HOUSE OF REPRESENTATIVES

Friday, September 22, 1995

The House met at 1.35 p.m.

PRAYERS

[MR. DEPUTY SPEAKER *in the Chair*]

PAPER LAID

Thirty-seventh Report of the Salaries Review Commission. *[The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. K. Valley)]*

COMPANIES &
SECURITIES INDUSTRY BILLS

Joint Select Committee Report

Adoption

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Deputy Speaker, I beg to move the motion standing in the name of the Minister of Finance which reads as follows:

> *Be it Resolved* that this House adopt the Report of the Joint Select Committee appointed by the Senate and the House of Representatives to consider and report on the Companies Bill, 1995 and the Securities Industry Bill, 1995.

You would recall, Sir, that on March 4, 1995 the House of Representatives agreed to a resolution that this House consider it expedient that a committee of both Houses be appointed to consider the Companies Bill and the Securities Industry Bill, 1995. That resolution was adopted by the other House on March 29, 1995.

Subsequent thereto, Members of the House of Representatives and Members of the other House were appointed to that joint select committee to consider those two Bills, the report of which is the subject of the Motion before us today.

By way of preliminary, I may note that the committee had its first meeting on May 1, 1995, and thereafter held seven meetings during which time the two Bills were considered, and the report as it stands before us recommends the conclusions of that committee.

If I may turn to page 4 of the report, it indicates that the committee "has completed its deliberations on the Securities Industry Bill, 1995 and the Companies Bill 1995 and recommends that these Bills be accepted by the House of Representatives and the Senate subject to the amendments listed in Appendix I

and Appendix II respectively…" The amendments proposed by that committee are set out in those two appendices.

The committee considered the Bills in the reverse order, in that they considered the Securities Industry Bill first and then went on in the course of their deliberations to consider the companies legislation.

It would be inappropriate of me not to refer to the portion of the report which acknowledges the contributions of the individuals and groups, those bodies which gave assistance to the committee, by submitting memoranda and by making themselves available to the committee for further deliberations on the memoranda submitted.

At page three of the report a number of individuals are listed in relation to the Securities Industry Bill. Those persons participated in the meetings of the committee and for the record I think I should list them. They are as follows:

Mr. Peter Clarke	-	Managing Director, Money Managers Limited,
Mr. Hamid O'Brien	-	Permanent Secretary, Ministry of Tourism
Mrs. Judy Chang	-	Partner, Price Waterhouse
Mr.Ian Macintyre	-	Parliamentary Counsel
Mr. Hugh Edwards	-	General Manager, T&T Stock Exchange
Mrs. Nicole Toby	-	Treasury Solicitor.

Having gone past those preliminaries, may I say that the Securities Industry Bill was considered clause by clause by the committee and as the report notes at paragraph 6.2:

> "Your committee undertook a clause by clause examination of this Bill and during this process concerns held by Members were dispelled. However, your Committee agreed that it was necessary that a number of amendments be made to this Bill to give effect to its purpose."

You will note that Appendix I, which contains some 23 pages of amendments, reflects the work done by the committee in perusing and considering the Securities Industry Bill. The committee, as I indicated earlier, recommends to this House the acceptance of the Bill as introduced, subject to the amendments noted in Appendix 1.

I do not propose to deal at length with the contents of the Securities Industry Bill, having regard to the way this matter has progressed through this House. We

had gone, as you would recall, to the stage of second reading and it was then referred to a joint select committee. The Bill, therefore, has been available to Members for a considerable period—as I recall, from March of this year—and has been subjected to the detailed scrutiny of the committee as reflected in Appendix 1, with its 23 pages of further amendments.

The Bill essentially seeks to repeal and replace the Securities Industry Act, Chap. 83:02 and to establish a Securities and Exchange Commission in Trinidad and Tobago and to provide for the regulation of the securities market and for connected matters.

I may say that the Explanatory Note to the Bill indicates fully the clear purpose of the Bill which is to provide a restructured system to regulate and control the securities industry market.

1.45 p.m.

One of the main criticisms of the previous legislation was that the control of the securities industry was not seen as control by an independent commission, in that the Trinidad and Tobago Stock Exchange comprised persons who were major actors in the securities exchange market were not seen to have that independent stand-off position in relation to the regulation of the securities industry.

One of the main features of the Securities Bill of 1995 is that it establishes an independent commission appointed by the President and it sets out in clear terms, the regulatory powers of the commission to control those agencies which would be the major actors in the securities market.

The legislation is another of the structures put forward by this Government to deal with our financial sector; to deal with the regulation of the investment market; to deal with matters in relation to the management of our financial institutions.

The Securities Industry Bill, I may say without attempting to pre-empt the debate, but based on reports which I have read in relation to the committee's report, has not attracted as much criticism as the related Bill, the companies legislation. I think there has been a recognition by all quarters that the Securities Industry Bill, as framed, provides a proper regulatory mechanism for the securities industry market and provides a base for the growth and development of a securities industry in Trinidad and Tobago.

In fact, the one criticism that I read on the Securities Industry Bill expressed the view that the legislation may be a little too ambitious in anticipation of the

growth of a securities industry in Trinidad and Tobago. What I, myself, feel is that as we envision the path of development for Trinidad and Tobago, we have to provide the necessary structures, thinking not only of today, but also of down the road, to the tomorrows.

Insofar as the committee has recommended the adoption of its report with respect to the Securities Industry Bill, I could only add my word of support to that particular aspect of the report and to recommend to this honourable House that Members support the recommendation of the joint select committee.

The Companies Bill which was also considered by the committee has, as I have said, attracted much more critical comment since the report was laid in this honourable House. In fact, the committee itself, made an observation with respect to both Bills, but having been a Member of the committee, I know that the comment was essentially directed to the Companies Bill. At page four of the report, one would note that the committee further recommends that in a period of no longer than nine months from the Bill's passage, the Government should bring amendments to Parliament that would arise from practical concerns in its implementation.

That further note of the committee was more directed to the companies legislation but, certainly, we do anticipate that with respect to the securities legislation there would be the need as well to monitor its implementation and to consider amendments to it when we see how it operates in practice.

Before dealing with the concerns expressed about the Companies Bill, it may, perhaps, be useful to give a brief history of the company laws of Trinidad and Tobago.

The existing legislation is modelled on the 1929 United Kingdom legislation which has since been repealed in the United Kingdom. It was first repealed in 1948 and subsequent amendments were made during the course of the 1980s. In 1971, the then Heads of Government under the Caribbean Free Trade Association, appointed a working committee to consider the harmonization of companies legislation in the Caribbean. That particular committee of 1971 deliberated over a period of time and subsequently produced a report as well as a draft Bill which was subsequently forwarded to the respective Caribbean governments for their consideration.

The Government of Trinidad and Tobago took no real action on that matter until 1989. Prior thereto, however, there were two other reports submitted with respect to amendments to the companies legislation and those two reports—one I believe was the Pennington Report—sought to update the present legislation

based on the UK's experience. Neither of those proposed amendments received the approbation of the business or legal community, and subsequently, those reports remained stacked on the shelves of some ministry.

In 1989 however, the administration appointed a working committee and the terms of reference of that committee were to consider the report of the 1971 committee and the draft Bill which had been prepared as a Caribbean model, and to submit a detailed brief for the drafting of legislation based on the analysis of the working committee's report of 1971, and the draft Bill of 1971.

That committee, after having met for some time, then requested of the Government that its terms of reference be extended to include the power to draft a new bill. The requested mandate was so extended and in 1991 that committee produced a draft companies Bill which was then subjected to a series of seminars and consultations with the business community, the representatives of labour, the legal community and so forth over a period of time and the bill remained there without, I think, being introduced into Parliament, but subject to much comment over that period.

1.55 p.m.

On that committee all the major interests surrounding this type of legislation were represented. They were the Trinidad and Tobago Manufacturers' Association, the Chamber of Commerce, the Law Association, the Association of Companies Secretaries, the Institute of Chartered Accountants, among others, and, as I said, the Bill having been produced in 1991, was again itself subjected to a series of seminars and consultations over a period.

I do not want to miss any of the parties who may have participated in the working committee. There were the Manufacturers' Association, the Hugh Wooding Law School, the Institute of Banking, the Labour Congress, the Employers' Consultative Association, the Chamber of Commerce, the Association of Companies' Secretaries, the Institute of Chartered Accountants of Trinidad and Tobago.

Also involved were the Trinidad and Tobago Stock Exchange, the Ministry of Finance, the Ministry of Tourism and the Ministry of Legal Affairs; they were the participants on that working committee which essentially came up with the 1991 Bill which reflected, a leaning towards the working committee's report of 1971 and the draft Bill of 1971.

Thereafter, in giving a brief history of the development of the Bill of 1995, the Government of 1991/1992 appointed another committee to consider the Bill of

1991 and to make any recommendations for amendments. Again, there were a series of consultations which resulted in the Bill of 1993. That Bill, if my recollection is correct, was laid in Parliament in early 1994 and was referred to a joint select committee of both Houses which committee, unfortunately, did not complete its work during that parliamentary session and itself recommended that the Bill be recommitted at the next session of Parliament to a joint select committee.

We are here in 1995 with the recommitted Bill of 1993 which itself was subjected to amendment before being reintroduced in 1995.

The 1995 Bill does not differ significantly from that of 1993. What happened during the period between dissolution of the last Parliament and this present Parliament was that the development of the Securities Industry Bill had reached a stage where certain provisions of the companies legislation were thought fit to be transferred to the Securities Industry Bill. What we did was harmonize the two pieces of legislation, and essentially transferred some provisions from the companies legislation to the securities legislation. That Bill was recommitted to a committee of both Houses of Parliament and this is the report which is now before us today.

I had indicated that I would give that brief history essentially to serve as a backdrop in looking at some of the criticisms which had surfaced recently over the companies legislation. There appeared to be three general type concerns. First, the adequacy of consultation on this matter.

Secondly, whether the legislation should be UK-based legislation or should instead follow the Canadian model, which has been adopted by some of the Caribbean countries and also by other countries including New Zealand.

The third concern was whether we are at the point where this Bill can move forward having regard to the expression of concern that there may be the need for further review, and that concern I pointed out, was actually even raised in the report of the committee. The committee, as I indicated, reported that within a period of nine months consideration should be given to the practical implementation of the Bill, and the necessary adjustments made. Those are the three general concerns.

In respect of both pieces of legislations there were specific concerns raised. In the case of the securities industry legislation—and I must at this juncture congratulate the diligence of a particular firm of attorneys, and it is a matter of public record, the firm of FitzWilliam, Stone and Morgan who, through its senior

partner, former Senator, Mr. Gerald Furness-Smith, contributed greatly by submitting comments on both pieces of legislation.

So, apart from the three general concerns which I enumerated, there were specific concerns raised with respect to individual provisions of the legislation. In the case of the Securities Industry Bill the firm of lawyers, to which I referred, provided detailed analysis of those provisions. The committee, therefore, had the benefit of that memorandum, which is dated March 1994, and comprises some 18 pages of detailed analysis of the securities industry legislation.

The committee not only had the benefit of these comments on specific provisions, but it also had the benefit of detailed analyses done by the Ministry of Finance in a document which was prepared, detailing, on the one hand, the clause by clause specific observations made by former Senator Furness-Smith and of corresponding comments on the respective provisions. That analysis covers some 26 pages and was available to members of the committee and formed part of the deliberations of the committee.

In commending those who submitted memoranda on this matter, I must note that the Securities Industry Bill comprises some 150 clauses and covers 136 pages of parliamentary literature. The Companies Bill is a little more formidable and comprises some 520 clauses and occupies 258 or so pages of parliamentary literature. It was indeed an expression of commitment to analysing and looking at the Bills which were laid in Parliament that those persons who submitted memoranda displayed. It was indeed a massive exercise and the committee was deeply grateful to those who were able to contribute meaningfully towards the work of the committee.

May I, therefore, return to the three general criticisms which were raised.

One was the lack of consultation. Having outlined the history of the development of the companies legislation beginning, as it were, in 1971, which I will call the modern phase—in fact, there was an earlier phase where there had been attempts to upgrade the 1999 UK legislation. The modern phase of company law reform began in 1971. My inadequate mathematics tells me that is about 24 years ago.

2.05 p.m.

Quite apart from the fact that the report of the working committee, which had, as I said, the objective of company law harmonization in the Caribbean, was available—I think the first draft Bill was prepared in 1973—we then went into an

intense period of activity, beginning in 1989, with the appointment of the working committee. That committee comprised persons—and I listed them—who all had a direct interest in the development of company law legislation.

Arising out of all these consultations, the one clear and perhaps common factor between those who are now promoting the legislation and those who are critical of it is the recognition of the need for reform of our company law.

I do not need to belabour the point and to assert to Members of this honourable House that there has been significant and adequate consultation on the process of company law reform in Trinidad and Tobago, set in the context of the harmonization, not only of our company legislation in the Caribbean, but indeed, also of our commercial laws which were mandated by the treaty of Chaguaramas.

