss Roopchand: If we do not report Tuesday and we continue, this work is—

Mr. Jaggassar: It is lost.

Madam Chairman: So, we have to do something on Tuesday. Let us debate it on Tuesday and save it.

Mr. Jaggassar: It would be debated. The Bill would be read a third time

and passed. It would go for concurrence in the other place and if it is not debated there, when the Bill is being sent back to Parliament, you would come with a new 2009 Bill, which will include all the amendments and provisions that we have decided on today.

Madam Chairman: Okay. At what point are we saving it? We would have to go through this again?

Mr. Jaggassar: It will not be saved.

Miss Roopchand: It is embedded in the Act.

Mrs. Persad-Salick: Are we not doing the safe thing? Are we not saving this on Tuesday and debating and when, because we are not sure if it would be going through in the House, when we come next year all of this would be—

Mr. Jaggassar: You would be coming with a new Tobacco Control Bill that would include everything that was discussed.

Madam Chairman: Could you tell us again what it is we are doing?

Mr. Jaggassar: We have to prepare a report with the recommendations of this committee. That report will be laid as a Paper in the Senate and there will be a Motion on the Order Paper to have the report adopted. I suppose because the Government has the majority, it will be adopted. There is no guarantee that it will be debated in the House of Representatives because when that happens the Bill itself will go to the House of Representatives and if it is not debated there, the CPC will draft a 2009 Tobacco Control Bill, including all these provisions that will come back in the Second Session of the Ninth Parliament.

Madam Chairman: Okay, so let us go that way and we debate on Tuesday.

Mr. Jaggassar: Minister Enill stressed that because it is a special majority Bill, he wanted the report circulated in particular to the Independent Senators by Saturday.

Madam Chairman: So you would be able to do that for us?

Mr. Jaggassar: A lot depends on the drafters with the amendments. I would do the body of the report.

Miss Roopchand: Would we be going with—is this going to form an appendix to the Bill?

Mr. Jaggassar: That is for the committee to decide.

Madam Chairman: I say yes, it should. I was quite impressed that we got so many responses, so I think we should.

Mrs. Persad-Salick: Madam Chairman, my colleague is on a ministerial retreat and I want to give an undertaking that we can have this—

Madam Chairman: We would work on the net. Send it to us and we will liaise on it.

Mrs. Persad-Salick: You would like to have this by tomorrow?

Madam Chairman: Yes.

Mrs. Persad-Salick: At what time, 4.00 p.m.?

Madam Chairman: I would like to thank the members of this committee. I really want to thank you for the hard work, the dedication, the long hours and for a really very good quality Bill. There is the saying that a lot of counsel brings success. I think I really want to say that it is a good quality Bill. Thanks very much and to the staff of the Parliament who went beyond duty, thanks for your long hours to get our work on time. Thank you very much. I am to say to you that refreshments are in the room next door for your entertainment. Is that what it is?

3.51 p.m.: *Meeting adjourned.*



**SPECIAL SELECT COMMITTEE OF THE SENATE
APPOINTED TO CONSIDER AND REPORT ON A BILL ENTITLED
"THE TOBACCO CONTROL BILL 2008"**

A P P E N D I X VII

AMENDED BILL

**AMENDED BILL AS RECOMMENDED BY
THE SPECIAL SELECT COMMITTEE**

THE TOBACCO CONTROL BILL, 2008

Arrangement of Clauses

PREAMBLE

ENACTMENT

Clause

1. Short title
2. Commencement
3. Act inconsistent with Constitution
4. Interpretation
5. Functions of the Ministry
6. Appointment of authorized officers
7. Licensing of sellers of tobacco products
8. Freedom from exposure to tobacco smoke
9. Limited Prohibition
10. Sponsorship
11. Other forms of promotion
12. Prohibition against reverse brand stretching
13. Prohibition against incentive promotions and the free supply of tobacco products
14. Right to be informed of the risks of tobacco use
15. Labelling
16. Constituents and additives disclosure on tobacco product packages
17. Prohibition on deceptive or misleading information
18. Continuing duty to warn
19. Multiple packaging
20. Requirements for name, licence number, etc, on package
21. Requirements for tamper-proof packaging and labelling
22. Language of labelling information
23. Evaluation of messages
24. Labelling requirements for exported products

25. Minimum package size for smoked tobacco products
26. Minimum package size for smokeless tobacco products
27. Prohibition on sales to minors
28. Prohibition on sales by minors
29. Prohibition on self-service displays
30. Prohibition on public displays
31. Prohibition on vending machines, internet and certain other sales of tobacco products
32. Prohibition on sales of tobacco products in certain places
33. Prohibition on toy or candy cigarettes
34. Compliance with standards
35. Prohibition on health claims
36. Evaluation for disparate effects
37. Reports of constituents, additives and certain business information
38. Protection for Employees
39. Inspection and investigative powers
40. Identification of authorized officers
41. Penalties
42. Civil proceedings
43. Enforcement cost recovery
44. Public awareness, education and cessation programmes
45. Regulations
46. Penalties where none prescribed

BILL

AN ACT to prevent tobacco use by young people; enhance public awareness of the hazards of tobacco use and ensure that consumers are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit or restrict promotional practices; prevent illegal conduct, including but not limited to smuggling; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; provide for sufficient regulatory flexibility to respond to new technological and scientific innovations and findings and to changes in consumer behaviours; create a national co-ordinating institution for tobacco control and provide for other related matters and purposes

BILL

AN ACT to prevent tobacco use by young people; enhance public awareness of the hazards of tobacco use and ensure that consumers are provided with information to make more fully informed decisions about using tobacco; protect individuals from exposure to tobacco smoke; prohibit or restrict promotional practices; prevent illegal conduct, including but not limited to smuggling; provide for regulation of tobacco products to mitigate against the harmful effects of tobacco; provide for sufficient regulatory flexibility to respond to new technological and scientific innovations and findings and to changes in consumer behaviours; create a national co-ordinating institution for tobacco control and provide for other related matters and purposes

