

*Leave of Absence**Wednesday, July 12, 1995***HOUSE OF REPRESENTATIVES***Wednesday, July 12, 1995***PRAYERS**

The House met at 10.03 a.m.

[MADAM SPEAKER *in the Chair*]**LEAVE OF ABSENCE**

**Madam Speaker:** Hon. Members, I have granted leave of absence for today's sitting to the Member for Caroni East (Miss Indera Sagewan) and to the Member for San Fernando West (Hon. Ralph Maraj).

**STATEMENT BY MINISTER****(No Confidence Motion)**

**The Minister of Industry and Trade and Minister in the Ministry of Finance (Hon. Kenneth Valley):** Madam Speaker, on the last occasion on which this honourable House met, the acting Leader of Government Business indicated that a Motion would be filed under Standing Order 90 requiring the Standing Orders of this House to be suspended to provide that the Deputy Speaker preside over this honourable House in place of Madam Speaker during the debate on the substantive Motion.

The Acting Leader of Government Business advised at that time that the substantive motion touched directly and concerned Madam Speaker, and as a consequence he was of the view that Madam Speaker ought not to preside.

The principle involved in this matter is quite clear and is founded on the well-known tradition that one cannot be a judge in one's own cause.

By correspondence dated July 11, 1995, the Clerk of the House has informed the Acting Leader of the House, *inter alia*:

“I am directed by the Speaker to convey to you her ruling on the Motion you so filed:-

‘That you be informed that the Motion is unfounded, misconceived, and is an abuse of the rules of the House of Representatives and the Parliamentary process and is indeed *wholly out of order.*’

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I am also directed by the Speaker to convey to you the following:

“That your attempt to flagrantly undermine and disregard the authority of the Chair and to abuse the rules of the House of Representatives and the Parliamentary process borders on contempt and that you so take note.”

Madam Speaker, the Government frowns with disfavour upon an infraction of the hallowed principle of natural justice that no one, no matter how resolute, elevated or self-righteous, ought to be a judge in his or her own cause. Madam Speaker, our institutions transcend the transient interests of those who temporarily occupy their prestigious positions. What we do here has attracted and will continue to attract avid attention nationally and internationally.

With the greatest deference to the Chair, we must avoid being seen as contributing to the undermining of our Parliament, of this honourable House, and most particularly of the exalted office of Speaker. We must, therefore, in good conscience refrain from participating in any proceedings which may establish a precedent of an unfortunate and ill-advised nature. We owe it to your office to decline to proceed with the Motion under these auspices of what may be perceived as confrontational intransigence. We await a much-yearned-for return to calm, unemotional and rational procedures.

This honourable House will appreciate that in all of this, the Government sees as its primary responsibility, taking priority over everything else, the maintenance of the dignity of this parliament and in particular the office of the Speaker.

Accordingly, Madam Speaker, the Government does not propose to debate the Motion of “No Confidence” unless and until the honoured traditions are observed, that is, the Speaker vacate the Chair.

#### ADJOURNMENT

**The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley):** Madam Speaker, in the circumstances, I beg to move that this House be now adjourned to a date to be fixed.

I so move.

**Madam Speaker:** Hon. Members, I have listened to the statement by the hon.—

**Hon. K. Valley:** Madam Speaker, please, I moved that the House be adjourned.

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**Madam Speaker:** Yes, I have to rule on your Motion. You have moved that the debate not be proceeded with.

**Hon. K. Valley:** Madam Speaker, no, no, no.

**Madam Speaker:** What are you moving?

**Hon. K. Valley:** I have moved that the House be adjourned.

**Madam Speaker:** All right I am ruling on that.

**Hon. K. Valley:** That question—

**Madam Speaker:** Will the Member please take his seat?

**Hon. K. Valley:** Madam Speaker, that question, according to the Standing Order, has—

**Hon. Members:** Sit down! Sit down!

**Madam Speaker:** We are not debating the issue, hon. Member. The Speaker has to rule on that Motion. We are not debating it.

I wish to advise—

**Hon. K. Valley:** Madam Speaker, with all due respect—

**Madam Speaker:** Will the Member please take his seat!

A Speaker has the power to refuse a Motion for the Adjournment of the House on any debate and I have to take into consideration the statement of the Minister and the points raised in that statement. To do so would make a mockery of this Parliament and I have no intention of putting this to the vote and the Motion would accordingly proceed.

**Hon. K. Valley:** Madam Speaker, with all due respect—

**Madam Speaker:** I have ruled on the Motion. I am not putting it to the vote.

**Hon. K. Valley:** Madam Speaker, I do not know which Standing Order... For my own guidance, would you point me to the Standing Order that you are under?

**Madam Speaker:** You must take your guidance from the Attorney General.

**Hon. K. Valley:** Madam Speaker, the question before the House—

**Madam Speaker:** Will the hon. Member please sit! I have ruled that I am not putting the question to the vote! We have had enough of this and Members ought to have been prepared for the debate on this matter today.

**NO CONFIDENCE MOTION  
(ADVICE ON)**

**Madam Speaker:** Hon. Members, before I call upon the hon. Minister of Education to propose the Motion listed on the Order Paper, I wish to indicate that there is a procedural point and a few matters on which the Chair seeks assistance, and which must be determined before I call on the hon. Minister to propose the Motion before us.

**10.10 a.m.**

When this Motion was presented to me for approval to be listed on the Order Paper for debate, it was clear from prior requests by the hon. Minister of Education and the Attorney General, and utterances by the Attorney General at a press conference prior to filing the Motion, and the Motion itself, that the purpose of the Motion before me was to force me to resign and vacate office.

I struggled with the conceptual and constitutional propriety of the Motion before me, and whether or not it was highly irregular and wholly out of order. I had grave misgivings as to whether or not this Motion should be listed on the Order Paper and sought guidance from May's *Parliamentary Practice* and parliamentary precedents of decisions on issues of this nature in arriving at my decisions. These parliamentary precedents, and indeed, May's *Parliamentary Practices*, reveal that the Speaker has the authority to direct that a Motion be printed on the Order Paper and reserve a final decision as to its regularity and propriety for debate for future consideration.