Article No. 42 of the Treaty, which Trinidad and Tobago adopted, provides that the countries of Caricom shall work towards, *inter alia*, the harmonization of our companies law regime, and it deals with the other areas of commercial law. I will deal with that aspect of the matter when I am about to wrap-up on this Motion.

There has been extensive consultation, there has been protracted consultation, there has been consultation over a long period, during which persons who had the inclination to make a contribution to the development of the change in the companies law regime, had more than adequate time to do so. As I said, formidable as the task was, persons did come forward and submitt lengthy and detailed memoranda, not only at the seminars to which I have referred, but also in aid of the work of the committees of both 1994 and 1995.

The second criticism is a fundamental one. The way that criticism has been made suggests, quite clearly, that there are two schools of thought on this matter. The model which we have used is one which was developed, basically, out of the Canadian legislation of 1975 and the Barbados legislation of more recent vintage, which itself was modelled on the Canadian legislation.

It represents, therefore, in terms of our legal and parliamentary tradition, a departure from what has been the norm. Traditionally, we have approached the business of law making in our Parliament by first reaching out to the United Kingdom and seeing what they have done in respect of a particular matter. So that the two schools of thought, proposed are separated by the width of the Atlantic Ocean. On the one hand the Canadian model represents a new approach to the conduct of our parliamentary business, and the United Kingdom approach remains as the model we can look at.

The arguments, therefore, have to be weighed, and having been weighed, a decision has to be made. We have thought, as previous administrations have thought, that the Canadian model was best suited for the Caricom area and for Trinidad and Tobago. I mean absolutely no disrespect, Mr. Deputy Speaker, but the way some of the concerns have been expressed, in my view, could not possibly attract significant or serious support.

In one of the documents which were made available to the committee, the concern was expressed that the legal fraternity would not be au courant with the Canadian model; that the legal fraternity who have to advise companies, and the company secretaries themselves who would have to advise their boards of directors, would not be familiar with the Canadian model, that they are more familiar with the United Kingdom model, that the textbooks and the authorities are more easily available.

It may be convenient to enact legislation based on the United Kingdom model because, traditionally, we have been tied to the United Kindgom. It may be more convenient for interest groups who would have some degree of advice, or may be consulted, on the legislation for them to say, "Well, we are more familiar with a particular model and therefore, we should adopt that model."

2.15 p.m.

I say, it is an argument which really does not attract much support from me as a person who is looking at the broader implications of enacting legislation. So whilst I appreciate those who advocate that view and I sympathise with the fact that they may now have to do a little more work in order to familiarize themselves with the new legislation, I do not think it is a persuasive argument as to which model one should adopt.

I think one has to analyze the benefits of the respective models and determine which model is the best suited for the Caribbean area. Based on the best advice available to us, beginning in 1971 and going through the consultations of 1989 through 1994, we have come forward with the model, which, having weighed it against the alternative, seems to us to be the best model to follow.

Again, I want to set that criticism in the light of the decisions which were taken since 1971, that it was in the mutual interest of the Caricom—Carifta—area, that we should seek to harmonize, to have a commercial law which was as mutual as possible to our respective independent countries. I therefore mean no disrespect when I say that there comes a time when one should detach oneself from the coat-tails of the United Kingdom and look at our hemispheric position and determine

what is the best for Trinidad and Tobago and for Caricom. That does include the Privy Council as well.

There is one more general concern and that was the question of the legislation not being ready for parliamentary passage. That has been suggested, and as I pointed out, indeed the report does say that the matter should be kept under review and, in fact, sets a deadline within which the Government should, if necessary, produce amendments based on the practical implementation of the legislation. That is not to say, as has been attempted, that the legislation requires further theoretical consideration. The criticism comes out in such a way as to suggest that there is some rush to pass the legislation.

My view is that if a period of 24 years is a rush, then this legislation is being rushed. If one were to even take it from the point of view of 1989 and six years of consultation on a single piece of legislation is a rush, then we are rushing this legislation through Parliament. I do not see how anyone, having regard to the intense deliberations, the amount of scrutiny, the amount of consultation which has surrounded the development of this piece of legislation of 1995, can realistically stand and say that the Government is rushing the Companies Bill.

Even if one were to forget 1971 and 1989, as though those years did not exist, or the events surrounding them did not exist, if one were to take the presentation of the Bill in 1994 as the starting point and the referral of that Bill to a joint select committee in 1994, then, again, one would have to ask the question whether the legislation is being rushed.

The Government have been very careful about the way this legislation has progressed not only in its developmental stage, but also within the walls of Parliament. We recognize that the document is a formidable one in terms of its size, and parliamentarians, with their normal diligence, would have had the opportunity from 1994—if one were to take the last possible date that one can take—to go through, clause by clause, the provisions of the legislation. As I said, it comprises some 500 provisions, so that in more than a year since the Bill was presented, if one were to have read one clause a day, one would have been able to read the entire legislation.

I know that Members of this Parliament would not read one clause a day; they would read at least two clauses, as the Member for Tabaquite has indicated. With their due diligence, parliamentarians have had the time to consider the Companies Bill, they have had the benefit of the reports of the several committees, they have

had the benefit of the different seminars which have been held in relation to this legislation, so that I expect that we are all familiar with the provisions.

I do not see that we can continue a theoretical exercise forever and ever, but I may point out that one of the harshest critics of this legislation and one who worked very diligently, as I said, the former Senator Gerald Furness-Smith, himself recognized that one has to stop somewhere. One has to say, “Look, we have put much into this; let us see how we can deal with it in its practical implementation.” And whilst the goodly former Senator favoures the United Kingdom approach or model, as we want to call it, he does recognize that the Canadian based legislation may be better; in fact, he says so and I quote from the memorandum which he made available to the committee:

"(e) while the law might in principle be ‘better’, it would be uncertain and an inappropriate basis for a Caribbean commercial centre;"

2.25 p.m.

I want us to look at that statement very carefully, because, you see, at Item 5 of his critical review, he does say that the law "might in principle be 'better, it would be uncertain and an inappropriate basis for a Caribbean commercial centre." So he is making three points. He said that the law might be better in principle; that is one point. He said it would be uncertain; that is the second point, and he says it would be inappropriate.

If one analyses the critique which precedes that, one would see that he goes back to the—and I am sure that the memorandum is available to the Member for Oropouche. I mean the document was available to the committee and I did applaud former Senator Furness Smith for his contribution, but it does not prevent me from criticizing some of his own criticisms of the Bill. He says at (a) of his critical review that "there will be no lawyers in Trinidad and Tobago able to give confident and quick advice on any troublesome problems of company law which may arise."

Now again, that is the point I was making. Lawyers or any other group of professionals which have a duty or a responsibility to advise on company legislation must make themselves familiar with the legislation. We cannot pass legislation to suit the whim and fancy of a select group of persons. So that it is a criticism which, as I said, does not attract much favour from me. I think that is what he means when he says it would be uncertain.

He goes on to note, however, “that lawyers would have to buy Canadian textbooks, etc.” Again, the benefit of the many cannot be sacrificed for the

convenience of the few. The fact that it may be desirable to consult Canadian lawyers on aspects of the law—I cannot see that because one may not be familiar with legislation and one has a duty to advise on legislation because this Parliament must devise legislation to suit the convenience of those who wish to give advice in respect of it.

So that the uncertainty is one which, I am sure, will be overcome by the due diligence of the lawyers and the company secretaries who will, no doubt, in the same way that parliamentarians had the time to familiarize themselves with the legislation, would also take the time to familiarize themselves with it.

Firstly, he said, it might be "better," and with which I agree. Secondly, he says that it would be uncertain; I do not agree. And thirdly, he says it would be an inappropriate basis for a Caribbean commercial centre. I have found nothing in the rest of the comments which informs me of the reason for the third comment—that it would be inappropriate for a Caribbean commercial centre.

The working team of 1971, as I pointed out, had as its objective, the harmonization of the company laws in the Caribbean. I think as far back as 1971 there was a recognition of the hemispheric changes, the commercial groupings that were developing at that time, and it was recognized that if Caricom were to develop as an investment centre, there ought to be some degree of harmonization of our laws in the commercial field. The Canadian model was therefore looked at.

Barbados has implemented the Canadian model; Jamaica is looking at it, also Guyana and we, in Trinidad and Tobago, in a period extending over 24 years, have looked at the Canadian model. I am sure the thinking was that Caricom must provide an opportunity for investment and investors from outside to come into a region where there would be familiarity with the laws; where there would be some harmony between the laws. Despite statements made to the contrary to the outside world, Trinidad and Tobago still remains an attractive place for foreign investment and for the development of a vibrant commercial market.

So that we have chosen to look at that model. We know, and we appreciate, that there would be difficulties. We know that in the practical application of the law there would be bureaucratic problems, and we have already started upgrading the Companies Registry, and so on. So that we have set in train the practical aspects of the implementation which we anticipate when we enact this legislation. So that there will be the need to look at it.

Only a few days ago I had the opportunity to speak with a lawyer from New Zealand, who is very familiar with their new companies legislation, which is

based on the Canadian model. So that whilst I spoke about hemispheric development, it, in fact, has reached the other side of the globe. They have adopted the Canadian model in New Zealand and they are still in the process of making changes and adjustments to the legislation to suit their particular conditions.

So that we recognize that there would be the need to monitor the legislation. We reject outright the suggestion that the legislation is half-baked and not ready for passage in the Parliament. We understand that there is much work to be done with respect to the fine-tuning and so forth, but we understand that in this modern world we cannot stand still. We could sit here for another 24 years whilst those with their own particular interest haggle over what is right and what should be right and what should be in and what should be out. The fact remains that we have a responsibility, as a Parliament, and this Government has a responsibility, as a Government, to move Trinidad and Tobago from the backwaters of 1929 to the 21st century. That is what this legislation is about.

Those were the general concerns expressed over the legislation and over the report. There were specific concerns, some of which may be addressed by other speakers. But I indicated that the committee had the benefit of detailed memoranda; it had the benefit of analysis of the memoranda that were submitted; it had the benefit, therefore, of looking at both sides of the argument in finalizing its report and in proposing the amendments which are contained in the report.

I know that change always gives concern. In fact, it sometimes strikes fear in the hearts of some. We are sensitive to the concerns which have been expressed by the business community, by the legal fraternity, by the labour movement, by the other professional groups. We also understand that some of those concerns are driven, to some extent, by the fear of change.

The Government has to balance the sensitivity of those concerns which have been expressed; it also has to look at the development of Trinidad and Tobago, and it recognizes, based on its vision for Trinidad and Tobago and, indeed, the Caribbean region as a whole, that, sometimes, bold and daring steps have to be taken.

2.35 p.m.

There will be oft-times, concern expressed when change is implemented which appears to be radical. One only has to look at trade liberalization and the concerns that were expressed then; how many jobs would be lost as a result of it; the fear that came out of statements made at that time—40,000 jobs, I think were going to be lost as a result of the floating of the currency. There was the

prediction of TT$25, TT $30 and TT $40 to US $1. The fact of the strides being made on the crime front. There are still some who are crying out in "Inside Editions" about all kinds of things that do not exist except in their own minds.

Mr. Deputy Speaker, as we move forward and take steps to ensure the progress of Trinidad and Tobago on several fronts, there are those prophets of gloom and doom creeping out of their shadowy corners, finding some external voice to express all their views about Trinidad and Tobago's development.

Our concern is to move Trinidad and Tobago forward. We have analyzed these two pieces of legislation. The legislation fits within our pattern of development as we see Trinidad and Tobago and we present it with the bold assurance that it forms another plank of the development of Trinidad and Tobago. It takes us a further step forward, being cautious at all times that we, as a Government, have the responsibility to continue to monitor these changes to ensure that as we build the systems that we put in place, they would inure to the benefit of the children of the 21st century.

Mr. Deputy Speaker, I beg to move.

Question proposed.

Mr. Basdeo Panday *(Couva North)*: Mr. Deputy Speaker, the function of this House is to pass legislation for the good governance of the country. In passing such legislation, the House must take the utmost care to ensure that it does not place laws on the statute books which are unworkable or oppressive, or passed in a dictatorial manner, even if the laws themselves are not dictatorial.

Mr. Sudama: And in undue haste.

Mr. B. Panday: That is the point. If they are passed, for example, without the proper consultation, even the laws that are not dictatorial are passed in a dictatorial manner. This House must ensure that does not happen. The criteria must include measures, as I said, for the good governance of the country.

We recognize that one of the functions of law is to regulate social and economic activity in the country. What kind of laws does the Government pass? In a democracy it says that a government is a government of the people, for the people, by the people. If government is to be of the people, then it must not pass laws at its own whim and fancy; it must pass laws that have the consensus or agreement of the people.

It is misunderstood that any law that has the support of the majority of the population is passable. The first point about that is that the whole principle of

majority does not make things right. It is merely a mechanism for arriving at a decision when there is conflict. It does not necessarily make the majority view right.