[, 2008]

Understanding the devastating health, social, and economic effects of tobacco use and exposure to tobacco smoke on individuals and families and the costs to the government, to society, to the environment, and the socio-economic development potential of the nation:

Acknowledging the existence of vast numbers of persons addicted to tobacco use making it impractical to make tobacco products illegal:

Recognizing the right of consumers and the public to have meaningful information about the hazards from tobacco use and to be free from tobacco industry practices that undermine that information:

Recognizing further that there is no such thing as a safe tobacco product:

Realizing that people generally begin using tobacco products without recognizing the consequences of their highly addictive character:

Realizing Further that exposure to advertising and promotional practices encourage and glamorize tobacco use, and that current widespread promotion of tobacco leads to youth initiation:

Recognizing that scientific evidence has established unequivocally that exposure to tobacco smoke in non-smokers causes death, disease and disability, and, thus, cognizant of the need and responsibility to protect individuals from the hazards of tobacco smoke:

Asserting the government's legitimate public health function and its duty to protect its population from exposure to tobacco products and their toxic smoke, regulate the manufacture, promotion, and sale of tobacco products, and to do so within a regulatory framework that provides flexibility to address advances in knowledge, technology and science as they occur, and to provide an efficient legal framework for addressing the harm caused by tobacco:

Resolving to align national laws with the WHO Framework Convention on Tobacco Control, the government undertakes the following measures to protect the health rights, and well-being of all the people, taking into account specifically the needs of, and effects of these measures on priority populations:

And whereas it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any such Act does so declare, it shall have effect accordingly:

And whereas it is provided by subsection (2) of the said section 13 of the Constitution that 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:

And whereas it is necessary and expedient that the provisions of this Act shall have effect though inconsistent with sections 4 and 5 of the Constitution:

ENACTED by the Parliament of Trinidad and Tobago as Enactment follows:—

1. This Act may be cited as the Tobacco Control Short title Act, 2008.

2. This Act shall come into operation on such day as Commencement the President may declare by Proclamation so, however, that different commencement dates may be appointed for the commencement of different provisions of this Act.

3. This Act has effect even though inconsistent with Act inconsistent with Constitution sections 4 and 5 of the Constitution.

4. In this Act—

“additive” means any substance, chemical, compound, or component, other than tobacco or water, that is introduced into a tobacco product during processing, manufacturing, or packaging, including, as applicable, those contained in the paper, filter, portion pouch, or similar part of the tobacco product, its package or accessories;

“advertisement” means any commercial communication through media or other means, that is intended to have, or is likely to have, direct, indirect or incidental effect of—

- (a) creating an awareness of a tobacco product, brand, manufacturer or seller; or
- (b) promoting the purchase or use of a tobacco product or brand,

and a tobacco advertisement includes, but is not limited to, words, names, messages, mottos, slogans, letters, numbers, pictures, images, colours, and other graphics, sounds and any other auditory, visual or sensory matter, in whole or part, that are—

- (c) commonly identified or associated with a tobacco product, brand, manufacturer or seller; or
- (d) otherwise an indication of product, brand, manufacturer, or seller identification;

“authorized officer” means an officer appointed under section 6 and includes a police officer, customs officer or public health officer;

“Child” means any person under the age of eighteen years;

“constituents”, in relation to smoked tobacco products, means the chemicals, including the particles, vapours, and gasses found in the smoke. In relation to smokeless tobacco products, constituents mean the chemicals found in the product itself;

“distributor” or “wholesaler” means any person who buys tobacco products and re-sells them to another seller;

“exporter” means any person who sends tobacco products outside Trinidad and Tobago for sale or supply in another country;

“factual information” means, and is limited to, the brand name, manufacturer’s name, type of product, for example, cigarettes or smokeless tobacco, prescribed messages, constituent and additive, disclosures, price information, and any other information required or permitted in the Regulations;

“graphic” means any symbol, sign, logo, mark, trademark, pattern, emblem, design, crèche, recognizable colours or patterns of colours, or any other indicia of tobacco product, manufacturer or seller identification;

“health care services”, in relation to any person who has suffered or is at risk of suffering from any tobacco-related illness, means inpatient or outpatient examination, diagnosis, treatment procedures, health status monitoring, counselling, pharmaceuticals, therapies, and other health-related goods or services;

“importer” means any person who receives or arranges for the receipt of tobacco products from another country for sale in Trinidad and Tobago;

“manufacturer” means the corporation or other person that manufactures, fabricates, produces, processes, packages or labels tobacco products;

“media” means broadcast, print, electronic, and any other avenues of communicating to the public;

“message” or “health message” means a warning or other information about the health effects of tobacco use or exposure to tobacco smoke, the benefits of, or suggestions for quitting, any other appropriate tobacco control message, as prescribed by the Regulations;

“Minister” means the Minister responsible for health;

“Ministry” means the ministry responsible for health;

“package” means any covering, wrapper, container, or other enclosure that contains a tobacco product, or multiple packages of tobacco products, that is, cartons, and includes any label and other written or graphic information on or in it;

“person” includes any individual, proprietor, firm, partnership, corporation, franchise, organization, agency, association, institution or other entity possessing a legal personality;

“place of collective use” means any place open to the public whether it is enclosed, partially enclosed, or an outdoor public space, where—

- (a) persons congregate in close proximity to one another;
 - (b) smoking might pose a fire hazard;
- or

(c) other criteria established in the Regulations are met,

examples of places of collective use include, but are not limited to stadiums, bus stops and similar places;