In the exercise of this authority I directed that this matter be listed on the Order Paper and reserved the decisions on the issues raised above for this time. I did so in the interest of giving hon. Members an opportunity of assisting the Chair in arriving at a final decision. The questions on which I reserved the decision and on which I now seek assistance are as follows:

Whether the Speaker ought to approve, for debate, a Motion of no confidence against the office holder of Speaker for the purposes of the Speaker vacating office, in the light of the provisions of sections 58(2), 54(2), 54(2)(a) and 54(6) of the Constitution.

By section 58(2) of the said Constitution, the Speaker is given the constitutional entitlement to preside at each sitting of the House of Representatives.

By section 54(2)(a), that entitlement and right of the Speaker can be taken away only by alteration of the Constitution if a Bill for such alteration is passed in

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both Houses of Parliament supported by votes of not less than two-thirds of all the Members.

By section 54(6) the Constitution framers gave a very wide meaning to the word “alteration.”

It stated that alteration is not limited to repealing the provision. It also includes situations where the Parliament makes a different provision for an existing provision, or where Parliament modified the provision or suspends it. It would, therefore, appear that any attempt by any other means, including a no confidence Motion to force the Speaker to resign and vacate office, would collide with and infringe these sections and can amount to an undermining and subverting of our Constitution. The rules of procedure in this House are, of course, subject to the Constitution.

The second point is: Is the Motion before us conceptually in order, or is it irregular for any other purpose?

Any Member wishing at this time to assist the Chair on any of these matters may rise and indicate his or her desire to do so.

**Hon. K. Valley:** Madam Speaker.

**Madam Speaker:** The Member for Couva South.

**Hon. K. Valley:** Madam Speaker, I beg to move that this House be adjourned. [*Interruption*]

**Madam Speaker:** I have called upon the Member for Couva South. Nobody else rose. I see the Member for Couva South rise. Proceed please.

**Mr. Ramesh L. Maharaj:** (*Couva South*): Madam Speaker, the issue raised in this Motion is a vote of no confidence in the Speaker.

**Madam Speaker:** A very serious matter.

**Mr. R. L. Maharaj:** The motive of the government in moving this Motion is to remove the Speaker from office and to cause the Speaker to cease presiding in office.

This debate and this Motion and this issue have far-reaching consequences for the upholding of the Constitution and the security of tenure and independence of office of the Speaker. It has serious consequences for the restraining and misuse of power and abuse of power by the Government in its attempt to use a majority vote in Parliament to achieve indirectly what it cannot achieve directly, that is, by

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the Constitution. It requires a two-thirds majority on a Bill passed by both House, in order for a law to be made to cause the Speaker to vacate office on a motion of no confidence.

The issue, therefore, involves an examination of the Constitution. In order to appreciate the issue, it is important for us to understand what is the purpose of a Constitution.

The purpose of a written Constitution is to circumscribe the powers of officials of the state and arms of the state. Under our Constitution the state of Trinidad and Tobago is comprised of three arms of government. They are the Judicial, Executive and Legislative arms. The Parliament is the Legislative arm of the state.

Under our Constitution the Parliament is not totally supreme. As a matter of fact, there are certain restrictions placed by the Constitution on the Parliament, which prevent it from passing bills and doing matters which can have the effect of contravening provisions of the Constitution. The Constitution of Trinidad and Tobago is supreme. It is the supreme law of the land and we must understand that whatever we do here, the Parliament can be accountable to the courts for its actions.

Therefore, if we are asked in this Parliament to exercise a vote or to participate in a Motion which, *prima facie*, it, collides with the Constitution, it is our duty as parliamentarians, as law-makers, carefully examine the Constitution and the Motion to see whether they in fact collide with the Constitution.

That is important. When we took office in this Parliament, we took an oath and that oath was to uphold the Constitution and the law. If I may say so, with the greatest respect to the Chair, the Speaker, in my view, has been generous in allowing this Motion to be listed because this Motion is frivolous, vexatious and it is an abuse of the process of Parliament, and I would show that.

Under the Constitution there are certain institutions and certain matters which are entrenched. For example, the right of appeal to the Privy Council, the security of tenure of judges. What the Constitution framers in Trinidad and Tobago did was that they decided to entrench the position of Speaker. There is a situation under our Constitution, where, although, the Speaker is elected by a majority of votes in the Parliament, having been elected, the office of Speaker is protected.

When we examine section 53 of the Constitution we see that Parliament is given the power to make laws for the peace, order and good Government of

Trinidad and Tobago. But that power says that Parliament may make laws and then it says, and I should like to read this:

“Parliament may make laws for the peace, order and good Government of Trinidad and Tobago, so however that the provisions of this Constitution or (insofar as it forms part of the law of Trinidad and Tobago) the Trinidad and Tobago Independence Act 1962 of the United Kingdom may not be altered except in accordance with the provisions of section 54.”

Parliament is given the power to make laws and under section 54, it says:

“(1) Subject to the provisions of this section, Parliament may alter any of the provisions of this Constitution or (insofar as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.”

Then it says under subsection (2), and it talks about section 58:

“a Bill for an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House.”

For the record, although section 58 has been bandied about in this House, we should have a motion of no confidence in the Attorney General.

**10.20 a.m.**

Section 58(2) states:

“The Speaker or, in his absence, the Deputy Speaker or, where they are both absent, a member of the House of Representatives, not being a Minister or a Parliamentary Secretary, elected by the House for that sitting shall preside at each sitting of the House.”

Any second standard child can understand this section. This section says that the Speaker shall preside at all sittings of the House. If the Speaker is absent, the Deputy Speaker shall preside. If the Deputy Speaker and the Speaker are absent, then the House has the power to elect someone to preside.

We see section 58 as the section by which section 54(1) says that it is an entrenched section and it cannot be altered. That is to say, the entitlement of the Speaker to preside cannot be modified, suspended or taken away, unless there is a Bill authorized by Parliament for that to be done. We see that for the Speaker to vacate his or her office there are specified conditions which must be satisfied.