Even more importantly, in a democracy one does not lump the entire population together and say if more than 50 per cent of the population says yes, it becomes democratic. Indeed, the modern concept of a democracy is that democracy is not the rule of the majority, but the rule of majorities. The majorities, as opposed to the majority! [*Interruption*] Oh quiet! the Member would not know what that means. It has nothing to do with Project Pride. [*Interruption*] Yes, tell the Member to shut up. I agree.

It means that when one is going to pass legislation, one must consult with those whom the legislation will affect more directly than others. When we come to deal with these pieces of legislation—the Securities Industry Bill and the Companies Bill—the people who are likely to be most directly affected are the business community. Beyond the business community, there are the trade unions. The business community deal with private investments and so forth, they employ workers so the workers are also concerned. The population at large is also concerned since it has to do with shares, stocks and people buying shares on the securities market and so forth.

This is the only piece of legislation that has come before this House in which every single group that is going to be affected disagrees with it completely. How could the Government call this piece of legislation democratic when the business community are protesting the Bill? The trade unions are protesting the Bill. Incidentally, I am speaking on the Companies Bill; my Friend would deal with the Securities Industry Bill.

The business community object to it. The trade unions object to it. [*Interruption*] Exactly! The Minister has not heard that because the committee has not completed its work. Even the committee which the Government appointed indicated that it did not complete its work. [*Interruption*] The committee did not really say that at all.

Who, in the Government's opinion, consents to this Bill? What consensus does this Bill have among the people who are most affected, namely, workers, employers? That is, companies, investors and so forth.

Even the one memorandum that the Government received disagrees with the Bill. What is even worse is that while agreeing with the hon. Minister that this Bill has had a history and has gone from committee to committee, what is being

debated in the House at this moment is the report of a joint select committee which was set up to consider these Bills. The joint select committee itself said that it is not ready.

2.45 p.m.

Mr. Sobion: Mr. Deputy Speaker, I just want to correct the record. At page 4 of the report the committee says,

> "Your Committee wishes to report that it has completed its deliberations on the Securities Industry Bill, 1995 and the Companies Bill, 1995 and recommends that these Bills be accepted by the House of Representatives and the Senate subject to the amendments listed in Appendix I and Appendix II..."

The amendments in the appendices—this report proves the point. They have considered two Bills—and these are the sizes of the Bills—two pages containing amendments. The only amendment that the report contains concerns the Securities Industry Bill.

Mr. Deputy Speaker, the Member for Couva North has come here ostensibly to debate this report. There are two appendices to the report. There are four pages of the report. He has not read the four pages, for he does not recognize that the committee has completed its deliberations. He has not read Appendix II which deals with amendments to the Companies Bill.

Mr. B. Panday: If my Friend is referring to Appendix II as amendments to this Bill, then he does not understand the report, nor does he understand—

Mr. Sobion: Does the Member accept the amendments to the Companies Bill?

Mr. B. Panday: They are absolutely minimal, peripheral, insignificant. If one reads the report carefully one would see that though they may be satisfied with the Securities Industry Bill—they have done their work on that—they recognized at page four that they are not yet finished with the Companies Bill. For it reads:

> "The Committee further recommends that in a period no longer than 9 months from the Bill's passage, the Government bring amendments to Parliament that would arise from practical concerns from its implementation."

My Friend agrees that really applies to the Companies Bill as opposed to the Securities Industry Bill. Nobody gives a time frame in which to bring amendments. Amendments do not arise within a time frame. Amendment is a

continuing process; as you implement a Bill it is amended from time to time. It is like the American Constitution, like our own Constitution. Like any other Bill it is amended from time to time. The report says nine months, why have they specified nine months?

Mr. Sobion: Gestation period.

Mr. B. Panday: The Member says it is a gestation period.

Mr. Sudama: I hope it is not an abortion.

Mr. B. Panday: The reason for setting this time frame is that more time can be given to whoever is going to consider this Bill and make amendments so that the Bill can be implemented. That is quite obvious. Even so, here is a committee that is looking at the Companies Bill which affects the Manufacturers' Association. It received two memoranda from the law firm; one from the American Chamber of Commerce. This committee did not see it fit to call the Trinidad and Tobago Chamber of Commerce.

The Trinidad and Tobago Chamber of Commerce did not give any evidence before the committee, they submitted no memorandum as far as I am aware. The Trinidad and Tobago Manufacturers' Association are the persons who are concerned with this. They complained that they were unable to get copies of the Bill. The Accountants' Association—all the bodies that are concerned with this piece of legislation, not one came before the committee to give evidence and to put forward its point of view, and he says the committee completed its work. Even if it says it has completed its work one must conclude that it has not.

In addition to this report, there is what may be termed a minority report. And that is a letter by two Members of the Opposition who sat on this committee. It is dated September 14, 1995 and addressed to the Hon. Wendell Mottley, Chairman of the Joint Select Committee.

Hon. Member: What date is that?

Mr. B. Panday: September 14, 1995.

Mr. Sobion: Mr. Deputy Speaker, I do not know what document my Friend is referring to. Standing Order (82) deals with reports from select committees. As I understand Standing Order (82(4) (c), it states:

> "Any Member dissenting from the report of a majority of the Committee may put in a concise written statement of his reasons for such dissent, and such statement shall be appended to the report; or, if he so desires, he may submit a minority report."

I am not aware that the document to which my Friend is referring forms part of the report. If Members of the committee who attended meetings have a point of view which they wish to express, which they did not express at the committee meeting, then they have the opportunity to do it here. But to read from a document which does not form part of the procedures of select committees is, in my view, wrong.

Mr. B. Panday: I am sure my learned colleague would realize that the Members of the Opposition did not sign this report.

Mr. Sobion: I am unaware of that.

Mr. B. Panday: As a matter of fact, Sen. Martin Daly did not sign the report. They did not agree with your report and they wrote a letter to Hon. Wendell Mottley dated September 14, 1995.

Mr. Deputy Speaker: Hon. Member, you are making reference to a letter which was written, but it certainly cannot be considered as a minority report because it is not in accordance with the Standing Order read out by the Attorney General. So you are merely reading a letter to the Chair.

Mr. B. Panday: That is correct. It matters to me not whether it is appended. It has been brought to the attention of the Government, and that is important. And I am bringing it to the attention of the public at present. If you remember, I said it was tantamount to a minority report. You cannot tell me it is not tantamount to that. It may be so considered; you cannot tell me that is not so. The letter reads:

"Position of the Opposition Members:

A committee was mandated to consider the Securities Industry Bill 1995 and the Companies Bill 1995. It was our interpretation that joint consideration of both Bills was important as the provisions and policies of both Bills related.

It is our conclusion that this exercise is yet incomplete and as such, we are unable at this stage to recommend the majority report to the House."

Signed by Mr. S. Panday, Member for Naparima and Miss I. Sagewan, Member for Caroni East."

Our first objection to this Bill is that the exercise which this House mandated to a joint select committee of the Parliament—to investigate and look into this Bill—that job is incomplete, no matter who says what. You do not bring a Bill before Parliament with a recommendation that says pass the Bill now, we know it

needs amendment but we have not had time or for whatever reasons, we have not put the amendments before you; let the Bill operate for six months and within nine months, you pass amendments. If there are amendments that you think ought to be passed, let us pass them now. That is our first objection to this Bill. The work that the Parliament has given to a committee is incomplete.

Mr. Valley: Mr. Deputy Speaker, just for the record, let me again state that nowhere in this report is the committee saying pass the Bill now, that there are amendments to be made and we are going to make them later on. The report is clear. We are recommending the adoption of the report to the House.

2.55 p.m.

Mr. B. Panday: My Friend may put what ever interpretation he wants on this paragraph, but I am putting this interpretation and I shall lead evidence later on to show that I am correct. I am saying that that is my interpretation. So hang me! My interpretation is that when the committee says:

> "The Committee further recommends that in a period no longer than 9 months..."

it means that it realizes that if it had about nine months more it would have had its own amendments. It cannot have amendments *[Interruption]* Mr. Deputy Speaker, is it saying that after nine months there will be no amendments? If the intention was to see how the Bill operates and then have amendments, why nine months?

Mr. Sobion: Read the whole sentence.

Mr. B. Panday: I do so:

> "from the Bills passage, the Government bring amendments to Parliament that would arise from practical concerns in its implementation."

Why will that arise only in nine months?

Mr. Sudama: Because they say so.

Mr. B. Panday: Because they say so. My interpretation is that the job has not been completed and I intend to show that this is so. Mr. Deputy Speaker, you would recognize, and I am sure the Member agrees with me, that the major persons who would be affected by the Bill did not even appear before the committee. I imagine they should have been summoned before the committee.

Mr. Casimire: Why should we invite them?

Mr. B. Panday: Oh! I see. The question is, why? Because you want their views. I would have thought that that was elementary. If you do not want it and you say, "bring it if you want," that is a PNM syndrome—if you do not like it, get to hell out of here.

The Member for Toco/Manzanilla asked, why invite them? If the Member has read the report, why did they invite Peter Clarke? It says here, on page 3, paragraph 6 of the report:

> "For the purpose of deliberation on the Securities Industry Bill, 1995, your Committee invited the following persons..."

Did the Member read that? So it is all right to invite for the Securities Industry Bill but not so for the Companies Bill. Is that what the Member is saying? My God, have mercy on us. It goes on:

> "who were very much involved in the preparation of this Bill, to attend the meeting:
>
> Mr. Peter Clarke
>
> Mr. Hamid O'Brien
>
> Mrs. Judy Chang..."

The other names were read by my learned Friend.

> "Your Committee undertook a clause by clause examination of this Bill and during this process concerns held by Members were dispelled. However, your Committee agreed that it was necessary that a number of amendments be made to this Bill to give effect to its purpose."

That was the Securities Industry Bill. A thorough job was done on it.

Why people were not invited—people who were concerned, the Chamber of Commerce, the trade unions, the Manufacturers' Association—to give evidence before the committee on the Companies Bill?

Mr. Sobion: Mr. Deputy Speaker, perhaps I can assist the Member for Couva North. The fundamental objections as to which model should be chosen, they nonetheless, submitted memoranda through their legal representatives and otherwise, dealing with specific concerns and the specific concerns were taken aboard by the committee. The main point of departure was whether the United Kingdom model should be followed, or the Canadian model and, therefore, there was little need for debate on that matter.

Mr. B. Panday: Which, again, substantiates my point. If you are writing a report like that, at least you would have appended all the computations made. I do not see that, so the Member cannot expect me to assume that memoranda were written and consultations were made. If that was the case, then they should have been appended here. There is not even mention of that in the report. Why should I take the Attorney General's word? Not that I dispute him, but, as far as I am concerned, he probably was not there at all.

Mr. Sobion: I was a Member of the committee.

Mr. B. Panday: Oh! He was a Member of the committee?

Miss Sagewan: Mr. Deputy Speaker, I was a Member of the committee, and the documents the Attorney General referred to were not made available to the committee. The Member said, that "specific concerns" when he replied to the Member for Couva North, "were taken aboard by the committee." They were not, with the exception of the one by Furness Smith. *[Interruption]* But the Attorney General is expressing concerns that the opinion of other organizations was—.

Hon. Member: Is the Member on a point of order?

Mr. B. Panday: Mr. Deputy Speaker, I have given way. Mr. Furness-Smith was not acting as any legal counsel for the Chamber of Commerce, the Trinidad and Tobago Manufacturers' Association, trade unions; he was not. There is nowhere the Attorney General could show that, so, again, he is misleading this House by telling us that there were representations made. If there were representations made, one would have expected to find them attached to the report.

The exercise is incomplete, but even more telling, has been the reaction of the Chamber itself. I know for a fact, from personal knowledge, that the trade unions disagree with it as well, for example, the National Trade Union Centre.

Dr. Rowley: Who?

Mr. B. Panday: I will tell Mr. Mc Leod when I said NATUC the Member asked, 'Who'? The Member is treating Mr. Mc Leod with such contempt. He is the president of the National Trade Union Centre. He should not be treated with such contempt as asking: Mc Leod, who? or NATUC who? *[Interruption]*

I refer to the complaints of the Trinidad and Tobago Chamber of Commerce published on page 5 of the *Trinidad Guardian* dated September 22, 1995. Had the Government invited them to appear before the committee, they would have had these matters to consider—

Mr. Valley: They were included?

Mr. B. Panday: No, they were not. Was Mr. Furness-Smith acting on their behalf?

Mr. Manning: What is your point?

Mr. B. Panday: The point I am making is that the work of the committee is not complete, and therefore, Mr. Arneaud had to resort to the newspaper to get his views heard. Mr. Arneaud, who I imagine is representing the *[Interruption]* If there was any doubt that the UNC was not anti-business, that doubt is dissolved by the stand we are taking today on behalf of the business community.

Hon. Member: But they are members of the parasitic oligarchy.

Mr. B. Panday: When we speak about parasitic oligarchy it is the Government we are talking about. *[Interruption]*

Mr. Humphrey: The biggest parasites.

Mr. B. Panday: Today we stand in defence of business. We stand in defence of the Manufacturers' Association. We put their cause here today because the Government has refused to listen to them. And my brothers and sisters, today we dispel the lie that the Government has been trying to project against the United National Congress that we are anti-business. Today we dispel all the propaganda to paint us in a corner.