“priority population” means any population group that is, or traditionally has been, excluded from tobacco control planning, decision-making, or the benefits of tobacco control programmes or interventions; has disproportionate rates in relation to its population numbers of tobacco use or tobacco-related morbidity or mortality; or experiences a disproportionate rate of exposure to tobacco smoke or to tobacco industry promotional practices;

“promotion” includes advertising but is a broader term that includes any commercial act or practice that is intended to or is likely to encourage, directly or indirectly, the purchase or use of any tobacco product or brand or create an awareness of or association with a tobacco product, brand, manufacturer or seller;

“public conveyance” means any form or mode of transportation that carries passengers for hire or reward, whether locally, between places within the country, or internationally;

“public place” means any place, fixed or mobile, including work place, to which members of the general public or segments of the general public ordinarily have access by express or implied invitation. An enclosed public place is a partially or fully completed building or structure, including a mine or tunnel, that is separated from the outdoors;

“retailer” means a person who sells tobacco products to consumers;

“seller” means any person who supplies any tobacco product for a fee or other consideration, and includes any manufacturer, distributor, wholesaler, importer, exporter and retailer;

“smoking” means inhaling, exhaling or handling an ignited or heated tobacco product or a tobacco product producing emissions by any means;

“supply” means to sell, give, exchange, convey, consign, deliver, furnish, or transfer possession of or title to any tobacco product for the purpose of obtaining financial or business gain, or arrange or offer to do so, whether for a fee or other consideration or without charge;

“tobacco smoke” means the smoke or other emissions released from a tobacco product or the smoke exhaled by a person smoking a tobacco product;

“tobacco product” means any product containing tobacco in any form that is intended for human use and includes all parts and materials, such as papers, filters and filter wrappers, over-wrappers, rods, portion pouches, and similar matter, as applicable, even if sold separately and raw tobacco that has not been processed or prepared for human use shall not be considered a tobacco product under this Act;

“tobacco-related illness” means any illness, disease, or condition resulting in whole or in part from tobacco use or exposure to tobacco smoke, and includes any illness, disease or condition exacerbated by tobacco use or exposure to tobacco smoke;

“tobacco sponsorship” means the direct or indirect public attribution, acknowledgment, association, identification or display of a tobacco manufacturer, seller, brand or product, or of any indicia of a tobacco manufacturer, seller, brand or product with, on, or in connection with—

- (a) an entertainment, sporting, recreational, educational, cultural, fashion, or other event, show, activity or work;
- (b) any person or team participating in such an event, show, activity or work, including their equipment, clothing and accessories;
- (c) activities in bars, nightclubs, restaurants, entertainment venues, and other similar venues;
- (d) a service provided or contribution made by a tobacco manufacturer or seller; or
- (e) a building, institution, stadium, or other public place, other than one exclusively used to manufacture or sell tobacco products;

“workplace” means any enclosed place in which persons perform duties of employment or work and includes private offices, common areas, and any other area which generally is used during the course of employment or work but shall not include private residences except to the extent that they are used for commercial purposes however, an enclosed workplace is a partially or fully completed building structure, that is separated from the outdoors.

Functions of the
Ministry

5. The Minister shall establish a unit which shall be responsible for—

- (a) developing and implementing, in collaboration with national stakeholders, a national strategic approach to tobacco control;
- (b) undertaking impact assessment of national policies and programmes aimed at controlling consumption and production of cigarettes and other tobacco products;
- (c) designing and disseminating messages for inclusion on tobacco packages;
- (d) reporting on Trinidad and Tobago's progress to the World Health Organization and at international conferences hosted for signatories to the Convention; and
- (e) monitoring activities nationally to ensure compliance with and enforcement of the Act and Regulations.

Appointment of
authorized officers

6. The Minister may appoint any person or class of persons as **authorized officers to carry out inspections and investigations as necessary or appropriate under the Act and to take enforcement actions against persons found to have violated any provision of the Act.**

Licensing of sellers
of tobacco
products

7. (1) No person shall manufacture, import, export or sell tobacco products at wholesale without first having a licence, except however, that persons engaged in the business of manufacturing, importing, exporting or selling tobacco products on or before the coming into force of this Act shall have a period of up to **nine months from the date this Act comes into force to apply for a licence.**

(2) A licence, once granted—

- (a) shall be prominently displayed at the establishment of the holder;
- (b) is valid for a period of three years; and
- (c) shall be subject to renewal thereafter.

(3) If the application for an initial licence or renewal is denied, the applicant shall cease manufacturing, importing, exporting or selling tobacco products, as the case may be, immediately upon notification of the application denial, subject to any right to appeal.

(4) No person shall sell any tobacco product to any manufacturer, importer, exporter, wholesaler or retailer which does not certify that it holds a valid licence, that it is exempt from licensure, or which the person knows or has reason to know does not hold a valid licence and is not exempt from licensure.

(5) No person shall purchase or take possession of any tobacco product from any manufacturer, importer, exporter, or wholesaler which does not hold a valid licence, or which the person knows or has reason to know does not hold a valid licence.

(6) The Minister shall serve as the licensing authority and may prescribe the requirements for the grant and renewal of a licence, including attaching to the grant or renewal of any licence such conditions as are reasonable or necessary for the effective and efficient administration of this Act.

(7) The Minister shall prescribe the procedure and forms for the licensure application.

(8) An application for an initial licence and any renewal shall be made to the Minister in accordance with any requirements prescribed in the Regulations.

(9) The licence fees shall be as follows:

(a) manufacturer....twelve thousand dollars per annum;

(b) wholesaler.....six thousand dollars per annum.

(10) The Minister may, by Order, amend the sums specified in subsection (9).

(11) A person who fails to meet the requirements for a licence on initial application or on renewal shall be denied a licence by the Minister.