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Section 50(5) states:

“A person shall vacate the office of Speaker or Deputy Speaker—...

(b) in the case of a Speaker elected from among persons who are not members of either House—”

That is in this case because Madam Speaker was elected Speaker and she was outside the House. She is not an elected member.

(i) when the House first meets after any dissolution of Parliament;”

We have not reached there. That is to say that if the Prime Minister of Trinidad and Tobago dissolves this Parliament and calls an election—which I think he should do—then that section will come into place. We are not in that area at all.

“(ii) where he ceases to be a citizen of Trinidad and Tobago; or”

Madam Speaker, unless you have ceased to be a citizen of Trinidad and Tobago, and I doubt that you have ceased to be, that section does not apply. I do not know if they have any evidence that the Speaker has ceased to be a citizen of Trinidad and Tobago. If they have, I ask the Attorney General to get up and say so now or forever hold his peace.

(iii) when any circumstances arise that would cause him to be disqualified for election as a member of the House by virtue of subsection (1) of section 48 or any law enacted in pursuance of subsection (2) of that section;”

Let us go to section 48(1) to see whether any one of those situations arises. It states:

“(a) is a citizen of a country other than Trinidad and Tobago having become such a citizen voluntarily, or is under a declaration of allegiance to a country;”

That does not apply. We have no evidence of that. In his press releases which were totally improper, the Attorney General did not make that kind of allegations. It goes on:

“(b) is an undischarged bankrupt...”

I know somebody who is an undischarged bankrupt.

“having been adjudged or otherwise declared bankrupt under any law in force in Trinidad and Tobago;”



He should tell us the persons in his Government who are bankrupt and who had to get loan forgiveness.

**Madam Speaker:** Proceed, please, hon. Member. Keep this clean. The Member is assisting the Chair. Please keep it at a very high level.

**Mr. R. L. Maharaj:** Yes, Madam Speaker. I continue:

“(c) is mentally ill, within the meaning of the Mental Health Act;”

Madam Speaker, I do not think that applies. It probably applies to some persons on that side.

“(d) is under sentence of death imposed on him by a court...;”

That does not apply.

“(e) is disqualified for membership of the House of Representatives by any law in force...;”

(f) is disqualified for membership of the House of Representatives by any law in force in Trinidad and Tobago by reason of his having been convicted of any offence relating to elections; or

(g) is not qualified to be registered as an elector at a Parliamentary election under any law in force in Trinidad and Tobago.”

So far we have seen that nothing in this applies for the Speaker to vacate office.

Section 48(2) specifies certain classes of cases under which legislation can be passed. They do not apply to this matter before us.

Before I assist the Speaker, this House and the country in this matter, let me state that it has been decided by the courts of this land, and the Judicial Committee of the Privy Council, which is our final court, that the exercise of powers by this Parliament is fettered, regulated and controlled by chapters 1 and 2 of the provisions of the Constitution of Trinidad and Tobago.

There is a principle of law that a parliament cannot do directly or try to achieve indirectly, what it is restrained from doing under the Constitution. If we agree with the provisions of the Constitution which say that a Bill has to be introduced and a two-thirds majority has to be obtained, if the entitlement to the Speaker is to be affected in any way, section 54(6) which you quoted, Madam Speaker, defines alteration to include modification and suspension.

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Two cases were decided in the Caribbean, one in Trinidad and Tobago, and the other in Guyana which reaffirm the constitutional principle that a Parliament cannot do or attempt to do indirectly what it cannot do directly. For the record I would like to refer this House to the case of the Trinidad Islandwide Cane Farmers Association and the Attorney General v. Seereeram. It is reported in the West Indian Reports, Volume 27 at page 329. In this case the High Court had declared a law passed in this Parliament as unconstitutional because the action of the Parliament contravened the Constitution.

Page 343 of this report, the Court of Appeal of Trinidad and Tobago, not the Caribbean Court of Appeal or the Privy Council, comprised Chief Justice Hyatali, Justice of Appeal Clement Phillips and Justice of Appeal Evan Rees. This court adopted what the Privy Council said in 1964 in a case from Ceylon. With your leave Madam Speaker, I read from the authority. Page 343 states:

“After stating, in reference to the Constitution of Ceylon, which contained certain fetters on the enactment of new legislation similar to ours that the court has a duty to see that the Constitution is not infringed and to preserve it inviolate and that unless there is some cogent reason for doing so the court must not decline to open its eyes to the truth,’ Lord Pearce stated. ([1964] All ER 785 at 792):

‘A legislature has no power to ignore the conditions of law-making that are imposed by the instrument which itself regulates its powers to make law. This restriction exists independently of the question whether the legislature is sovereign, as in the legislature of Ceylon, or whether the Constitution is “uncontrolled”...Such a constitution can indeed be altered or amended by the legislature, if the regulating instrument so provides and if the terms of these provisions are complied with; and the alteration or amendment may include the change or abolition of those very provisions.’

**10.30 a.m.**

“The proposition which is not acceptable is that a legislature, once established, has some inherent power, derived from the mere fact of its establishment, to make a valid law by the resolution of a bare majority which its own constituent instrument has said shall not be a valid law unless made by a different type of majority or by a different legislative process.”

There is not only that case; there is the case of the Attorney General v. Mohammed Ali, 1987, a Court of Appeal decision of Guyana. That is important if

one looks at the facts. That was a case in which the Government refused to consult the trade union movement and they introduced legislation.

That legislation was passed in the Parliament of Guyana and it was challenged in the court on the basis that since the Executive acted unconstitutionally in not consulting the trade union movement, its action was unlawful and by the Parliament following that unlawful action, the Act itself was unconstitutional. The Guyana Court of Appeal citing recent decisions of the United Kingdom and the Commonwealth agreed that the legislation was unconstitutional because the Executive action was unconstitutional.