Today we stand up in defence of the Chamber of Commerce in its attack on the Government for rushing through a piece of legislation which will adversely affect them. We want that on the record to show how broadminded we are, to show that in a UNC dispensation everyone would have his say because, "in my fathers kingdom there are many mansions. All the propaganda which had been spread over the years, today has gone to naught.

Mr. Arneaud, to whom the Government refuses to listen, says:

> "We feel that the idea of totally replacing our existing company law requires critical review for the following general reasons:"

The first one was mentioned by the hon. Attorney General, that is the question of lawyers being unable to give advice because the legislation is not only patterned after the Canadian legislation, but actually introduces new provisions which are not contained in the Canadian legislation.

3.05 p.m.

Whether they are right or wrong is not the issue at this point; the issue at this point is that the committee has not thoroughly done the job which this House mandated it to do. That is my simple argument. We can say that with confidence because Mr. Arneaud is still complaining after the report and he is speaking on behalf of the Trinidad and Tobago Chamber of Commerce.

Dr. Rowley: Have you read it?

Mr. B. Panday: Are you asking Mr. Arneaud if he read the report? I do not know, you ask him that yourself. If you want to insult Mr. Arneaud, that is your business. I am not going to be part of that.

Dr. Rowley: I am asking you, too, whether you read the Bill.

Mr. B. Panday: You can insult Mr. Arneaud if you wish. Ask him if he read the report; do not ask me that. You cannot insult Mr. Arneaud so.

The Trinidad and Tobago Chamber of Commerce complains that whilst the parts of the Bill based on the Canadian Act may be carefully drafted, there are numerous areas where changes have been made from the Canadian legislation, and many clauses raise doubts and difficulties as to their effect in the particular circumstances.

The Chamber also complains that it is impossible to foresee or to be sure what effects the totally new concepts and language will have upon the formation of new companies. The Chamber actually states that this Bill undermines the basis of all private enterprise by interfering with the duties of the directors. My dear Friend, if you did not read the Bill, I did.

Hon. Member: Did you understand it?

Mr. B. Panday: And to my Friend who thinks I did not understand it, may I say that I even have red lines in it. I can assure him of one thing: I have done more cases in court than he has.

Dr. Rowley: And you have lost more cases too.

Mr. B. Panday: I have never heard of a single instance where that Member has appeared in court. The only reason he has that job is that he is in PNM. I have never heard him do a case in court, so do not criticize my reading and understanding of the law. Only persons who practise in the courts can do that and he is not so qualified. He has never done a case in his life. *[Laughter]* I hope he

shut up after that. How many cases has he done? Not one single case, not even a dog case.

Mr. Deputy Speaker: All right. Order, please!

Mr. B. Panday: Not even a dog case.

Mr. Deputy Speaker: Will the Member proceed.

Mr. B. Panday: Thank you, Sir. Ask him if he has done a dog case, please. And he wants to criticize me.

Mr. Sudama: He gives bad legal advice to—

Mr. B. Panday: He is giving bad legal advice on his job all the time. The only reason he has his job is that he is a Member of the PNM. He wants to criticize my reading of the law. Would you believe that, Sir? I am sure he would never do that again.

Hon. Member: Go cool. Go cool.

Mr. B. Panday: Mr. Arneaud further complains that many of the provisions in the Bill are matters of substance which are left to be prescribed by regulations which are not yet available even in draft.

Mr. Imbert: Which clause? Which section?

Mr. B. Panday: Clause 153.

Mr. Imbert: You are reading the newspapers. It is the *Guardian* you are reading.

Mr. B. Panday: As a matter of fact, the letter by the Chamber of Commerce makes a very interesting point. It says:

> "that the exacting provisions as to annual certificates of solvency and resulting publicity may cause companies to cease trading prematurely with consequent loss of jobs."

Now the last time I read about loss of jobs is where the People's National Movement was saying that my speaking the truth on television would prevent persons from coming to Trinidad and Tobago to invest and so the unemployed would suffer.

Mr. Manning: Say it again.

Mr. B. Panday: First of all, the statement was made by the People's National Movement. It is significant that even the Government does not support the

People's National Movement on that statement. I have not heard a single Member of the Government supporting that statement. It is also significant that the People's National Movement made it, and not the Government.

Mr. Manning: Mr. Deputy Speaker, I should like to inform the hon. Leader of the Opposition that he can speak neither for the People's National Movement, nor for the Government.

Mr. Imbert: Nor for the UNC.

Mr. B. Panday: I can say, however, that the People's National Movement has made a statement and not a single Member of the Government has supported it. I can say that. I am not speaking for anybody, but I can say that, because that is the empirical evidence; that is the fact. Loss of jobs will occur because one speaks the truth about the crime situation in the country. So says the Government.

Dr. Rowley: Your logic is obscure.

Mr. B. Panday: You see how they believe they could fool everybody? So a man coming to invest millions of dollars in Trinidad and Tobago is not going to do any feasibility study; he is not going to come here and examine the objective situation before he does business; he is going to wait for a statement from either the Government or the Opposition before he comes here; he is going to do no research at all. I do not know what they think people are, to believe that speaking the truth about a statement of crime will prevent persons from coming here to invest and create jobs.

Dr. Rowley: What truth? What truth?

Mr. B. Panday: Mr. Arneaud says it is your proposed Companies Bill that will result in a loss of jobs.

Dr. Rowley: And I love Mr. Arneaud.

Mr. B. Panday: The Chamber of Commerce goes further to say that the Act imposes on all companies irrespective of size and status, the expense of professional articles. These are clauses to object to.

My argument is, if that is the case, the Government must deal with these problems before bringing the Bill to the House for final vote. That is my argument.

Changes made in the law relating to share transfers by clauses 199 and 200 will cast a serious doubt on the rights of property in shares. The changes are

neither explained nor justified in the Explanatory Note, or elsewhere. And Members opposite say this committee has done its job! The Chamber of Commerce are complaining that they do not understand the meaning of a clause, neither explained in the Explanatory Note nor elsewhere and the Government comes to us to pass a Bill that affects the business community at large.

The Bill specifically contemplates that the Registrar may take as long as 60 days to fulfil his duties with respect to reviewing applications under it and provides no relief until that time elapses, which period is totally unacceptable and inconsistent with the efficient conduct of the nation's business.

The Chamber of Commerce who have studied this Bill—

Mr. Valley: What number?

Mr. B. Panday: Clause 251. I am referring to the Bill. So the people who are concerned with this business are telling the Government if it passes this Bill it would be inconsistent with the efficient conduct of the nation's business, and this is the Government which says it is going to make this country the financial centre of the Caribbean.

I think the rest of the statement of the Chamber is very significant and must be put into the record. It says—and the Attorney General rightly says, and I agree with him—that everybody agrees that the Bill should have received most careful consideration and review by persons knowledgeable in the practice of company law before being enacted. It is unfortunate that the Government appears to wish to pass the Bill into law without the detailed review which it still clearly requires.

The Opposition is not saying that; it is the Chamber of Commerce.

3.15 p.m.

Mr. Arneaud goes on to say:

> "The Bill is of critical importance to the business community and consequently to the economic future and aspirations of the people of Trinidad and Tobago. When passed into law it will impinge every day on the activities of companies through which almost all business activity is carried on."

Do you see the importance of this Bill? It goes on:

> "To Business, it is the equivalent of the Constitution to the citizens generally.

As far as the business community is concerned, the Companies Bill is equivalent to the Constitution as it relates to people, obviously to their rights, privileges, powers, duties and so on. This is a Bill that the Government wants to pass when the committee which it set up has indicated that it has not completed its work.

The article continues:

> "That the final edition of such a Bill should be allowed to pass without a proper opportunity to the public to comment on it, nor without such comments as are available from experienced practitioners to be carefully considered clause by clause, cannot be acceptable."

I know that the hon. Member has said that money is no problem.

Mr. Arneaud continues:

> "It is, therefore, suggested that if difficulties are anticipated in the administration of any clause of the Bill (and many difficulties have already been identified which have not all been addressed) they must be dealt with now before the Companies Bill can be passed into law."

We know that money is no problem for the Minister. We have heard that for the second time in this century. But the Chamber nevertheless says:

> "We, therefore, reiterate that the Chamber is still prepared to finance the drafting of a proper Companies Bill in the interest of taking further steps to achieving the Government's goal of establishing this country as the leading commercial and financial centre in the Eastern Caribbean."

The Member for Barataria/San Juan is "steupsing."

Hon. Member: She is tired with you!

Mr. B. Panday: She is tired with me? She gets tired rather quickly these days. I wonder what is happening, whether Mr. Gerry Hospedales is having an evening.

In addition to what Mr. Arneaud has said, this morning I received a letter from Mr. Arneaud himself. I believe copies of that letter have been circulated to other Members of Parliament.

Dr. Rowley: I did not get any.

Mr. B. Panday: Not on your side. Mr. Arneaud is so intelligent. If he did not send a copy to your side it means that he knows the futility of so doing. The letter says:

"Mr. Basdeo Panday. MP.
Leader of the Opposition,
(Member for Couva North)
Chepstow House
56 Frederick Street,
Port of Spain.

Dear Member of Parliament,

The Trinidad and Tobago Chamber of Industry and Commerce (Inc.) has been informed that it is proposed to take the Companies Bill through all its stages at the sitting of the House of Parliament, on Friday September 22, 1995, despite the fact that the Joint Select Committee reported that it was unable to thoroughly analyse the bill."

Hon. K. Sobion: Who told you that?

I am reading from Mr. Arneaud's letter. So as far as the Attorney General is concerned, Mr. Arneaud too is misled about the committee's report, and as far as my Friend is concerned, Mr. Arneaud does not know what he is talking about. Well that is his and Mr. Arneaud's business. My duty is to do my duty here today. It continues:

"The Chamber strongly objects to such a cavalier approach to the passage of any legislation since the conduct of citizens is governed by the laws passed in Parliament."

That was the first point I made when I began my contribution in this House this afternoon. It goes on:

"It is beyond recklessness to knowingly pass into law an instrument which it is admitted has not received careful consideration and analysis, one in which a significant number of defects have been identified, and one which will govern the business and therefore economic life of the country."

These are strong words coming from a strong man in a strong organization, and we agree with them. That is the point. We think they are right. It shows clearly that we are prepared to stand up on the side of right, no matter who is involved.

The letter goes on to say:

"The Chamber condemns in principle the manner in which the Companies Bill is being handled, and indeed would do so for any other legislation dealt with in a similar manner.

With respect to the Companies Bill itself, the Bill in its present form, as submitted to Parliament, is substantially different from earlier versions published over the last two or three years. The Bill although published is not available up to the present time from the Government Printery."

Hon. Member: So how he could make 19 comments on that?

Mr. B. Panday: That is a *non sequitur;* it is illogical. The fact that he has made comments on it does not mean that it is available. He did not say he did not have it. He said it is not available at the Government Printery. That is what he said. If he is able to get a copy from another Member of Parliament, he has a copy, but it is not available to the public—

Mr. Valley: But it is available to him, at least.

Mr. B. Panday: At least he was able to secure a copy. The fact that he was able to secure a copy from a friend, from a Member of Parliament, from wherever, does not mean that it is available at the Government Printery. That is the point he is making.

Mr. Sobion: But it is available.

Mr. B. Panday: It is a *non sequitur*. The point is, if the Bill has got to go for public comment, the public must have access to it, but the public cannot have access to a Bill that is not available at the Government Printery. That is what Mr. Arneaud is saying and he is quite right.

Mr. Valley: Mr. Deputy Speaker, this Bill was out for public comment since 1993.

Mr. Humphrey: It is not the same Bill.

Mr. Valley: It was out for public comment quite some time ago. The only difference is, one took out the sections dealing with the securities legislation and put them in the Securities Industry Bill.

Mr. B. Panday: The Bill that was originally put out for public comment has been amended three times on the statement of the Attorney General himself. As a matter of fact, I am informed—I do not know; I am subject to correction—that even the Bill upon which Mr. Furness-Smith commented—

Mr. Deputy Speaker: The speaking time of the hon. Member has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. *[Mr. R. Palackdharrysingh]*

Question put and agreed to.

Mr. B. Panday: I thank the Member for La Brea for saying "Aye".

Mr. Bereaux: I want to hear you speak on the Bill now.

Mr. B. Panday: I know you do.

So that the Bill which was put out for public comment that I was speaking about is not the Bill which is before the House today. That Bill was amended several times. In fact, I am told that the comments of the former Senator were on the original Bill, not the Bill before the House today. So the point that Mr. Arneaud is making is a valid one. He said:

> "This Bill although published is not available up to the present time from the Government Printer's office. It is not the Bill on which the Chamber has been working or the Bill on which elaborate comments have been made by the only firm of Attorneys-at-law which has made the time to give it critical study in full."

3.25 p.m.

Mr. Sobion: Mr. Deputy Speaker, just for the record, and to refer to the comments from former Sen. Furness-Smith—and I would just read the covering letter—

> "With the assistance of my partners, I have now reviewed almost the whole Bill in some detail and enclose the resulting memorandum which includes the comment in my previous memorandum on the earlier Bill insofar as it is still relevant."