(12) A licensee found to have violated any provision of this Act or Regulations made thereunder may be subject to licensure sanction, which may include limitation, suspension or revocation, at the discretion of the Minister, consistent with the purposes of this Act and in the event of suspension, the Minister may attach such conditions for reinstatement as he deems appropriate for the efficient and effective administration of this Act.

(13) A person who contravenes this section commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

(14) In this section “**Minister**” means the minister with responsibility for trade.

Freedom from
exposure to
tobacco smoke

8. (1) No person shall smoke or hold a lighted tobacco product in any enclosed public place, including any workplace, or in any part of an enclosed public place or workplace, including the following:

- (a) offices and office buildings;
- (b) factories;
- (c) health institutions;
- (d) educational institutions of all levels;
- (e) premises in which children are cared, for a fee;
- (f) any means of transportation used for commercial, public or professional purposes used by more than one person;
- (g) public transportation terminals;
- (h) retail establishments including bars, restaurants and shopping malls;

- (i) clubs;
- (j) cinemas;
- (k) concert halls;
- (l) sports facilities;
- (m) pool and bingo halls;
- (n) publicly owned facilities rented out for events;
- (o) facilities that employ paid personnel; and
- (p) any other facilities that are accessible to the public.

(2) Except in a place not prohibited under subsection (1), no person shall smoke within fifteen metres of any **outdoor public place that caters primarily to children, such as children's playgrounds, amusement parks and video arcades.**

(3) Subject to subsection (6), if any person contravenes subsection (2) in respect of a place described in subsection (2)(d), (f), (g), (h), (i), (j), (k), (l), (m), (n) and (p), each manager, owner and lessee of the place is deemed to have contravened that subsection and each is liable for the contravention.

(4) Subject to subsection (6), if a person contravenes subsection (2)(a), (b), (c), (e), and (o), the employer is deemed to have contravened that subsection and is liable for the contravention.

(5) It is a defence to a charge under subsection (2) if the manager, owner, lessee or employer, as applicable, demonstrates that he exercised reasonable care and diligence to prevent the contravention.

(6) A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars **or two years imprisonment.**

(7) The Minister may, by Order, add to subsection (2).

9. (1) Subject to this section no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.

(2) A person may advertise a tobacco product by information advertising or brand-preference advertising by way of—

- (a) a publication that is provided by mail and addressed to an adult smoker who is identified by name;
- (b) a publication that has an adult readership of not less than eighty-five per cent;
- (c) signs in a place where **children** are not permitted by law.

(3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to a **child**.

(2) In this section—

“brand preference advertising” means advertising that promotes a tobacco product by means of its brand characteristics;

“information advertising” means advertising that provides factual information to the consumer about—

- (a) a product and its characteristics; or
- (b) the availability or price of a product or brand of product;

“lifestyle advertising” means advertising that associates a product with, or evokes an emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

10. (1) Subject to section 11, tobacco sponsorship^{Sponsorship}, advertising and other promotion of tobacco sponsorships in which the name of a sponsoring entity is publicised, are prohibited.

(2) A person who engages in any activity prohibited under section (1) commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

11. (1) No person shall sell, display for sale, supply,^{Other forms of promotion} or advertise any non-tobacco product or service that contains, either on the product, or in any advertisement of the product a depiction of a tobacco product, **except where the person held the intellectual property rights to that product prior to the commencement of this Act.**

(2) For the purposes of this section, a non-tobacco product shall include a building, facility, premises, or business that is not a building, facility or business that manufactures tobacco products exclusively.

(3) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

12. (1) No person shall use the brand name, trade-^{Prohibition against reverse brand stretching} **mark or other sign, symbol, logo, or similar matter, in whole or in part, commonly associated with a non-tobacco product or service, on a tobacco product, except for tobacco products for which a trade or brand name of a non-tobacco product or service was in use prior to the coming into force of this Act.**

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

Prohibition against
incentive
promotions and
the free supply
of tobacco
products

13. (1) No person shall offer or provide any direct or indirect consideration for the purchase or use of a tobacco product, including a bonus, premium, cash rebate or right to participate in a game, lottery or contest, so, however, that nothing in this section shall prohibit the giving of any normal trade discount or normal trade rebate, or providing compensation for monitoring compliance with this Act.

(2) No person shall supply or offer to supply a tobacco product to any other person free of charge as a sample, gift, or otherwise so, however, that this subsection shall not be construed as prohibiting individuals from giving tobacco products to other individuals, so long as this is not done at the behest of, or for the benefit of, a tobacco manufacturer or seller or any person working on behalf of or in the interest of a tobacco manufacturer or seller, or for financial gain for the individual offering the tobacco product.

(3) A person who contravenes this section commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

Conformity with
packaging and
labelling
requirements

14. (1) No person shall sell, offer for sale, supply, display, import or export any tobacco product that is not labelled and packaged in a manner that complies with all the requirements of this Act and with any Regulations made thereunder.

(2) No seller shall acquire tobacco products that are not packaged and labelled in a manner that complies with all requirements of this Act and with any Regulations made thereunder.

(3) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

15. (1) All tobacco products shall contain, ^{Labelling} permanently affixed on their packages or individual wrappers in the case of cigars, messages as may be prescribed.

(2) Prescribed messages shall be **attributed**.

(3) No person may sell or supply any product, device, or other thing that is intended to be used, or that can be used, to cover, obscure, mask, alter, or otherwise detract from the prescribed messages on tobacco product packages and this prohibition includes design of the product package in such a way that parts of the package itself, or accessories can cover or obscure the messages.

(4) A person who contravenes this section commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

16. (1) All tobacco products shall contain, ^{Constituents and additives disclosure on tobacco products packages} permanently affixed on their packages, or wrapper in the case of cigars, a list of the constituents and additives specified, and in a manner as may be prescribed.