At letter “g” on page 189 of this judgment, it states:

“These concepts which appear to have universal support were explained in *Pillai v. Mudanayake*, [1955], 2 ER 833, where Lord Oaksey, speaking for the Judicial Committee of the Privy Council when a law enacted by the Parliament of Ceylon ... was under challenge was being unconstitutional, observed ...:

‘The principle that a legislature cannot do indirectly what it cannot do directly has always been recognized by their Lordships’ Board, and the legislature must, of course, be assumed to intend the necessary effect of its statutes. But the maxim *omnia praesumuntur rite esse acta* is at least as applicable to the Act of a legislature as to any other acts, and the court will not be astute to attribute to any legislature motives or purposes or objects which are beyond its power.’”

What is the Government trying to do by this Motion of no confidence? What is the purpose of the Motion? The purpose is that the Speaker demit office. There is no existing law in Trinidad and Tobago which says that a Speaker can demit office by a motion of no confidence passed by an ordinary majority in this House. The Government is trying to get this Parliament to agree to and vote on a motion which would have the effect of trying to achieve indirectly what the Government cannot achieve directly, and of violating the Constitution.

In order to illustrate this, I shall cite this example. A situation developed in the Cook Islands in 1964. These facts were different, but the Speaker refused to go, having regard to the provisions of the Constitution and the procedure which must be adopted for the Speaker to go. I want to make it clear that the facts were totally different, but the principle was the same.

The Speaker was Mrs. Margurite Story. There was an election, a certain party got into office following which there was a court case which declared some of the

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seats vacant and Madam Speaker decided that she was remaining. Then there was the question of litigation and so forth. There was no law in the Cook Islands which authorized the removal of the Speaker by a vote of no confidence and a majority vote.

In the Cook Islands there were similar provisions as in our Constitution. The Government had to amend the constitution in order to put in it that the Speaker can be removed from office if there is a motion of no confidence, supported by votes of not less than two-thirds of the majority of the House.

Provided the law is changed, even if this Government wants to go the parliamentary route, it would not be able to remove the Speaker by a motion of no confidence, the office having been entrenched, unless the vote is supported by not less than a two-thirds majority. This government cannot use a motion of no confidence to remove a Speaker. Law is made only by bills presented to the House and passed in a certain way. We know that there are many which have been passed and not implemented, but the fact is that law is not made by motions of no confidence.

We have a situation where the Executive arm of the state, that is the Government, is violating and undermining the Constitution—and this issue has nothing to do with whether one likes or dislikes the Speaker or whether I want or do not want to support her. This issue is whether we are defending the Constitution of Trinidad and Tobago; whether we are defending the office of and independence of the Speaker; whether we will allow emotions and pandering to public hysteria to set aside rules of law, and whether we will set a dangerous precedent in this country where, by mere press conferences, releases, introductions of motions of no confidence, public officials will be compelled by pressure to leave office, when the Constitution prescribes a certain way for it to be done. If that is the case, then the Commissioner of Police would have to leave.

That would also be achieved with members of the Judicial and Legal Commission and the Chief Justice of Trinidad and Tobago. That would be a way in which one could undermine the Constitution. One would think that the Government would be the first one to uphold the Constitution. The government knew when it filed this Motion that there was no basis for it. It knew that it was violating the Constitution. It had an ulterior motive—to put pressure on a person to leave office.

The other aspect of this matter which we must understand, is that Parliament cannot be a rubber stamp. It is a function of parliamentarians to examine what the

Executive arm of the state brings to this parliament because we have a constitutional obligation to ensure that that action does not contravene the constitution.

Therefore, Madam Speaker, when the Executive arm of the Government asks the Legislative arm, which is the Parliament, to adopt a certain action or support a certain motion, it is the duty of the Government to satisfy the Parliament that what it is doing does not contravene the guaranteed fundamental rights provisions of the Constitution.

It is not only that what it is doing does not contravene section 58 of the Constitution, but also that what it is doing guarantees the fundamental rights entrenched in the Constitution. Therefore, if on the face of the Motion, or if it appears that the action of the Government is contravening the fundamental rights provisions of the Constitution, it is the duty of the Speaker to prevent such action, and it is the duty of every Member of this House, whatever his feelings, to uphold the Constitution and the law.

To remind the other side, the Constitution framers—and if we do not like it, we can change it—guaranteed to every individual in Trinidad and Tobago the right to the enjoyment of property and for that right not to be taken away except by due process of law.

**10.40 a.m.**

Madam Speaker, this Parliament cannot take any action which can have the effect of depriving the individual of the enjoyment of that right, unless we are satisfied it is not being done arbitrarily. The entitlement to occupy an office has been held to be property in constitutional law. Here we have a situation where *[Interruption]* Yes, the entitlement to office, the salaries of the public servants are property. Property in the Constitution is not limited to land—tangible and intangible property. A right to a licence in the American jurisdiction is held to be property. The entitlement to occupy office is property.

The Constitution guarantees equality before the law, the protection of the law and equality of treatment. When the Government comes here with actions, we have to consider whether the procedure—I am on the procedure—which has been adopted here is permitted by the Constitution. Should a motion of no confidence which makes allegations about the Speaker be debated without the Government, which is responsible—the Opposition is not responsible for creating procedural mechanisms—the Executive arm, providing any machinery whereby the Speaker can be given a right to be heard in respect of any allegations?

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We have a situation where this Government is coming to this Parliament and on the face of it is contravening the right to be heard. As a matter of fact, a person is entitled to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations. We see the conduct of the Government it did not give the individual an opportunity to be heard, and did not even want the Speaker to preside to hear the allegations. That is conduct which clearly contravenes the Constitution.

An ordinary person in Trinidad and Tobago, who does not occupy the office of Speaker; a policeman, a public official—

**Mr. B. Panday:** A cleaner!

**Mr. R. L. Maharaj:** A cleaner is entitled, in accordance with the rules of natural justice, to be heard. It is important that the Motion should have stated what action the Government took in order to ensure it complied with these provisions of the Constitution.

When this Government presented this Motion—this is all part of the illegality—it should have satisfied this House as to whether the Attorney General took it upon himself, before any decision was made by Cabinet, to ask the Speaker to step down from office.