That letter was dated April, 1995; one month after the Bill of 1995 was laid in Parliament.

Mr. B. Panday: Mr. Deputy Speaker, it does not make any difference. That may be a letter following up on the second Bill. I do not know. The former Senator has not stated which Bill he is talking about. It may have been written one month after the third Bill was published. That may very well have been so, but that is not the point. The letter goes on to say—

> "The Companies Bill is of vital importance to the business community and consequently to the economic future and aspirations of the people of Trinidad and Tobago."

Everyone knows that besides this Government.

> "When passed into law it will impinge every day on the activities of companies through which almost all business activity is carried on. To business, it is equivalent of what the Constitution is to the citizens generally. That the final edition of such a bill should be allowed to pass without a proper opportunity to the public to comment on it, nor without such comments as are available from experienced practioners to be carefully considered clause by clause, cannot be acceptable."

This is not acceptable to the Chamber of Commerce; it is not acceptable to Mr. Arneaud, it is not acceptable to NATUC; it is not acceptable to the Manufactures' Association; and it is not acceptable to the United National Congress.

I continue the letter—

> "It is respectfully submitted that if difficulties are anticipated in the administration of any clauses of the Bill (and many difficulties have already been identified which have not at all been addressed), they must be dealt with now before the Bill is passed and not afterwards."

Those are the sentiments I express and those are sentiments with which I concur.

Mr Arneaud goes on to say in his letter—

> "It is respectfully submitted that a promise to consider amendments within a nine month or other period will not solve such difficulties nor do anything to bolster the confidence of the business community of foreign investors which have recently showed signs of returning.
>
> The Bill, when it is passed, cannot be implemented until regulations have been passed prescribing the matters which are required to be prescribed (which include all the forms of application and the precedents for forming companies and other matters)."

What is the urgency? I think that is the point he is making. What is the urgency of the Government rushing through this Bill without it being properly considered, when it cannot be implemented anyway because the regulations and forms have not been prepared. If they had been, we would have found them with the Bill.

"There is no suggestion that a draft of such regulations is available now and it will certainly take a considerable time to prepare. It is not understood therefore, why the Bill itself should be rushed through in this way."

If the Opposition had said that, the Government would have said we are not co-operating with the Government in order to run the country. This is the only Opposition in the whole democratic world that I know that is being called upon to run the country. If the Government cannot run the country, it should come on this side and we would go on that side and run it. Do not tell us to run it from this side. *[Interruption]* It would not be long. December!

"The Chamber has offered, and reiterates its offer to finance the preparation of a suitable Bill which would avoid these difficulties.

The Chamber, therefore, wishes to record its strong objection both to the principle involved, i.e. passing legislation with known deffects to be amended later, as well as the contents of the Companies Bill as it now stands.

Yours sincerely,

TRINDIAD & TOBAGO CHAMBER OF
INDUSTRY AND COMMERCE (INC.),

Sgd. Michael Arneaud,

President."

Mr. Deputy Speaker, we on this side could not have put the argument better. We stand firmly behind the views expressed by the Chamber of Industry and Commerce on this issue because we believe they are right and we hope that the fact that we have indicated beyond all reasonable doubt that we are prepared to stand up for right when it is right, we would dispel all propaganda that was spread about the UNC being anti-business or anti-big business. We have put paid to that once and for all today.

We thank the Government for this opportunity to do that for we would not have had it if the Government did not bungle this legislation as it has bungled everything else in this country including the Madam Speaker issue. You name it and my Prime Minister has bungled it.

Unless this Government can persuade us otherwise,—that we should pass incomplete legislation in this House—we would be unable to support them on this Motion.

Thank you very much, Mr. Deputy Speaker.

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Deputy Speaker, I rise in support of the Motion before the House. I was a member of the joint select committee which was appointed by this House to consider and report on the Securities Industry Bill as well as the Companies Bill.

I can report that the committee held eight meetings and I was present at every one. Some of my colleagues, especially those on the other side, were not there at every sitting, but I can say that when they were there they contributed, and up to the end of the report, they stated objections to neither the Securities Bill nor to the Companies Bill. One, therefore, left the committee with the view that there was general agreement. The record would show that at the end of the session—I think it was on August 29—the Chairman reported that he would have the report drafted and circulated for signature at the next sitting of Parliament.

I can confess of my amazement, when the Members opposite failed to sign the report. The *Hansard* would show that neither of the two Members of the Opposition, who were present at the sittings—there was one Member who was ill and did not attend many of the sittings, so one did not expect him to sign the report. Similarly, Sen. Daly who was away for some time.

I was really amazed when the two Members opposite, the Member for Caroni East and the Member for Naparima, refused to sign the report.

Only last week I had to comment in this House that my colleague the Member for Chaguanas found herself in real difficulty when she attempted to chair a committee with respect to the Chaguanas Market, and we are seeing the same thing today—simply a position taken by the Opposition that come what may, they are not working with the Government in spite of the fact that we are talking about legislation that is to move the country along.

Mr. Humphrey: Mr. Speaker, on a point of order. I can speak for the Opposition but the Member for Diego Martin Central cannot.

Mr. B. Panday: No, he can speak for that particular Member.

Mr. Humphrey: The Opposition is satisfied with the work that was done on the Securities Industry Bill and has no difficulty in supporting it. But the Opposition is not satisfied with the work that was done on the Companies Bill; that is why the two Members refused to sign the report. They received the report not at the time of a sitting of the committee, but afterwards.

3.35 p.m.

Hon. K. Valley: Mr. Deputy Speaker, I think it is the Opposition's right not to agree with the report of the joint select committee. The point I am making, however, is that neither of the two Members stated any objections either to the Securities Industry Bill or to the Companies Bill up to the last sitting of the committee. At the last sitting, when the Chairman stated that we would have finalized the draft for signature, there was no objection even to the effect that the consideration of the committee was incomplete. So to make that argument today, obviously, has got to be a false argument. As I said, it is on par with what the Opposition does from time to time.

My job as Minister of Trade and Industry is to understand the needs of the business community as defined so that we would want to bring legislation to the House in the context of what the Member for Couva North said—that there must be some level of agreement with respect to the legislation. We on this side are convinced that, by and large, the interest groups, the people who would have to deal with this legislation are satisfied that it is the best approach given the circumstances.

I was privileged way back in 1993 to address a luncheon meeting, a seminar organized by the Institute of Chartered Accountants of Trinidad and Tobago and the Law Association of Trinidad and Tobago. Members would know that when we are talking about company legislation, we are really talking about legislation that any company would depend on—its accountants, its lawyers—its accountants to deal with the accounts in accordance with the legislation and its lawyers to advise it. Few would be the businessmen who would be up to date or who would even bother to read a companies Act. They pay their professionals so to do, and to advise them.

Mr. Deputy Speaker, I want to put on the record some of the comments made by these professionals. I will read first from an address given by Vishnu Maharaj, who at that time was the President of the Institute of Chartered Accountants of Trinidad and Tobago. We are hearing today that this one does not like the legislation and that one does not like the legislation.

When I am finished you would realize that there are two lawyers in Trinidad and Tobago who do not like the legislation—Mr. Gerald Furness-Smith and Mr. David Collens. Simply, they seem to have the ear of the present executive of the Chamber. Before I go to Vishnu Maharaj, perhaps I should just read an extract from a former president of the Chamber. At the seminar, Mr. Martin Daly made the point that the two sides should come to some agreement.

The basic criticism about the legislation is that we are moving to a Canadian/Barbados precedent, moving away from the traditional UK precedent. Mr Daly advised, that we should settle this before it gets to the Parliament and that we should come together. Mr. Beaubrun who was the former president of the Chamber some time in 1991 said:

> "If I may make reference to this morning, Martin Daly raised the question of eleven men in blue and eleven men in white and a fight between two sides in terms of what kind of legislation we are going to pursue finally, the Canadian or the English model. I think I would like to point out that in each of the groupings, be it ICATT, the Chamber, the Law Association or a business group, I think you will find that there are a number of views; certainly views on both sides in all camps. It is not a lump-in situation.
>
> So that while David Collens has quite correctly said that his view—the official view of the Chamber is what he said this morning—I can assure you that there are very many people in the Chamber who hold an opposite view, too, and I think the purpose of today's meeting in the minds of, I hope, most of us, has been to air the issues as they stand."

One would see, quite clearly, that even within the Chamber, the view is not cut and dried. The President of the Institute of Chartered Accountants of Trinidad and Tobago said:

> "Where are we in the process of company legislation today? We are still operating under the 1929 English Companies Act. That Act had been updated in 1948, 1967, 1985; and I believe there were some other minor changes. And it is now over 60 years old and I guess like most of us who have reached that age, due for retirement."

I am quoting from a symposium on the Trinidad and Tobago Companies Bill, 1993. It was held on February 23, 1994 at the Holiday Inn. I am quoting from an address given by Mr. Vishnu Maharaj who was then the President of the Institute of Chartered Accountants of Trinidad and Tobago.

The problem is some of those persons who get to that age, rather than retire cling onto the old. I proceed:

> "It started with the Pennington report in the sixties. At that time the recommendation was that we adopt in Trinidad wholesale, the 1948 English Act. There was objection to that and I believe members of the Law Association worked towards updating later Acts to suit the needs of what was considered acceptable locally. However, the efforts came to naught.

In the decade of the 70s there was another attempt and the committee at that time was chaired by the then Institute President, Mr. Dick Hobday. The effort at that time was also frustrated and nothing came out of it. So this is, in effect, the third attempt,..."

And he is talking about the 1993 Bill which, as you know, lapsed in the Parliament and had to be reintroduced.

3.45 p.m.

"...I would say, to get companies legislation going in Trinidad and Tobago and I believe if we miss this attempt, and judging from history in the past, I think we will be looking beyond the year 2000 to start again.

The present Bill started, as Judy said, under a committee which she chaired and included a broad-based section of the community. The committee used the Bill that was prepared by the Working Party of Caricom that was set up specifically to do the job.

The Working Party of Caricom worked eight years, from 1971 to, I believe, 1979 on preparing a draft Caricom document. One of the objectives of the bill was to harmonize company law in the region, besides updating as well, and this Bill is based on that Caricom draft.

Since that draft, Barbados has implemented legislation, Guyana has passed the Act but I don't think it has yet been proclaimed, and I believe Antigua, St. Vincent and a number of other territories are in the process of passing law based on the Caricom draft. The Bill is now before Parliament and there has been some objection. The objection primarily is from a lobby within the Chamber and the objection is based on the fact that the Caricom draft was based on the Canadian model and the people who are advocating that we do not go the Canadian route in effect wanted to remain tied to the British system, or the British law. My question is this: if, in effect, the lobby from the Chamber is successful, what it means is that we would be throwing down the drain the eight years of the Caricom Working Party effort, the five years locally it has taken to get the Bill to this stage, we would be dumping the efforts towards harmonization of commercial law within the region and we will be linking ourselves back to the U.K., who is now being influenced heavily by what is taking place in the EEC and a lot of their commercial laws will in fact in the future be formed by EEC opinion."

This, Mr. Deputy Speaker, is the view of the accountants. They have gone through the loop on a number of occasions, starting to update their laws in the

1960s with a 1929 Act, based on a 1909 precedent. They are saying they do not want to start again. When the Member for Couva North talks about consensus and so forth, this is one group that wants this Parliament to pass this legislation. They want to put this legislation on the books. They are aware that it does not matter how many committees we set up, in fact, we would have to make amendments from time to time based on the practitioners' experience.

We have said that we have come to the point where we must put the legislation on the books; we think that we have done the best we can do, and that is what the report reflects. The committee felt that it did the best it could do in the circumstance, but be aware, Mr. Deputy Speaker, that no set of politicians sitting in a room in the Parliament can deem what is appropriate in terms of company legislation forever and ever. We are aware that we would have to come back to this House and make adjustments, because company law must be a living organism, and that is what it is. That is what the accountants have said.

Let us turn now to the Law Association of Trinidad and Tobago. At that symposium the then President of the Law Association, Mr. Allan Alexander, made a contribution. Listen to what he said, because these are the people who have to deal with the legislation. The businessman would rely on his accountant and his lawyer. He said:

> "As we know, the Companies Ordinance was enacted way back in 1939 and followed the English legislation after the English experience, consequent upon the Companies Acts of 1862, 1908 and 1929.
>
> By the time most of our senior members of the legal profession had journeyed to London to study law, the Companies Ordinance had already been overtaken by the Companies Act of England of 1948. So even those of us who have studied in England had studied a piece of legislation in advance of the 1939 Companies Ordinance. So even because of the passage of time, it is the view of the Law Association that company law reform is long overdue, and we do feel that we should take this opportunity to avoid the failure which occurred resulting from the work of Professor Pennington."

That was the view of Mr. Allan Alexander of the Law Association. He concluded:

> "In the final analysis, although the Law Association has not yet completed its work on the Bill ... the Law Association is yet of the view that the Companies Bill 1993 is as good a basis to introduce reform in the system as any."