(2) Constituent yield numbers shall not be displayed on tobacco product packages unless specifically authorized.

(3) **A person who does not comply with this section commits an offence and is liable—**

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

Prohibition on
deceptive or
misleading
information

17. (1) No tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended, directly or indirectly, to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions.

(2) This prohibition includes, but is not limited to, the use of—

(a) words or descriptors, whether or not part of the brand name, such as “light”, “ultra light”, “mild”, “low tar”, “slim” or similar words or descriptors;

(b) any graphics associated with, or likely or intended to be associated with, such words or descriptors; and

(c) any product package design characteristics, associated with, or likely or intended to be associated with, such descriptors.

(3) A person who contravenes this section commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

18. Compliance with this Act in no way shall be construed as relieving any tobacco manufacturer or seller of any duty prescribed by law, custom, convention, or otherwise, to fully inform consumers of all dangers associated with tobacco use and exposure to tobacco smoke. Continuing duty to warn

19. (1) If any tobacco product is placed in multiple layers of packaging, all health messages, constituents and additives disclosures shall be permanently affixed to the package in which the tobacco product ultimately is intended for consumer use, as well as to any external packaging, including cartons. Multiple packaging

(2) A person who contravenes subsection (1) commits an offence and is liable—

(a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or

(b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.

20. (1) Tobacco product manufacturers, exporters and importers, as applicable, shall ensure their bulk packages contain the tracking and tracing and tax status labelling information required by this section. Requirements for name, licence number, etc., on package

(2) The following information shall be presented in a visible manner, and shall be permanently affixed under the cellophane or other wrapping on all the sides of each tobacco product package, including each carton, at the time of manufacture—

(a) name and licence number of the manufacturer, as applicable, wholesaler, importer and exporter;

- (b) unique manufacturer serial number, date of manufacture and location;
- (c) name of the country in which it was manufactured; and
- (d) name of the country in which the product is intended for legal sale.

(3) A person who contravenes this section commits an offence and is liable—

- (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or**
- (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.**

Requirements for
tamper-proof
packaging and
labelling

21. (1) Tobacco product manufacturers shall design their product packaging and labelling in such a way as to make them tamper-proof, using the best available technology.

(2) Manufacturers, importers, exporters, wholesalers and retailers shall exercise all reasonable and necessary precautions to prevent tampering with such information while the products are under their control or supervision.

(3) A person who contravenes this section commits an offence and is liable—

- (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or**
- (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.**

Language of labelling
information

22. The information printed on a tobacco product shall be in English only.

Evaluation of
messages

23. (1) The Minister shall continuously determine whether the messages required under this Act and any Regulations made thereunder are providing information in an appropriate and effective manner to the general population and to priority populations.

(2) To the extent the minister determines that the mix of messages is not found to be effective in reaching the general population or priority populations, the Minister shall take remedial regulatory action as appropriate.

24. (1) Notwithstanding the provisions contained in this Act, tobacco products that will be exported from Trinidad and Tobago shall not be required to meet the labelling requirements under this Act, other than the requirements of sections 22 and 23 save that they shall be required to meet the labelling requirements of the importing country. Labelling requirements for exported products

(2) In the absence of labelling requirements in the importing country, the labelling requirements under this Act shall apply fully to exported tobacco products and any required messages, constituent and additives disclosures, and other required labelling information shall appear in the official languages of the country of destination.

(3) A person who contravenes this section commits an offence and is liable—

- (a) on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or**
- (b) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.**

25. (1) Smoked tobacco products, with the exception of cigars which may be sold as individual units so long as they are individually labelled as required, shall be contained in a package of at least **ten** units. Minimum package size for smoked tobacco products

(2) No person shall sell single cigarettes or other smoked tobacco products, or sell any smoked tobacco product other than as part of a complete and intact package that meets minimum quantity requirements.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of twelve thousand dollars and imprisonment for six months.

(4) Subsection (1) expires two years from the date of the proclamation of this Act.

Minimum package size for smokeless tobacco products

26. (1) Smokeless tobacco products shall be contained in a package of at least twenty grams.

(2) No person shall sell any portion of a smokeless tobacco product package, or sell any smokeless tobacco product other than as part of a complete and intact package that meets the minimum weight requirement.

(3) A person who contravenes this section commits an offence and is liable, on summary conviction, to a fine of twelve thousand dollars and imprisonment for six months.

Prohibition on sales to minors

27. (1) No person shall sell any tobacco product to any person under the age of eighteen years.

(2) Prior to selling a tobacco product to any person who appears not to be at least five years older than eighteen years, it shall be necessary to take all reasonable steps to verify the age of that person, by requiring, at a minimum an identification card.

(3) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of—

(a) one hundred thousand dollars or three months imprisonment for the first offence; or

(b) two hundred thousand dollars or six months for the second offence; and

(c) three hundred thousand dollars or nine months imprisonment for the third offence

28. (1) No person who sells tobacco products shall ^{Prohibition on sales by minors} hire or use any person under eighteen years of age to sell any tobacco product or to handle any tobacco product.

(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of—

- (a) one hundred thousand dollars or three months imprisonment for the first offence; or**
- (b) two hundred thousand dollars or six months for the second offence; and**
- (c) three hundred thousand dollars or nine months imprisonment for the third offence.**

29. (1) No person shall sell any tobacco product in ^{Prohibition on self-service displays} such a way that a consumer may handle the product without the assistance of a sales clerk or other employee or agent of the seller prior to purchase.

(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of—

- (a) one hundred thousand dollars or three months imprisonment for the first offence; or**
- (b) two hundred thousand dollars or six months for the second offence; and**
- (c) three hundred thousand dollars or nine months imprisonment for the third offence**

30. (1) No person shall display tobacco products in ^{Prohibition on public displays} such a way that they are visible to the public, so, however, that the provisions of this section prohibiting public displays of tobacco products shall not apply to individuals incidentally displaying tobacco products during carrying or use.