We should also be told whether on June 28, 1995, the Attorney General of this country had in his Chambers the Speaker, and informed her that the Prime Minister had requested an opinion from the Attorney General on the Victor Jattan matter—which he had not yet given—and that the Prime Minister and leadership were insisting on the Speaker's resignation. Whether the Attorney General did not tell the Speaker that the Prime Minister is a very stubborn man and his decision was political and not legal.

When did the Cabinet of Trinidad and Tobago take a decision—if it has taken a decision—that the Speaker should demit office? Is the Government coming to Parliament because the Prime Minister is stubborn and because he considers it is part of his political agenda to get rid of the Speaker?

Madam Speaker, no papers have been laid in this House. The Government has come with a debate like this, it has not given us any information and we do not know the Executive action which has resulted in this decision. We have to be satisfied. They have taken the position today and have tried to put the blame on the ruling of the Speaker.

I ask the Attorney General to respond to this. In the other place, there was Motion from the Privileges Committee in respect of one of the UNC Senators. The

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President of the Senate presided, although he was involved in making the allegation against the Member. The Government took the position that the presiding officer does not decide the matter, he merely presides. That happened about two years ago. “Different strokes for different folks!” *[Interruption]*

**Mr. Valley:** Madam Speaker, on a point of order, this is really making—

**Madam Speaker:** We are not in a debate. The Member is assisting the Chair. This is not a debate. *[Interruption]*

**Mr. R. L. Maharaj:** Madam Speaker, it is important, because this country must know by this Motion, whether this government wants the office of Speaker to be independent as stated in the Constitution.

**Madam Speaker:** Members of the public, *[Laughter-Public Gallery]* observe the rules of order and procedure in this House.

**Mr. R. L. Maharaj:** The constitution made the office of Speaker independent; that office cannot be undermined. Can an Attorney General summon a Speaker to his chambers and tell the Speaker that “I have not done a report as yet, but the Prime Minister is a stubborn man, you must go?” Then what happened?

Without even informing the Opposition, on June 30, 1995, the Minister of Education, accompanied by the Attorney General attended the Speaker’s chambers at the Red House during the tea break. At that discussion, the Speaker was told that she must resign or she will be removed by a motion of no confidence. Is that not interfering with the independence of the office of Speaker?

On July 3, 1995, the Attorney General spoke to the Speaker of this House and she informed him that she was standing on the constitutional authority of the Speaker. The Attorney General warned the Speaker that “from now on, the going would be rough and things would get nasty.” That is the kind of conduct we have from a Government that wants to get rid of the Speaker. I ask the Prime Minister to stand now and tell this House, when did Cabinet decide—if it did decide—that the Speaker should go?

**Mr. B. Panday:** Never! It is a personal decision.

**Mr. R. L. Maharaj:** It was a decision taken by a few to put pressure upon other Members of Cabinet to ratify that decision. Is that how a government is run and managed in an attempt to remove a Speaker?

Under our Constitution, although the Attorney General is a Member of the Government, he must, in certain matters, take an independent role and stand. His

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duty is to advise the Government—even if it means resignation from the Government—when things are going wrong. It is not his function as the agent of the Prime Minister, to take part in summoning the Speaker to his Chambers to put pressure on the Speaker to go. We expect that the Attorney General will give an answer to this in this House today.

There is another issue which arises in which the Government must satisfy the Speaker with regard to this Motion. Before I go to that issue, I should like to touch on some of the matters which the Government seems to have been relying upon that would make a difference to this matter.

**10.50 a.m.**

All the rules which relate to the Parliament having any other power or any rules which can be made, or any powers to be given or to be done by this House, will be subject to the Constitution. Therefore, where there is an express section in a constitution stating what must be done if there is any resort to any other section, that resort to that section cannot be had unless the Constitution gives authority to do that. All the sections which the Government has been relying upon are subject to the Constitution. In any event, all the other sections, unless they expressly state so, are subject to the provisions of the Constitution.

There is another matter, and that has to do with equality. It is the requirement for the Executive arm, in such a motion to satisfy this Parliament that it is acting to promote equality of treatment and equal protection of the law when it purports or attempts to take action in which it relies upon any conduct which the Government regards as misconduct not to occupy the office of Speaker.

So it is the obligation of the Government to satisfy the Parliament, either on the fact of the Motion, or by documents filed in the Parliament, that it is not giving one law to one set of people and another law to another set of people. So that if the conduct of Madam “A” amounts to misconduct, but there is conduct of other Members—Mr. “B”, Mr. “C” and Mr. “D”—which can be regarded as even worse—for example, if—Madam Speaker, I want to make it quite clear, because we are not on the facts of the matter—

**Madam Speaker:** I urge the hon. Member to refrain from any facts. We are dealing with principles here today. I just want to be satisfied on principles.

**Mr. R. L. Maharaj:** Very well, Madam Speaker. This Government in presenting a Motion like this must show that the impugned conduct which it is attacking is worse, is more offensive than the conduct of other Members of the



Government, because the individual is entitled to equality of treatment and equal protection of the law.

Madam Speaker, I respectfully submit that having regard to what I have stated to this honourable House, this Motion is out of order, frivolous and vexatious.

I am going to ask that Madam Speaker consider having the conduct of the Government and those responsible for this action in undermining the office of Speaker, by their conduct be referred to the Privileges Committee for investigation. It is quite clear that conduct outside this House which amounts to bringing the office of Speaker into disrepute and which undermines the authority of the Chair amounts to a contempt of this House.

Having regard to some of the publications and press releases which have been given by members of this Government in relation to this matter—to make all those press releases and then come and do not want to proceed with the Motion is clear abuse and it amounts to a contempt of this Parliament.

Madam Speaker, on the procedural aspect of this Motion, and having regard to the principles that are required, I wish to mention that in respect of a matter in the court, my legal firm is involved for the Jattan family; it is my duty to declare that. If anyone would have been biased against the Speaker, or could have been biased, it is the Member for Couva South, but we are here on principles; we are here on standards; we are here on the Constitution. Therefore, Madam Speaker, I respectfully submit that this Motion be struck out—that is a term I normally use. It should not be permitted to proceed.