That is the view of the Law Association, Mr. Deputy Speaker.

I would go to one other, Mr. Sebastian Ventour who also made a contribution at the seminar. He spoke on shareholders' rights and responsibilities. He is an Attorney at law and senior partner in the law firm of Fitzwilliams, Stone, Furness-Smith and Morgan. Everybody says one thing. Even David Collens recognizes that we need to update the laws, so he made that point.

Mr. Sudama: That is not the argument.

Hon. K. Valley: We know, that is not the argument. He said:

> "Although the 1993 Bill itself, is a radical departure from our existing law, it is hoped that with the necessary amendments it will prove to be a workable piece of legislation as our country grapples with the many problems of modern-day commercial activities."

Making the point, again, that there is need. He said:

> "I do not think that anyone would deny the fact that the present company legislation is in serious need of updating."

Again, this is Mr. Furness-Smith's colleague.

Then, of course, we had Mr. David Collens who argued that we ought not to change from the English law because of all the precedents and so forth. I want to put on the record two comments, but perhaps I should put a bit of what Mr. Collens said:

> "I want to make a plaintive and perhaps inadequate cry in opposition to this Bill. Basically, my position this morning—and the Chamber of Commerce, you may be surprised to know—is that there is no doubt that our companies legislation as contained in the Companies Ordinance is in need of updating and revision. ... However, revising and updating the Bill is not a cry for wholesale reform. We don't believe it is necessary to throw out the baby with the bath water.
>
> There is nothing sacrosanct about using U.K., legislation as a model, but the thing is that businessmen and professionals are familiar with it."

Mr. Deputy Speaker, I have pointed out already that both the Law Association and accountants are happy with the change to the Canadian legislation.

Let me make the point that consideration is clear, yes, this is cutting away from the English legislation; this is forging a new path and we have to see that it

fits into what the Government is attempting to do. We are talking about the Association of Caribbean States. We are talking about getting into NAFTA. We are talking about getting to the part of the Free Trade Association of the Americas. We are hitching our wagon, as it were, to this regional block. We know that we have to be influenced by what is happening here. *[Interruption]*

Yes, we are part of the Commonwealth, we were once a colony, but we have to cut this link in relation to the Bills we have been discussing because the "mother country" is now forging her own ties with Europe, and her laws would be influenced more and more by what is happening within the EEC.

3.55 p.m.

We have to be influenced by what is happening in this part of the world. Mr. Deputy Speaker, you would know it was only last week that my colleague/the Minister of Foreign Affairs executed two agreements with the Canadians: one is an updated double taxation treaty which has been hanging for quite some time.

Our double taxation treaty with Canada dates back, I think, to the late 1960s and there was an attempt to have a new treaty sometime in the late 1970s early 1980s but that came to nought. This Government was able to execute that agreement last week. It was able, last week also, to sign the bilateral investment treaty with Canada. The Canadians call it FIPA, Foreign Investment Protection Agreement.

I can tell you, Sir, that we visited Canada in 1994 on a mission. Before we went we were told that we were No. 62 on the list of countries which Canada was looking at in negotiating the treaty, and after our visit, we were at number 40. The hon. Prime Minister met *[Interruption]* at the Summit of Americas and the next thing we knew, we were there. We completed negotiations on the agreement.

I think it was in December the hon. Prime Minister met the Prime Minister—the Prime Minister of Canada visited Trinidad and we were trying to get that agreement signed while he was here and simply because of a hitch, that was not achieved, but a month later, we had finalized that agreement and the formalities in Canada were completed in July and we were able to execute that agreement.

We are hitching our wagon to this part of the world. So that yes, we have made a positive decision to be influenced by the Canadian precedents to go that way rather than the traditional English route. We cannot consider accepting the Chamber's offer to rewrite the legislation because we understand exactly what they want.

It would be simply going through the loop once more and we would have to say no at the end of the day because they would come with an English precedent, and we have decided as a policy that we are not going that way. It makes no sense. If there are amendments required of us, we are going to consider them, but amendments to the law, if one is talking about a fundamental issue such as which precedent we are going to follow, whether the English or the Canadian, then that is not on the cards.

One has to remember that the Canadian legislation is also influenced by the English legislation. Canada as a Commonwealth country, its laws were influenced by the English law but because of the passage of time, and of course, United States influence, one will find that the Canadian law is now a hybrid of the English and American law. In a sense, we have the best of both worlds.

There have been some other arguments with respect to the legislation, for example, the arguments coming from Members on the other side that we are hurrying this legislation simply to access funding under the ISL I made the point yesterday that no, that is not so. Let me put a little note into the record because, very quickly after looking at this morning's newspapers I had to send a note both to the *Guardian* and to the *Express* and this is the letter to the *Express* which I will read into the record.

"September 22, 1995

The Editor
Express Newspaper Co. Ltd.,
35-37 Independence Square,
Port of Spain.

Dear Sir/Madam,

I have noted in your newspaper of today's date the headline "Money is no problem" which purported to report on a statement I made at the Media Conference yesterday which was called to explain the Companies Bill now before Parliament.

I hasten to clarify that the idea which I attempted to convey was that the accessing of the Investment Sector Loan of the IDB was not the *raison d'être* for Government's decision to bring the Companies Bill into law at this time.

The issue is to update the companies legislation which we have been trying to do for the last twenty-four (24) years and to do so before Parliament is prorogued by the due date of October 14, 1995.

I trust that this clarification would be duly noted.

Yours respectfully"

I was not making the point that money is not a problem, I am saying that it is not the issue with respect to our wanting to pass this legislation at this time. The issue is to have it passed before Parliament is prorogued. This legislation lapsed in this Parliament twice before.

The Opposition is always asking to set up joint select committees for all types of things and when we set up joint select committees, they would not come to the meetings. So that when a government, such as this Government, knows that it has to get certain things done quickly it knows that it cannot depend on the mechanisms of the joint select committee, and if the Bill lapses once more, as the President of the Chartered Accountant Institute said, we may not be able to get this legislation on the books for another 10 years.

Dr. Rowley: That is what they want.

Hon. K. Valley: We want to ensure that this legislation is on the books before Parliament is prorogued. That is our objective, plain and simple. We believe we have spoken—you see we like action. Too much talk! We have been talking since 1971 about updating our company legislation going through and through different loops and we are saying, enough talk; let us get on to action. We will correct it if there are errors as we go along. That is what we will do. Businessmen know that, because that is how they do business. They have to fix it as they go along because time is money and they are aware of that.

If Members would get the proceedings of the seminar—I do not need to go through some of the others, but if one were to look at the contribution of Mr. Bernard St. John of Barbados on the operation of the law and the precedent issue, one would see that is not an issue. One would see also a contribution from the present Chief Justice, His Lordship de La Bastide, commenting on the contribution of Mr. Collens when he pointed out that even the English—when one talks about certainty and about precedents, one, not even now, depends on English precedents, because they seem to be changing so quickly.

The issue is really, where do we set our sails? Yes, we know that we are cutting a new path, but that is exactly what we want to do because it is in keeping with the positioning of this Government for our country. It is that result that allows us to reduce unemployment, to build confidence in the economy and to complete the transition.

I was at the Chamber last night and the President was speaking about the Government's need to complete the transition, and that is what we are doing. We are ensuring that the environment is in place to complete that transition. I recommend to my colleagues the acceptance of this report.

I thank you, Mr. Deputy Speaker.

4.05 p.m.

Mr. Trevor Sudama *(Oropouche):* Mr. Deputy Speaker, the first issue I want to raise has to do with the Securities Industry Bill. We support the philosophy behind the introduction of the Bill because what the Bill seeks to do is to separate the function of management and regulation of the securities industry. We feel that that is necessary and the regulation of the industry should be put into the hands of an independent autonomous body. There is no argument about that.

Our concern, however, is whether in fact we are going to assign to this body the required resources for it to carry out its work, whether we are going to find the right type of personnel to man a securities and exchange commission that we are going to set up under this Bill, and whether this Bill, in fact, will be implemented with vigour and with effectiveness in order to meet the objectives of protecting investors and enhancing the securities market and, indeed, to get more equity investment into the system and induce greater savings, which is a critical factor in our economic development.

So that merely passing the Bill—we want to emphasize to this House—is not enough. The mere passage of the Bill has to be followed up by a proper structuring of this commission, the proper issue of rules and regulations under which this commission will operate. Because one of the omissions in the Bill is no regulations supporting the Bill. While the text of the Bill makes reference to regulations, and so on, we have not been able to draft those regulations to append them to the Securities Industry Bill in order to make the Bill implementable. So that we should like to feel that those regulations will be with us very shortly and that the purposes for which this Bill is being proposed will, in fact, be achieved.

I want to raise one question on which there seems to be much ambiguity—it has not been fleshed out—and that is the whole question of a takeover code. This Bill does give the power to the Securities and Exchange Commission:

> (e) to review, approve and regulate takeovers, amalgamations and all forms of business combinations in accordance with this Act or any other written law in all cases in which it considers it expedient or appropriate to do so."

Now the Central Bank also has a jurisdiction in this matter. It was called upon to investigate the matter with the CL Financial Group and its controlling shareholding in Republic Bank. The Central Bank did some investigations, and it said:

> "it has not been established that the CL Financial Group is not a fit and proper person to be a controlling shareholder in Republic Bank."

Now my contention here this afternoon is that we, as a Parliament, really, should get a copy of this report. They concluded:

> "...it had come to this conclusion after due investigation of available material."

We have certain concerns. While this matter is before the court we do not want to say anything to prejudice its outcome, but that does not mean that we cannot, in this House, make reference to that fact.

You will recall that five million shares, or 7.3 per cent of Republic Bank's shareholding was bought by a group called Viveka Company. Viveka company is owned by five CL Financial directors. But this 7.3 per cent of Republic Bank's issued share capital is really held by the T&TEC pension fund. The chairman of that T&TEC pension fund is none other than a gentleman by the name of André Monteil who is also a member of the Viveka group. Is there a breach of trust? Is there a breach of confidentiality?

Is there an improper manipulation of the position of this chairman of the T&TEC pension fund in order to have that block of shares sold into the Viveka group, and as a result allow the CL Financial Group—to allow CLICO—to have a controlling interest in Republic Bank?

Now the question we have to answer here today is: Where would this investigation fall? Would it fall within the purview of the Securities and Exchange Commission? Because, you see, under the Financial Institutions Act, section 39, the Central Bank has the power to determine whether a person or company holding more than 25 per cent of a company is a fit and proper person to have that shareholding. If it determines otherwise, then that company will have to divest itself of anything in excess of its 25 per cent shareholding.

To date, CL Financial Group has almost 42 per cent of the shareholdings of Republic Bank. It also raises the question of monopoly and monopoly control. I want to state here and to endorse what the Member for Couva North has said, that we on this side are not against business, big or small; what we are against are the tendencies towards monopolization, towards exclusiveness, towards oligarchical

control and tendencies towards profiteering and exploitation. And we want to put this in *Hansard*.

I hope that the media, which are so ready to denigrate the UNC at every turn, to impute improper motives to the UNC, will take note of our statement today with respect to our attitude towards business in Trinidad and Tobago.

Miss Nicholson: Repeat that.

Mr. T. Sudama: The Member for Tobago West has asked me to repeat it, and I never refuse ladies, so I am going to do so. The position of the United National Congress *vis-a-vis* business in Trinidad and Tobago, whether it be big business or small business, is that we are not anti-business. Business is integral to the economic life of a country but business must abide by certain rules and conditions.

4.15 p.m.

We said that we are against the tendencies of monopoly, exclusiveness, oligarchical control, exploitation and profiteering. Once these elements are not present, we are not against business activity in Trinidad and Tobago. In fact, our position is to have a programme to enhance business activity, but throughout Trinidad and Tobago and across the various sectors of the economy and classes of industries. This is our position: to diversify business activity and not have it concentrated only in the petroleum sector as is the policy of the present Government. We have a more comprehensive approach to business development, particularly, to small business development.

I have placed that issue in *Hansard* but really, the question of takeovers and so forth is something which has concerned me with respect to this legislation. I would like to know whether this legislation makes adequate provision to deal with the regulation of these takeovers given what has been happening in the country today.

As I said, the regulations which ought to accompany this Bill are not with us and we would hope that the Government bring those regulations to this House at the very earliest opportunity, but more critical than that are the regulations that should accompany the Companies Bill.

I want to now go on to the Companies Bill. I want to restate to this House what I said during the debate when this Bill was presented to the House on March 24, 1995. The issue here was whether the joint select committee of both Houses did a proper job in investigating, analyzing and looking at this Bill in order to

produce a Bill which could, be implemented, and which would have met all the concerns of the various interest groups.

When I got up to speak in this House, the Member for Diego Martin Central wanted to suppress whatever I said. He had made an agreement that there would only be a short response, statement or reply—

Mr. Valley: Mr. Deputy Speaker, the hon. Member has it all wrong. It was the Chief Whip who made an agreement with me.