(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of—

- (a) one hundred thousand dollars or three months imprisonment for the first offence; or**
- (b) two hundred thousand dollars or six months for the second offence; and**
- (c) three hundred thousand dollars or nine months imprisonment for the third offence**

Prohibition on vending machines, internet and certain other sales of tobacco products

31. (1) No person shall sell any tobacco product through any self-service means, including through automatic vending machines, the mail or the Internet.

(2) The Minister may, by Order, prohibit any other means of sale where the age of the purchaser of the tobacco product cannot be verified reliably.

(3) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of—

- (a) one hundred thousand dollars or three months imprisonment for the first offence; or**
- (b) two hundred thousand dollars or six months for the second offence; and**
- (c) three hundred thousand dollars or nine months imprisonment for the third offence.**

Prohibition on sales of tobacco products in certain places

32. (1) No person shall sell tobacco products in any of the following places:

- (a) facilities where health care services are provided;**
- (b) sports, athletic or recreational facilities;**
- (c) government buildings;**
- (d) educational facilities; and**

(e) any other place prescribed by the Minister by Regulations.

(2) A person who contravenes this section commits an offence and is liable on summary conviction or on indictment to a fine of—

- (a) one hundred thousand dollars or three months imprisonment for the first offence; or**
- (b) two hundred thousand dollars or six months for the second offence; and**
- (c) three hundred thousand dollars or nine months imprisonment for the third offence**

33. (1) No person shall—

Prohibition on toy or
candy cigarettes

- (a) import or manufacture; or**
- (b) sell, display for sale or (distribute) supply any sweets, snacks, toys or other non-tobacco items or objects in the form of tobacco products, or which imitate tobacco products.**

(2) A person who contravenes subsection (1)(a) commits an offence and is liable—

- (i) on summary conviction to a fine of one hundred thousand dollars and six months imprisonment; or**
- (ii) on indictment, to a fine of five hundred thousand dollars or one year imprisonment.**

(3) A person who contravenes subsection (1)(b) commits an offence and is liable—

- (i) on summary conviction to a fine of ten thousand dollars and six months imprisonment; or**

(ii) on indictment, to a fine of one-hundred thousand dollars or one year imprisonment.

Compliance with standards

34. No person shall manufacture, import, export, supply, or sell any tobacco product unless it conforms to requirements and standards prescribed in this Act and the Regulations.

Prohibition on health claims

35. No tobacco product package may make any claim stating, suggesting, or implying that its use or exposure to its smoke is not hazardous or is less hazardous than other tobacco products or brands, unless authorized by the Minister after he is satisfied that the claim is accurate upon a showing of scientifically competent and reliable evidence, including—

- (a) evidence demonstrating that the product will significantly reduce harm to the individual tobacco user;
- (b) evidence that the product will benefit the health of the population as a whole, taking into account the increased or decreased likelihood that current tobacco users would delay or avoid quitting or that non-tobacco users might initiate tobacco use; and
- (c) any other considerations deemed appropriate by the Minister.

Evaluation for disparate effects

36. (1) The Minister shall determine whether the provisions of the Act and Regulations affording protection against exposure to tobacco smoke, tobacco advertising, sponsorship, and other forms of promotion or regulating tobacco product composition and design result in equal levels of protection across all population groups.

(2) In the event that disparities in the level of afforded protection are found, the Minister shall take remedial regulatory action as appropriate.

37. (1) Every manufacturer and importer of tobacco products shall submit to the Minister on a quarterly basis reports containing the information required under this Act. Reports of constituents, additives and certain business information

(2) Quarterly reports shall include information on—

- (a) import and export;**
- (b) business sales, marketing and distribution;**
- (c) new products or brands;**
- (d) constituents, additives and of toxic constituents and additives in smoke, expressed in their individual concentrations and as a ratio to nicotine; and**
- (e) product packaging and labeling, of all tobacco products.**

(3) Reports shall be made on the basis of products prepared and tested in accordance with the methods prescribed in Regulations.

(4) Reports shall be submitted in the form and manner as prescribed by Regulations made under this Act.

(5) Reports required under this Act shall be public information

38. No employer shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage an employee or deny that employee a benefit on the grounds that the employee testifies against an employer in an action brought under this Act. Protection for employees

39. (1) Authorized officers appointed under section 6 shall have the following powers: Inspection and investigative powers

- (a) to enter the premises of any place where tobacco is manufactured, sold, transported,**

received, distributed, supplied, or otherwise found or is likely to be found, or to have been present during the previous six days, so, however, that for the purposes of enforcing this Act, authorized officers may enter any public place, including workplace, and any place of collective use, to conduct inspections or investigations at any time during business or operating hours or at any other reasonable or necessary time;

- (b) to examine, open, and test any equipment, tools, materials, packages or anything the authorized officer reasonably believes is used or capable of being used for the manufacture, including packaging and labelling, storage, distribution, or advertising or promotion of tobacco products, manufacturers or sellers;
- (c) to examine any manufacturing operation or process carried out on the premises;
- (d) to examine and make copies of or from any books, documents, notes, files, including electronic files, or other records the authorized officer reasonably believes might contain information relevant to determining compliance with the provisions of this Act and the Regulations and any other applicable law, including legislation imposing duties or taxes;
- (e) to interview any person the officer believes may have information relevant to making a compliance determination;
- (f) to take samples of tobacco products or components of products, and their packaging, anywhere they are found, and have them tested;

- (g) to stop, search, and detain any aircraft, ship, vehicle or other means of transport or storage in which the authorized officer reasonably believes **bulk** tobacco products are or were contained or conveyed, and examine, open, and take samples of them;
- (h) to seize and detain, or order the storage without removal or alteration of, any tobacco product or other thing the authorized officer reasonably believes does not comply with the provisions of this Act or Regulations made thereunder and any other applicable law, including legislation imposing duties or taxes; and
- (i) to take any other action reasonable or necessary for the effective and efficient administration of this Act.