**Mr. A.N.R. Robinson** (*Tobago East*): Madam Speaker, I wish to make it absolutely clear that I have not been consulted in this matter by any of the parties involved. Mine are views which are being expressed from my own independent capacity and as representative of the humble people of Tobago who are so often ignored in proceedings in this House.

The whole episode with which we are faced today is one of an unprecedented nature and not only of absorbing national interest, but also international interest. I am sure at some stage these proceedings will be referred to in many Parliaments, not only of the Commonwealth, but of the world. So that what we do here is a matter of tremendous importance, not only to the future of this country; it also impacts on the progress of democratic principles and the democratic process in other parts of the world.

So that I speak today, not from any brief whatever, but according to my oath of office; it is contained in the First Schedule to the Constitution. It is referred to in

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section 7, and is a form of oath or affirmation for a Member of the House of Representatives or the other House. It says:

“I A.B. having been elected appointed a Member of Parliament do swear by ...(solemnly affirm) that I will bear true faith and allegiance to Trinidad and Tobago, will uphold the Constitution and the law, and will conscientiously and impartially discharge the responsibilities to the people of Trinidad and Tobago upon which I am about to enter.”

That was the oath of office that I took when I entered this House some 33 years ago, and which I took again when I entered on other occasions and just three and a half year ago. It is the oath of office which guides me in the performance of my duties. When I was a Member of the Government I took another oath of office to which I shall refer at another stage, the oath of office which a Minister takes on entering into the Cabinet.

You have asked Madam Speaker, for assistance on the procedural aspect of this matter, to which I shall confine myself. This is a matter, I must say, that has bothered me and I am sure it has bothered many other people in the country, and is a matter of fundamental importance.

When one is embarking upon an adventure or a project or a procedure which would involve the loss of office of an individual, it is important to decide in advance what that procedure should be, make very clear the procedures that should be followed. This is the test case of our maturity as a nation; not shouting and proclaiming in the market place one's views, but adopting a mature, responsible, sober and principled approach to a matter which can be of such far-reaching importance to the nation and of such interest internationally.

**11.00 a.m.**

This is the first motion of no confidence which is being brought by a Government in this country, that I am aware of—subject to correction. If anyone can tell me of another, I would be happy. But this is the first motion of no confidence which is being brought by the government of any country. I have sought, I have read the literature as much as I could and there are very few cases that I can find of no confidence motions being brought against a Speaker in a democratic parliament.

History shows also that a no confidence motion is almost always brought by the Opposition, and being brought by the Opposition, which is in the minority, it is doomed to failure. I do not know of any occasion on which the Opposition was able, successfully, to bring a vote of no confidence against a Speaker.

At best, therefore, historically, a motion of no confidence in the Speaker is only a mark of protest, a mechanism by which grievances can be expressed by Members of Parliament.

On the few occasions that it is brought by the Government, and certainly on this occasion, it is very different, because the Government has the majority. So that if matters proceed in the normal course, the Motion is bound to succeed. Its purpose in this case—it has been clearly stated both inside and outside this House—is to terminate the tenure of the Speaker and its effect will certainly be the beginning of the end of that tenure.

So this is different from a motion brought by the Opposition. A motion brought by the Opposition is protest; it is an expression of grievance. Brought by the government with a clear majority, with the stated object of terminating, its effect will certainly be the beginning of the end of tenure one way or the other; so it is different. One has to look at this with different spectacles.

Moreover, the consequences for a non-elected Speaker, that is one not elected by the electorate, will be more serious than for a Cabinet Minister who reverts to the position of an ordinary Member of Parliament or an elected Member as Speaker or Deputy Speaker who would revert to the position of Member of Parliament. For a Speaker who is not elected by the electorate, that Speaker reverts to the position of a private citizen. So it is far reaching in terms of its implications for the country; it is far-reaching in terms of its interest internationally, and of its consequences for the personality involved.

One, therefore, has to look at this matter very carefully; one cannot rush into it blindly. One has to think about it deeply and agonize over it responsibly and when, Madam Speaker, the procedure is adopted, it should be capable of being examined and scrutinized critically and should pass that critical examination.

In the instant case which is quite relevant to the question of the propriety of the procedure, Madam Speaker has charged that the method has been selective and the motive political. And certainly, conduct outside this House was impugned through the media by no less an official than the hon. Attorney General. That is also unprecedented. I know of no case where the Attorney General has gone outside the House and publicly impugned the conduct of the Speaker outside the framework of a motion of no confidence, duly brought within the confines of the Chamber. I can find no such example—there may be, but I can find none—and even if there is, I am sure it is not proper.

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The office of the Speaker is a creature of the Constitution which specifies the manner of appointment, by election—section 50 which has been referred to by the Chief Whip; and the circumstances for vacation of office; Section 49(3)—which has already been quoted in this House. There is a section in the Constitution, 142, which provides for the resignation of an official, so that resignation is also a constitutional act for certain offices under the Constitution.

One has to look at the office of Speaker in terms of the Westminster system to which we refer, and talk about the highest conventions and practices. Under the Westminster system, a Speaker, once elected, remains as Speaker even after a general election; does not contest a general election thereafter and remains Speaker—a symbol and practice illustrating what is required in terms of independence and impartiality.

So when you talk about Parliament being the highest court in the land, you also talk about the Speaker as a symbol and, in fact, embodied in that person, principles of independence and impartiality. I know of no example—I may be corrected by Members on the opposite side—where a Speaker was removed by a vote of no confidence in the Parliament at Westminster. It may have been, but I do not know.

One must look at the constitution. Our Constitution is not the same as the Parliament at Westminster. The Constitution of the United Kingdom—which some say does not exist; it is not a written Constitution—does not provide for the removal of the Speaker. The constitution does not set out the grounds on which the Speaker may vacate office. But the vacation of the office of Speaker in the Trinidad and Tobago situation is a matter of constitutional provision.

So, if you are seeking to amend the Constitution, there is a particular way, a procedure that the Constitution provides. And one would expect that these procedure would be followed so that the children in the schools, the professions, the police and the citizens of this country would know that there are steps and procedures by which you accomplish things.