Mr. T. Sudama: The Member for Diego Martin Central made a statement to this House that he wanted a short response.

The Member for Diego Martin Central behaves as if this House is his private property. He would decide who speaks or does not speak. He would decide for what length of time a Member is to speak or not speak. He would decide when Members go home and when they do not go home. This House is his private property.

Imagine last week the Member for Diego Martin Central was telling me I should not be speaking in the debate. He must decide. The Government has a monopoly on knowledge—the Members for Diego Martin Central; Ortoire/Mayaro; and Diego Martin East. They are the perennial shouters. They tried to shout me down.

Now, if the Government had listened to and heeded the advice which I gave on that occasion, this report, which is before us today, would have been much more accurate and useful.

This is what I said on March 24, 1995; I want to repeat it for the benefit of the Member for San Fernando East. I said there was a seminar which dealt with the role of committees and it said:

> '"The modernization of the parliamentary system was highlighted as critical to the reform process."

The Government wants to reform the Companies Bill, wholesale reform. It does not want to reform Parliament.

> "Greater use should in particular be made of parliamentary committees, independent from partisan politics, as investigative bodies to examine Bills and policies before they are passed."'

I want to put on the record what I added—

> "I am arguing that if this committee is to serve as an investigative body, it must have at its disposal much more expertise and other support than there normally is with respect to the usual committees. As I said, this committee must not have a time constraint and must operate in a way to get the most comprehensive expression or the views of the various parties concerned."

This is what I said in March, 1995. I continue.

> "This is an extremely difficult and complex piece of legislation that has been introduced in this House. We must ask this general question before this Bill is sent to a select committee: Will this Bill achieve what it is intended? One of the things it intends to achieve is to streamline the procedures for registration of companies. Will it do that?"

The Chamber of Industry and Commerce has stated categorically that it would not do that. The present legislation will not do that.

> "Will it upgrade the record-keeping regulation of activities of managers? Will it achieve greater protection for investors? There are a number of complex issues. There is the whole issue of requirement for disclosure. What kind of disclosure is required and whether that requirement can be fulfilled; and the imposition of the duty on directors.
>
> While we have to be guided by the practice in other countries..."

Now, I want to come to the point of the Member for Diego Martin Central—

> "While we have to be guided by the practice in other countries—foreign legislation and so forth—I want to advise the other side and this House that while we acknowledge what is the practice overseas, legislation must be made adaptable to our own local circumstances and conditions;..."

This is the point that the Chamber of Industry and Commerce is making and this is the point that former Sen. Gerald Furness-Smith is making—that we make it adaptable to our local circumstances and conditions

> "...and one of the criticisms that have been made of this Bill is that it has taken, wholesale, Canadian legislation which is not the legislation on which the current law is founded—that has been the United Kingdom legislation—it has taken the Canadian legislation, more or less, wholesale—a different perspective on company legislation—and is attempting to introduce that in Trinidad and Tobago. Very serious concerns have been made about whether,

in fact, that wholesale introduction can be implemented and whether it will achieve the objectives for which it has been designed.

If we are going to bring legislation to this House which cannot be implemented, then one asks the question: Is this just a matter of formality that we will have this legal framework on the books in order to satisfy some requirement from the multilateral financial institutions—merely have it here on the books—and will not be in a position to effectively implement it?"

Two questions arise: Why is this Bill before us? And: Why are we adopting Canadian standards? The Member for Diego Martin Central said that we are trying to harmonize legislation. I ask him: How many other countries in Caricom have adapted their companies legislation to the Canadian model? He could point only to Barbados, but of the 13 other countries, he has not been able to say whether they are going the same route with us, and if they are not, then why the hurry and haste?

Mr. Valley: Mr. Deputy Speaker, I quoted from the President of the Institute of Chartered Accountants who made the point that Guyana, Antigua and St. Vincent have passed legislation. I can also inform the Member that I understand, Jamaica is following the precedent.

4.25 p.m.

Mr. T. Sudama: Mr. Deputy Speaker, do you know what is the other rationalization they have come up with? I want to quote the Attorney General. He said:

"Government had to look at this country's regional position in terms of trade and investment and formulate a Bill suited to the regional, commercial and trade and investment interests of the country."

Our highest volume of trade is with the United States of America. Our second highest volume of trade is with Japan. Why not take excerpts from the Japanese legislation if he wants to harmonize with his trading interest, and put them into our legislation? If the issue is that by changing and reforming the law in this way we would get more investment coming into the country, I ask, whether simply by Canada updating its law, any more investment accrued to that country.

Today, China is one of the countries in which there is the largest volume of foreign investment. I wonder if China has followed the Canadian law in order to attract this volume of investment, and if that is their argument. Has Hong Kong or Korea done so? We have much trade going on with Korea and Taiwan. Why

should we then not incorporate aspects of their law into our law if we want to harmonize with our trading partners? That argument has little or no merit.

The updating of laws by the United Kingdom government has not meant—and they have not followed the Canadian pattern—that they have any less foreign investment coming into the United Kingdom or that their trade has suffered in any way.

I want to quote from the *Investment Sector Loan Report* one of the conditionalities of the loan contract between the Inter-American Development Bank and the Republic of Trinidad and Tobago—in fact, there are two loan contracts and both of them emphasize the fact that for the release of the first, second or third tranches:

> "Reforms to the legislation governing the establishment and operation of companies, which ensure consistency between said legislation and legislation governing the securities industries and which strengthen: (i) minority shareholders' rights; (ii) regulation of directors' duties; and (iii) disclosures requirements for issuers of securities, have entered into effect."

This is the reason for the haste. With all the arguments raised on this side there is reason to go back and look at the deficiencies in this Bill, come back to this House with a proper Bill which will deal with the concerns expressed and then when we have done that—which will take much less than nine months, they say they would come back in nine months with amendments—we would be in a better position to pass legislation more acceptable to all the interests concerned. Why the haste?

Our view is the haste is because they want to access another tranche of this investment sector loan in order to make merry before the local government elections. That seems to us to be the reason for the haste. The joint select committee has stated and this is the point I was making:

> "Although your Committee has dealt with the Companies Bill, 1995 to the best of its ability, there were severe limitations on the capacity of your Committee to treat with certain issues because of:
>
> (a) the highly complex and bulky nature of this Bill."

What does that imply? That they did not have the time, resources, expertise in order to treat with certain issues in this Bill.

"(b) at no time did your Committee have the benefit of the full breadth of talent that comprised it."

Mr. Deputy Speaker, this is in itself is an admission.

4.30 p.m.: *Sitting suspended*.

5.05 p.m.: *Sitting resumed.*

Mr. T. Sudama: Mr. Deputy Speaker, when we took the tea adjournment I was on the question of, why the haste to have this piece of legislation pass through the Parliament. Why the unholy haste in the teeth of such objections by interested parties? When the Chamber of Commerce uses such language—and I want to repeat it—it is not accidental. I quote from the letter from the Trinidad and Tobago Chamber of Commerce dated September 22, 1995:

"It is beyond recklessness to knowingly pass into law, an instrument which it is admitted has not received careful consideration and analysis, one in which a significant number of defects have been identified, and one which will govern the business and the economic life of the country."

This is not normal language, therefore there are deep-seated objections on the part of the Chamber of Commerce.

The Member for Diego Martin Central attempted to convince this House that all the parties concerned were in favour of this legislation, but this is not really true. The Member quoted from a symposium held on the 1993 Bill. The 1993 Bill is significantly different from the 1995 Bill

Hon. Member: How is it different?

Mr. T. Sudama: We will go into that in a short while.

What the Member reiterated was that there was everyone saying that there was a need for review and updating and so forth. We have no problems with that on this side at all. We agree that there is a need for review and updating of the laws, but we question whether there is this urgent need for the wholesale reform of the law which is contemplated, throwing the whole business community, the legal fraternity, the accounting fraternity and everyone else in a state of confusion over the provisions of this law. That has not been answered.

If the Government was convinced of everyone's support for this legislation, why did it not invite, again, all the interested groups—whether it was the Association of Certified Accounts, the Law Association and so forth when it was

going through this legislation clause by clause at the committee stage? If they did not show up that was another matter, but they were not invited.

The Government is now telling us, based on some 1994 symposium which merely gave a general approval for the need to update the law, rather than an approval for the wholesale revamping of the law—Mr. Deputy Speaker, we on this side do not buy that argument.

Another issue—as the joint select committee in its report has admitted—is that this is an extremely complex piece of legislation. I have been informed that persons involved in the drafting of this Bill when questioned about the rationale for such provisions, said they did not know. All they did was to make copies of sections and provisions wholesale from laws of other countries and put them into this legislation. We, therefore, have a situation where the Government is putting provisions into the law and it cannot tell us what are the reasons behind them. We find, very disturbing, that way of drafting legislation and having it approved in this House.

I tried to deal with the argument that because we have certain trading patterns and certain investment interests which involve countries such as Canada and so forth, we should follow their law. We are free to be influenced by legislation from any country. I think one should be able to take what is good from the legislation of any land. It is not a question of whether our trading pattern dictates this or our investment pattern dictates that.

What is important is that the laws that are framed and passed in this country ought to be clear, ought to provide certainty and minimal ambiguity or no ambiguity at all. The conventions and traditions of our own country should inform the law supported by appropriate rules and regulations. Once that is done, it does not matter where the influences come from. Because of the newness of this approach and the thorough revamping to which the companies law is being subjected, there would be much confusion and uncertainty.

What is most significant is that there would be tremendous added cost to the implementation of this legislation, which cost would fall on the companies which would eventually pass them on to the consumers. It is the whole country that would pay the added cost involved in the implementation of this uncertain piece of legislation.

There are no forms of application, no precedents for forming companies; all that would have to be procured, and would be added to the cost. With respect to the capacity of the Registrar's Office to implement the law, the Member for Diego

Martin Central, as he is accustomed to giving all sorts of off-hand assurances, gave the assurance that the Companies Registrar's Division's resources are being supplemented.

It will take an enormous amount of additional and expert resources, people with legal and accounting training in the Companies Registrar's Division to be able to deal with this new piece of legislation and all the obligations which will fall on the companies. We fully foresee that they will not be able to cope, and the consequence of that would be the dereliction of business in Trinidad and Tobago. We foresee that business activity will, in fact, suffer as a result of these problems.

There is an absence of rules and regulations to determine audit and accounting standards. Clause 152 refers to the financial disclosure, comparative financial statements, annual financial returns and so forth. This is not supported by any form of rules, any delineation of accounting and audit standards, so that the companies involved would have to find their way at great distress.

5.15 p.m.

Now clause 158 has to do with defining which companies must submit and deliver accounts in conformity with clause 153 to the Registrar of Companies. It says that any company which exceeds $4 million or the assets of which exceed $2 million, must file financial statements.

In other words, this will cover almost all the companies. In a few years' time, private and public companies will be under the obligation to file financial statements. The question is whether the Companies' Registrar can cope. Today, given the inflationary situation, a $4 million gross turnover is not a very high turnover. Even relatively small businesses now will have a $4 million gross turnover.

So the Government is asking virtually every company in Trinidad and Tobago, including private companies, to file returns. We spoke to the Trinidad and Tobago Manufacturers' Association and the vast majority of whose members are private companies and they are vehemently opposed to this provision because they feel it is not necessary and the additional cost that will be imposed upon private companies requiring them to file all these financial returns according to clause 153, is not justified.

Since these private companies are, by and large, family concerns, then it deprives them of the confidentiality that goes with private family concerns. The Trinidad and Tobago Manufacturers' Association, as I said, have spoken to us and have emphasized their objections in the strongest terms.

Here we have the Chamber of Commerce, and the Trinidad and Tobago Manufacturers' Association objecting to this Bill and the Government, in its own arrogant fashion proceeding regardless to impose this measure on an uncertain public.

Clause 159 deals with providing a certificate of solvency to the Registrar. Not only do all companies that have gross revenue in excess of $4 million or assets of more than $2 million have to file documents; they also now have to give the Registrar a certificate of solvency. This is merely a certificate signed by at least one director and by the auditor, if any, stating that on the basis of financial statements the company is solvent.

After professional auditors go through the balance sheet and they have certified those figures, why is there the need now, over and above this, to have a certificate of solvency which merely asks you to list the various assets and liabilities and to declare the company solvent? The majority of larger firms would have already had that done by a firm of professional auditors. What is the need for this certificate of solvency, and is it not too exacting on the firms having to meet all these additional obligations?

Clause 160 places an obligation on the company for an audit committee. Again that is the problem when one goes wholesale copying legislation and the rationale is not known. It is just seen in the books of another country and they want to copy it and put it on the books of Trinidad and Tobago.

The audit committee is not in the Barbadian law, it is not in the United Kingdom law; this is something new. What will it do? We should see if there is any need for it. One of the provisions says that the company could dispense with the audit committee. It says:

> "160.(1) Subject to subsection (2) a public company shall, and any other company may, have an audit committee composed of not less than three directors of the company, a majority of whom are not officers or employees of the company or any of its affiliates."

Not officers or employees, so we are talking about non-executive directors.