(2) In acting under subsection (1)(h), the officer shall first provide the licensee or owner of the tobacco products or other things, or if he is unavailable, any other person on the premises where the tobacco products or other things, are located, with written notice of the seizure and detention and the grounds for it and if any tobacco product or other thing so seized and detained is determined to meet legal requirements, it shall be returned to the premises from which it was seized within ten working days from the date it is determined to meet legal requirements, unless it is needed as evidence in a legal proceeding and if any tobacco product or other thing is determined not to meet legal requirements, it may be confiscated and destroyed or subject to other disposal, as ordered by the Court, subject to any appeal rights that may be applicable.

(3) No person shall deny, obstruct or hinder an authorized officer in the performance of his duties.

(4) No authorized officer shall abuse or use for his own financial or personal gain, powers given to him under this section.

Identification of
authorized officers

40. While carrying out official duties, authorized officers shall present proof of identity or proof of their appointment if requested by the person being inspected or investigated.

Penalties

41. (1) In any action for non-compliance with any provision of this Act or any Regulations made thereunder, the following penalties may be imposed:

(a) licensure suspension, revocation or limitation;

(b) removal by an authorized officer of an offending person from the premises or public conveyance, and confiscation and forfeiture of any tobacco products, for smoking in violation of the provisions of this Act; and

(c) confiscation and forfeiture, including, where appropriate destruction, using environmentally-friendly methods where feasible, of—

(i) any item that contains a tobacco advertisement and any promotional item prohibited under this Act such as advertising, sponsorship, and other forms of promotion, regardless of the knowledge or intent of the person who owns or possesses such products;

(ii) any tobacco product packaged or labelled in a manner that does not conform to the requirements of this Act, including tobacco

product packaging and labelling, or section, wherever they may be located and regardless of the knowledge or intent of the person who owns or possesses such products, and any equipment, machinery, materials, and related items used to evade the requirements of those sections;

- (iii) all tobacco products owned by or under the control of the person found to have committed a violation of sections 7, 13, 25, 26, 27, 28, 29, 30, 31, 32, and 34;
- (iv) equipment, machinery, raw materials, components, packaging and labelling materials, and any other items used to manufacture tobacco products in violation of this Act;
- (v) all tobacco products or components that fail to conform to the product requirements of this Act including forfeiture of any tobacco product located anywhere in the country that does not comply, regardless of the owner's intent or knowledge of its non-compliant status;
- (vi) all tobacco products for which all applicable taxes and duties have not been paid or that otherwise have not legally entered the country of destination;
- (vii) all non-tobacco products that contravene section 36; and

(2) For any continuing violation, each day the violation continues shall constitute a separate offence.

(3) Where any person derived any monetary or financial benefit directly or indirectly from any act or omission that constitutes a violation under this Act or any Regulations made thereunder or other applicable law, including any imposing duties and taxes, all proceeds so gained shall be forfeited in addition to any other penalty imposed.

(4) Where the person committing any violation is a corporate director or officer who authorized or acquiesced in the act, or who knew or, using due diligence, should have known of the commission or omission of the act constituting the violation, he shall be held liable.

(5) A corporation may be held liable as a corporate person.

(6) A person who domestically manufactures or supplies tobacco products shall be held strictly liable for any of its exported products that do not legally enter the designated country of destination or that later are found to have escaped payment of applicable taxes and duties or to otherwise be contraband goods.

42. In any action for non-compliance with any Civil proceedings provision of this Act or any Regulations made thereunder, the following shall apply:

(a) an affidavit or certification under oath by a laboratory analyst who tested any tobacco product or component; which is the subject of the proceedings shall be admissible on its mere production as *prima facie* proof of the violations shown by the examination or analysis of the tobacco product or component; so, however, that the accused

shall be notified in writing in advance of the intent to produce such an affidavit or certification and may compel the analyst's presence at the hearing or to cross-examine him in advance of the hearing and offer this testimony into evidence at the hearing;

- (b) copies from any record, book, or document certified by the Ministry as true and correct copies shall be deemed admissible into evidence as authentic;
- (c) where any tobacco product or component is found in any premises used for the manufacture, import, export, distribution, supply, or sale of such products, such product or component shall be presumed to be intended for manufacture, import, export, packaging, distribution, or sale, respectively;
- (d) any tobacco product from the same lot or batch shall be presumed to possess the same characteristics as those products from the same lot or batch found on the premises or at another location under the control of the owner or operator of the premises, so, however, that if there is no lot or batch number on the products, as required under the Act, any tobacco product found on the premises shall be presumed to possess the same characteristics as other tobacco products found on the premises or at another location under the control of the owner or operator of the premises; and
- (e) the person identified on the label or packaging of any tobacco product as the manufacturer, importer, exporter, distributor or seller shall be presumed to have manufactured, imported, distributed or sold the tobacco product, respectively.

Enforcement cost
recovery

43. A person who violates any requirement under this Act or Regulations made thereunder, or any other applicable law, may be ordered to pay all reasonable costs associated with any investigation and enforcement action brought about by the non-compliance.

Public awareness,
education and
cessation
programmes

44. (1) The Minister shall establish and carry out evidence-based programmes to inform the public of—

- (a) the dangers and addictiveness of tobacco use and of exposure to tobacco smoke;
- (b) the benefits of and strategies for quitting;
- (c) information on the tobacco industry and on the health, economic, and environmental effects of tobacco production and manufacturing; and
- (d) such other information as he determines to be effective in mitigating against the health effects, social, and environmental costs of tobacco and for increasing public and consumer awareness of pertinent tobacco related issues.