**11.10 a.m.**

It is not because you think something should be done, that you do it anyway and anyhow. There are ways and means. That is what I am concerned with. That is what should have taken place in the beginning. Whether outside Parliament or inside it, the first debate should have been—if we are contemplating something—how we go about it; without any pronouncement on the merits at all, but merely dealing with the procedural aspects of the matter.

As I have often said, I have been, as some Members know—some attach some significance to it, others do not—in public life for 40 years in which I have served in two different Parliaments: the Federal Parliament, which was a model parliament; and this Parliament; also in another deliberative body of which I was in charge, the Tobago House of Assembly, at another level. Certainly I have never seen anything like this. It gives rise to much concern—what is happening in the country; who is advising whom.

Listen to the oath of office of a Minister by which Members of the Government, certainly those who are Ministers, should be bound and guided. This is an oath of office:

“I .....do swear by .....(solemnly affirm) that I will bear true faith and allegiance to Trinidad and Tobago and will uphold the Constitution and the law, that I will conscientiously, impartially and to the best of my ability discharge my duties as... and do right to all manner of people without fear or favour, affection or will-will.”

That is an oath of office. So when you are deciding on the procedure you adopt, you must do right. So the constitution is not only a matter of law; it is a matter of ethics. I want to suggest that it is that which is at the heart of this entire matter—of what procedure you adopt. It is ethics and morality and not only the law.

Is the procedure which is sought to be adopted fair and just? Does it satisfy civilized notions of natural justice? One does not merely pick up something from a book and apply it. One must have a philosophy of good governance; a manner of approaching matters which affect the lives and livelihood of people. It is not only law; it is ethics; it is a philosophy of Government. And this is described as the highest court in the land. Can one seriously think then of removing a person from office—let us say the Speaker in this case—by a mere vote of no confidence? It cannot be. Without allowing the person to be heard, is that natural justice?

It has been said that those who have looked at books on jurisprudence would have seen that one of the first things about natural justice is an illustration that even God himself knew what Adam did, but he still asked him to explain. God knew what he was going to say, but he still asked him to explain. Surely a born-again Christian should know that.

So you cannot even contemplate seeking to remove Madam Speaker from office, or any other person who occupies office, in this manner, without hearing what that person has to say. Judging from the pronouncements made by the

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instant Madam Speaker—and I do not want to reduce it to the terms of any particular person; I am speaking generally, but in this case I have to say, the instant Madam Speaker—she has a lot to say. Why should we not hear it?

Will the Attorney General tell us why we should not hear it? Why should the country not hear it? Or if Madam Speaker in here judgment thinks these are matters that are too sensitive, that involved national security, that they should not be disclosed to the public, or if in disclosing them Members feel that they involve matters which may be subversive of public morals, or some such consideration, then it may be decided that they be heard in camera.

But the point I am making is, you cannot remove a person—I would not say any person, but certainly a person—who occupies any such position as the position of the Speaker. The Chief Whip mentioned other cases. It is a matter of good industrial practice I would hope the Member for Arouca North who defends the workers so much, would speak in defence of natural justice.

So whatever you may read in the books, the modern civilized—and I repeat, because often they do not listen, but I hope they are listening today—practice is that you hear a person before you condemn him and put him out of office.

You must respect the Parliament. When you deal with the Speaker in this fashion you are attacking the entire Parliament and you are setting the stage for the country—there is a law, you know, Madam Speaker, which talks about the powers and privileges of the House of Representatives. I want to read a section of that law. I do not think people are aware of it. I do not think the police are even aware of it. It is section 10 of the House of Representatives (Powers and Privileges) Act, Chap, 2:02. I read from 10(b) to begin with:

“Any person who—

- (b) assaults, obstructs, molests or insults any member coming to, being within, or going from the precincts of the House, or endeavours to compel any member by force, insult or menace to declare himself in favour of or against any proposition or matter pending or expected to be brought before the House or any committee;...
- (g) does any act which obstructs or impedes the House or any committee in the performance of its functions, or which obstructs or impedes any member or officer of the House in the discharge of his duty;...

is liable on summary conviction to a fine of two thousand dollars and to imprisonment for twelve months.”

**11.20 a.m.**

We had, recently, thousands of party supporters marching around the Parliament, demonstrating and insulting Members of Parliament coming to this House; obstructing and impeding their progress in the full view of the media; an unprecedented act by any political party in this country.

The Government talk about respect and highest traditions of Parliament. That is how they take over. They prevent and intimidate Members and eventually the day comes when they stop them from coming altogether and they take over the Parliament. That is what Hitler did—prepared the ground. They may not intend it now, but that is the direction in which they are moving. We have to establish principles on which we act.

The whole pattern, the vital institutions, organs and offices of this country have either been assaulted or undermined—the Police Commissioner, the Police Service Commission; the Public Service Commission; the Privy Council; the flouting of the order of the Court of Appeal; organized marches and demonstrations around Parliament. And now, attempting to adopt procedures which violate the fundamental principles of natural justice against the Speaker, and they say this is the highest court of the land. It is a kangaroo court, is it?

Madam Speaker, listen to the statement we heard this morning:

“Madam Speaker, the Government frowns with disfavour upon an infraction of the hallowed principle of natural justice that no one, no matter how resolute, elevated or self-righteous, ought to be a judge in his or her own cause.”

What about other principles of natural justice? It has to take a Leader of the House like that one not to recognize that this is not the only principle of natural justice. That is the danger that faces this country. It is not only a lack of morals, or lack of ethics, but ignorance that is in action. That is what we are faced with. There is nothing more frightening than that.

That is why the citizens of this country must take a stand. The merits of the matter can be dealt with, and I have no doubt can be dealt with if the proper procedures are adopted, but so long as Madam Speaker, her office must be treated with respect. When, and if ever the time comes for any other action to be taken, then it must be taken responsibly, with dignity and in a manner that befits an independent country that purports to hold its head high among the countries of the world.

Thank you, Madam Speaker.