(2) The Minister shall—

- (a) make public awareness, educational, and cessation materials available to municipal corporations, health care workers and facilities, schools, the media, non-governmental organizations and such other entities as the Minister deems appropriate;
- (b) In carrying out such programmes, develop evidence-based educational programmes and materials appropriate to the population at large and to priority populations; and
- (c) establish and carry out evidence-based tobacco use cessation programmes, including diagnosis, counselling, and treatment services and, as appropriate, access to nicotine replacement therapies.

45. The Minister may make Regulations **subject to** Regulations
negative resolution of Parliament—

- (a) prescribing requirements and standards for tobacco product constituents, including emissions of smoked products, additives and product design and specifying methods for testing and measuring compliance with the performance standards and requirements prescribed;
- (b) generally for carrying out the purposes and provisions of this Act.

46. A person who contravenes a provision of this Act Penalties where none prescribed
for which there is no prescribed penalty commits an offence and is liable—

- (a) **on summary conviction, to a fine of one hundred thousand dollars or six months imprisonment; or**
- (b) **on indictment, to a fine of five hundred thousand dollars or one year imprisonment.**

Passed in the Senate this day of , 2008.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

Passed in the House of Representatives this
day of _____, 2008.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of members of the House.

Clerk of the House

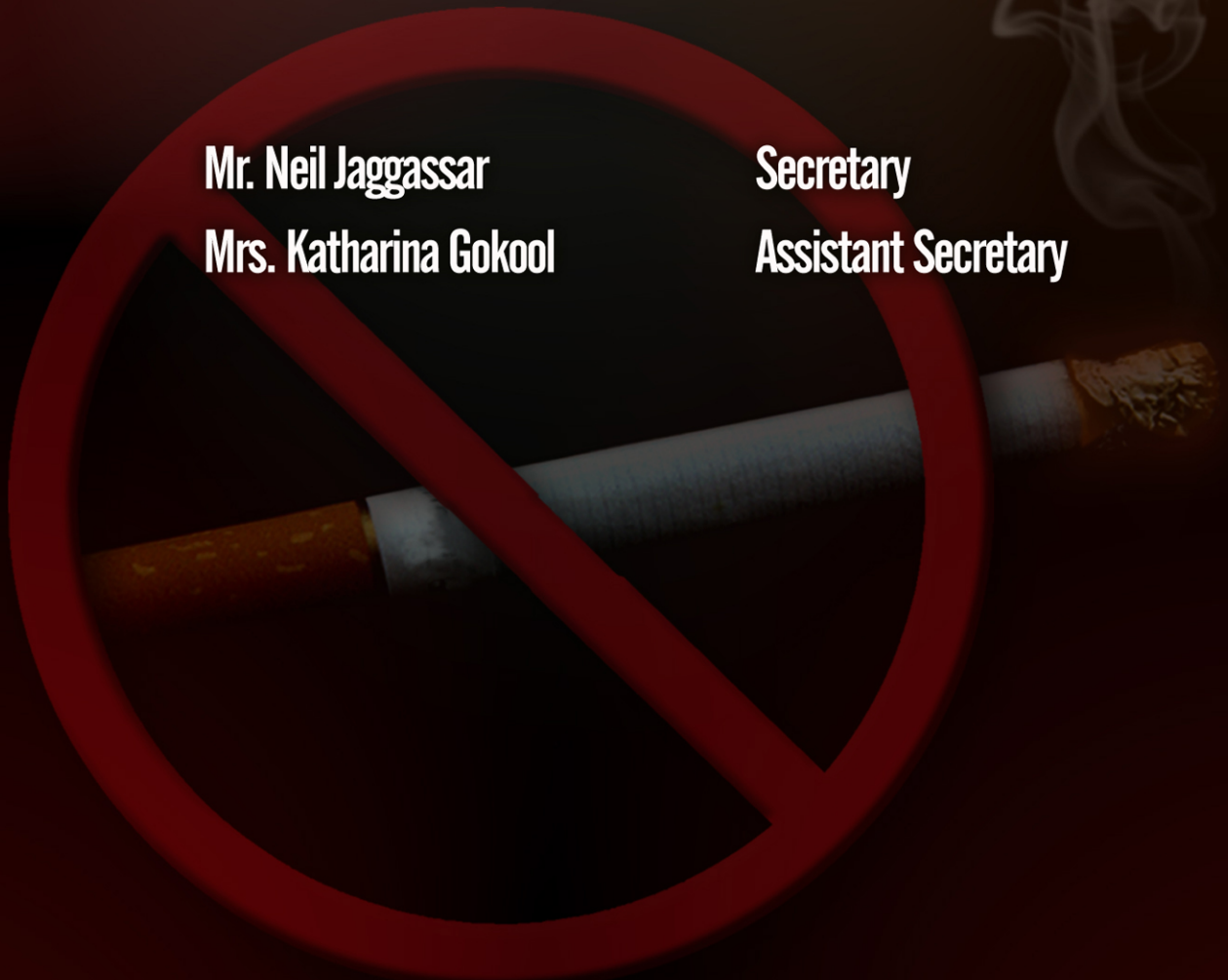
I confirm the above.

Speaker

Committee Members

Mrs. Hazel Manning	Chairman
Mr. Jerry Narace	Member
Dr. Emily Gaynor Dick - Forde	Member
Ms. Cindy Devika Sharma	Member
Ms. Dana Seetahal	Member

Mr. Neil Jaggassar	Secretary
Mrs. Katharina Gokool	Assistant Secretary



**Prepared by the Senate Secretariat
Office of the Parliament
The Red House
Abercromby Street
Port of Spain
Republic of Trinidad and Tobago - December, 2008**