**Madam Speaker:** I see that I have been able to get assistance from two hon. Members of this House and I am now convinced that my misgivings about the constitutional propriety of this Motion were indeed not unfounded at all; not only the constitutional propriety but also the conceptual one, having regard to the contribution of the Member for Tobago East.

As I said, those were the issues I struggled with when I took the decision to put this matter down on the Order Paper. I had the option of just not putting it down at all, but I felt that I should really get the assistance of Members on this matter of the conceptual and constitutional propriety, and whether at all this matter—as it said, having regard to the circumstances and the very filing of such Motion—is not irregular and out of order.

In the circumstances, having been assisted by Members of Parliament, I have no hesitation whatsoever in holding that this Motion is entirely out of order and therefore has to be rejected.

The events of the past week, outside of the Parliament have caused the Chair to consider whether or not both the Attorney General and the hon. Minister of Education have been in contempt, not only of the Chair, but also of the honourable House and ought to be referred to the Committee of Privileges of this House. These are matters which I gave consideration to, but as I said, my decision on these matters would be deferred.

Before I adjourn this honourable House, I should just like to mention a view and to ask hon. Members to note that the framers of the Constitution in their wisdom did not include such a provision for the removal of the Speaker—resignation or vacating of office—on the passing of a motion of no confidence. I have no doubt that these framers appreciated that to do so could have the effect of the chief characteristic attaching to the office of Speaker, that of authority and impartiality being under constant threat.

They foresaw that if a Speaker could be removed by the passing of a motion of no confidence in the Chair, then the office could possibly be manipulated by political parties for their own ends, and that this state of affairs could seriously undermine not only the independence of the office of Speaker, but also the proper working of democracy which this honourable House is expected to uphold. These are very serious matters which I gave thought to.

In their wisdom, the framers of the Constitution protected the office of Speaker from political interference by Government, Opposition or anyone else.



Today, as Speaker, I call upon all Members of Parliament and, indeed, the public at large to guard and protect our Constitution as the eyelids protect the eyes; and I recommend to hon. Members the statement in Erskine May's *Parliamentary Practice*, that the office of Speaker is one which ought not to be made the subject of party feeling.

To resign because of the filing of this Motion would have the effect of the Government being able to accomplish indirectly that which it could not accomplish directly under the Constitution. Being a lawyer myself, I cannot subscribe to such immorality and set this very dangerous precedent in our young nation, striving to evolve through democratic principles. No amount of tradition, political or public pressure will move me to do otherwise. I take this stand in the interest of all persons who presently hold high office or may do so in the future.

If every hiccup in a person's life, be it private or personal, with absolutely no relevance to the person's competence and ability to perform the duties related to high office, or every negative unfounded allegation pertaining to that person's character renders such person unfit to hold high office, then many who sit in this House today would be disqualified to do so. *[Interruption]* There would hardly be anyone, Members, qualifying for leadership roles in this society.

It must be remembered that in the classroom of human life, the soul's growth and development take place only through lessons assimilated from experiences in an individuals' life. Sometimes these experiences are very bitter and cruel. This society, therefore, must given serious thought to what events and circumstances in an individuals' life and experiences should render him or her unfit to hold or continue in public office; and not willy-nilly espouse and take shelter under the traditions of other societies that have been centuries in the making.

### **11.30 a.m.**

To do so would deny our citizens the right to be human and the right to experience soul growth and development, through trials and tribulations. Frankly speaking, I think that a great mockery has been made of this Parliament by the filing of this Motion by the Attorney General; a greater travesty of justice one would never find. Had this Motion proceeded today, this Parliament would have been disgraced and brought into disrepute by the mover of this Motion. Hon. Members, this Motion—and the mover, by this Motion—sought to attack my character and to strip me of my honour and dignity.

Sanatan Dharma demands of every Hindu woman, that she fight to the end, even if such fight results in here death or destruction, for the protection of her

honour and dignity, once she knows within the depth of her own being that she has committed no wrong, be it legal, moral or otherwise. This must be especially so in a society like ours, where the character of a woman is the first target of attack by unscrupulous men, seeking their own ends.

This I intend to do, because I stand on the rock of truth and I say, to hon. Members and to the national at large, that in the name of Sanatan Dharma, by which I abide, the saints and sages, spiritual masters of all religions, I have committed no wrong—legal, moral or otherwise—as a result of which I should vacate office. If it were not so, hon. Members, I would have told you all, and I would have been the first to decide to leave.

The inner stirrings of my soul would have dictated that to me. What I can tell you is that I stretched out my hands to assist a soul in distress and those hands were bitten by the serpents of fraud, deceit, ingratitude and corruption. Since there are higher universal laws that would certainly take care of those matters, I am content to await the out-working of those laws. In the circumstances, no one has any legal, moral or any other authority to demand my resignation and I will not be pressured to do so.

I fight to the end in accordance with my Dharmic principles in the interest of all women of this nation who are striving to carve a niche for themselves in this society and to take their rightful places as contributors to nation building.

Hon. Members, the fight to the end was in the interest of our young people who must have exemplars of strength. I hope that my stance will give them the understanding that they need never be afraid of doing their duty and standing up for their rights, once their fight is based on truth and right action.

I hope they would decide that the fear of embarrassment, adverse public opinion, character assassination and biased press attacks would never weaken young people if their cause is based on the rock of truth.

This fight has been for the protection of the constitutional rights of every citizen of this country. This fight has been a fight against injustice. I assure hon. Members that my fight was based on principle and that I bear ill-will or malice to none, because there is only one higher law which is the judge of us all. As I continue to perform my duties as Speaker of this honourable House, I give all members the assurance that I will do so with the independence and impartiality expected of me, and in accordance with the Standing Orders of this House.

I urge members of the media and the public at large, to restrain from being frivolous or sensational in this matter, because there are deeper issues involved

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here; matters that affect the bedrock of our democratic principles on which we are seeking to shape this nation. God Bless you all, hon. Members of this House.

**Hon. K. Valley:** Madam Speaker, I moved the Motion about two hours ago that the House be adjourned to a date to be fixed.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 11.34 a.m.*