> "(2) A public company may apply to the Commission for an order authorizing the company to dispense with an audit committee,"

So there is permission to dispense with it.

"and the Commission may, if he is satisfied that the shareholders will not be prejudiced by such an order, permit the company to dispense with an audit committee on such reasonable conditions as he thinks fit."

One could always make up a case.

"(3) An audit committee shall review the financial statements of the company before such financial statements are approved under clause 156."

Under clause 156 they are required to provide financial statements according to clause 153, and the directors of the company shall approve the financial statements. The directors of the company have to approve these statements, anyway. You want an audit committee to give prior approval before the directors give approval but the statements would have already been certified by the auditors.

What is this audit committee going to do really, except to rubber stamp something that the auditors have already done, merely for the approval of the whole board of the company? It is reviewed for the general board of directors.

I cannot understand why they are imposing all these burdens which we say do not seem to be justified in the circumstances and to which the various associations are, in fact, objecting. So we do not know clearly what the functions of this committee are and why it is necessary to put it in.

The people who will be filing the report of this audit committee are non-executive directors and they are not experts in accounting or finance. Many of them would be people who have business experience but they function as auditors. Do not forget what audit requires. It requires a going over of accounting, and to put one's signature to it. We feel that is not necessary.

We now come to the certificate of continuance, clause 345. It states that within two years of its coming into force, each company currently practising must provide itself with a certificate of continuance.

There are a number of questions about this certificate of continuance. The question is implementability. There are 30,000 companies in Trinidad and Tobago which would qualify under the $4 million asset gross revenue rule. They have this limited period of two years to provide all this information to the Registrar of Companies and get their certificate of continuance. Firstly, the Registrar of Companies does not have the resources; secondly, to look through all these documents and satisfy oneself will take much time, and, thirdly, the Barbados experience. What they have not done here today is tell us what has been the

Barbadian experience with the law. They had to drop the clause with certificate of continuance because it could not be implemented. When you ask someone to get a certificate of continuance, you are putting that person in no man's land.

Mr. Deputy Speaker: The hon. Member's speaking time has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Mr. R. Palackdharrysingh*]

Question put and agreed to.

5.25 p.m.

Mr. T. Sudama: Mr. Deputy Speaker, we are on this issue of the certificate of continuance. Every company which comes within the purview of this law must apply for this certificate of continuance to the Registrar of Companies. But he really does not know what information he must provide. You are putting this company in a very invidious position. Clause 348 states:

> "Upon receipt of an application under this Part, the Registrar may, and, if the applicant complies with all reasonable requirements of the Registrar to have the continued company accord with the requirements of this Act, the Registrar shall issue a certificate of continuance to the former-Act company, in accordance with section 486."

Now the question is: What are reasonable requirements? How will a company applying beforehand to the Registrar know what are reasonable requirements, in the absence of some regulations and in the absence of some kind of rules? It says, "reasonable requirements." It does not only say that you comply with section 486. Do you understand the problem? You may go back to section 486 and you may comply with that section and the Registrar may, at his discretion, feel that these things have not been reasonably complied with, where are you?

This is what we say. By the way the legislation is drafted, it opens up a great area of ambiguity and discretionary control by the Registrar and we feel that this will not auger well for the pursuit of business.

We on this side are also concerned with clause 440 which has to do with preferential payments in the event of winding up of a company. There has been an amendment put forward by the committee—one of two amendments put forward—which gives priority in the event of winding up to:

> "(a) all rates, charges, taxes, assessments or impositions, whether imposed or made by the Government or by any public authority under the provisions of any Act..."

> All contributions due and payable to the National Insurance Board under the National Insurance Act, if such rates, charges, taxes … are due and payable within twelve months next before the relevant date."

That is the first charge. The second charge is:

> "(b) all wages or salary...in respect of services rendered to the company during four months next before the relevant date."

Here we come to the very sticky question of severance benefits.

The way companies now are confronted with trade liberalization, with the pressures of competition and so on, where whole sectors of the economy are put in jeopardy, we foresee many companies being forced to go into receivership and into liquidation. When they do so, all that this Bill provides for in terms of priority—after all rates and charges and impositions from the Government and the National Insurance Board and their four months of salary—is only two months' basic wages or salary as a severance benefit.

The trade union movement, in their consultation with them, feels that this is totally inadequate and that some formula should be devised whereby severance benefits, in the event of a winding up, are reasonable. They feel that this is not reasonable and that, again, is a matter which needed a lot of consultation before we came up with a formula.

It is not a question that we could just sit here in Parliament and put down a figure. It is a question where people have differing views. It is a question where the livelihood of workers is at stake; it is a question on which they feel very strongly, where it may be that a lot of these people who will be retrenched on the winding up of a company, cannot find alternative employment, and certainly not in the immediate future. Therefore, the question of their survival in the following year or two years is one of urgent consideration.

We feel that if more discussions were held as to the feasibility of putting a formula, or indeed, of a company operating a fund specifically for the purpose of severance to which the employer will contribute as well as the employee, then benefits arising under this clause would have been greatly enhanced.

That is something, as I said, that would have required much discussion and so on, in arriving at a consensus formula which could then have been put into legislation of this type. That has not been done. So that you will see that in so many areas the proposed law is deficient; it is ambiguous; it calls for much greater

clarity and it calls for much greater discussion, which would substantially enhance the position of those who have to comply with the law.

I will not go into all the details but you will recall that the President of the Chamber of Commerce did outline in a newspaper today several sections which he feels are grossly deficient; they are unclear and needed reconsideration. This is one of the reasons the Chamber has come out with such strong language with respect to the unholy haste in the passage of this Bill.

A question raised was whether there will be too much delay and complication in registering foreign companies under clauses 324 and 338. Then there is the requirement that for every contract entered into by a company, the company's seal is to be put on it. It could be that there are companies that do not have a seal. What happens then? Does that mean that they cannot enter into legal contracts if they do not have a seal?

Then there is the matter of a statement of the capital account of the companies, as we understand it, under clause 36. This will not apply to public companies. It says here in clause 36:

> Section 35 and any other provision of this Act relating to stated capital do not apply to a company -
>
> (a) that is a public company;
>
> (b) that carries on only the business of investing the consideration it receives for the shares it issues; and
>
> (c) all or substantially all of whose issued shares are redeemable upon the demand of shareholders."

5.35 p.m.

Again, the reasoning behind this is something that one needs to have looked into, justified and explained. Then, the question of loans to officers and shareholders, whether too much latitude is given under clauses 57, 58 and 59 which deals with Permitted Loans—

> "58. Notwithstanding section 57, a company may give financial assistance by means of a loan, guarantee or otherwise—
>
> (a) to any person in the ordinary course of business, if the lending of money is part of the ordinary business of the company;
>
> (b) to any person on account of expenditures incurred or to be incurred on behalf of the company;

(c) to a holding body corporate if the company is a wholly-owned subsidiary of the holding body corporate;

(d) to a subsidiary body corporate of the company; and

(e) to employees of the company or any of its affiliates…

(ii) in accordance with a plan...

(iii) to enable or assist them to improve their education..."

Could this provision be abused? Do we have anything in place to prevent an abuse of this wide discretion to grant loans to all and sundry by the company's directors?

Then, there is the question of the liability of shareholders in unlimited companies, to which clause 60 refers.

"The shareholders of a company are not, as shareholders, liable for any liabilities, act or default of the company except under section 48(5) or section 139(2)."

When one looks at section 48(5), on sees that it says—

"A creditor may apply to the Court for an order compelling a shareholder or other recipient—

(a) to pay to the company an amount equal to any liability.."

That section is not very clear as to what are the limits of liability with respect to unlimited companies with unlimited liability.

Another objection has been raised as to whether firms without a legal identity should be appointed as secretaries and auditors of companies—clause 65 imposes the obligation on persons to be professionally qualified. Are those the only people who could serve as secretaries of companies. Is this not a provision which is biased in favour of professionals as against those people who may have worked their way up in a company, knows all the rules and regulations?

These are concerns raised which ought to be addressed. We on this side are not saying that all of these concerns are valid, but if people who are intricately and intimately concerned with the operation of business have certain concerns, I would think that it is only fair that the Government listen to them, and try to dispel their fears and anxieties, by resolving the genuine problems with which they are confronted.

The Government is not doing that. Despite this very strenuous objection, the Government is not doing that, but going jack-boots style riding rough-shod to push this legislation through. We all know for what reason. [*Interruption*] Yes, but who was responsible for this? What I am arguing is that for 24 years the Government has taken the wrong approach to the implementation of this regulation and its upgrading. [*Interruption*] Twenty-four years and the Government is not doing this consistently? It is not getting the views of everybody?

If the Government feels convinced that it has proceeded in the right way in its 24-year reign, why could it not have implemented this legislation in 24 years? [*Interruption*] The PNM was the governing party for 19 of those 24 years, and all this time it has been saying that it could not implement this legislation for which it feels the urgency? It is simply because it has been proceeding in the wrong way with this legislation.

If the Government had a select committee in respect of which the times of meetings and so forth were properly advertised and interested and concerned parties were told, "Look here, we are meeting and would like to have your memorandum, and for you to appear before us" and if this committee was supported by the requisite expertise and resources, then obviously the Government could have done its work in an efficient and effective manner, and we would have had a Bill that would have been acceptable.

I am fully in agreement that one cannot devise a law which is acceptable to 100 per cent of the population. That is an impossibility, but one must devise a law that has the concurrence of the vast majority of those who would be directly or indirectly affected by it. Here one is devising a law that has the objection of the majority of the people who would have to work intricately and intimately with it, yet the Government is going ahead with it. Is the Government not buying confusion for the economic life of the country? Is the Government not inviting uncertainty and chaos in the economic life of the country with respect to the registration and compliance under this Bill and with respect to the known deficiency in the Register of Companies Division?

Today, I want to tell the business community that we are fully sensitive to their concerns. Not that we would go along with all that they have commented upon, but we are fully sensitive and that our approach to their concerns, anxieties and objections would be much different from that of the PNM Government. We would give them an opportunity to be heard. [*Interruption*] Parasitic or not. We would deal with that in other types of legislation.

I believe that when people resort to the language to which Members opposite resort in their communication with us, Members of Parliament, they feel strongly about the issue. This is my honest belief. Generally, the business community have been fully supportive of the PNM Government. They have given many financial contributions to the PNM Government, so when, as on this occasion, they are making such violent objections, there is more in the mortar than the pestle.

We would have treated with this in a different manner and we do not buy this argument of time constraint and that they have gone through the loops.

5.45 p.m.

Company law and the operation of businesses will go on. Any great influx of foreign investment really does not depend on our overnight conversion of present law to any other system of law.

I do not know if they could convince anybody that because this law needs updating—and we agree that it needs updating—it has to be done tomorrow otherwise all this investment which is supposed to come from Canada, where they have signed a double taxation treaty, would not materialize. How much investment from Canada is coming into Trinidad and Tobago?

Members opposite are seeking to give the impression that all this investment which is due from other countries will not come here unless we do this overnight so it will present them with a law saying—and the law that they are presenting to them has more confusion and ambiguity than the current law.

The Government said it is going into the ACS and, therefore, must harmonize its legislation with that of the ACS. Apart from the Caricom countries which the Member said are going to harmonize, which other countries of the ACS have laws based on the Canadian model? How do they live and operate? How do they invite foreign investment? How do they promote trade? They do not have Canadian company law on which their economic life is grounded.

This argument is so superficial—harmonizing and relating that to the time constraint. Nobody will buy that argument whether it is the Opposition, the country at large, the Chamber or all the other interested parties. We cannot on this side accept that argument.

There is the other issue that the Chamber raised: that there is need for updating. But there is experience, there is practice in the present system. The United Kingdom has updated its laws. We can look at their laws, and if there are some other views that we consider useful, we can adopt them. They have updated

their laws and there is an initial ready made guide which then will be built on the foundation of one's practice of so many years of company law. Why not go through that route?

The Government wants to go into virgin territory. When one goes into virgin territory one must understand that one does not know what one would find. That is the nature of virgin territory. We are saying that you go along the tried and trodden path and when you have to change, divert and come back to the tried and trodden path so that you would not have to make too many diversions. You would not have to go into too much uncertainty and you would end up with legislation which is far more useful, far clearer with far less ambiguity, and will service the business community and the country far better than what you are presently trying to impose on our country.

Thank you very much, Mr. Deputy Speaker.

Miss Indera Sagewan *(Caroni East):* Mr. Deputy Speaker, I rise to make a very short contribution to this debate. As a Member of the committee that was mandated to look at both the Securities Industry Bill and the Companies Bill, I have to report to the House that extensive deliberations took place on the Securities Industry Bill. I know that I speak on behalf of my party when I say that we support the work that was done by the committee and the amendments that were brought to the House with respect to the Securities Industry Bill.

The Member for Oropouche had two particular concerns. Firstly, with respect to regulations—I am so surprised that regulations were not laid together with the report because in the committee regulations were presented.

The decision was taken, given that you are moving away from a situation where the regulator is as well the exchange—this new Bill seeks to separate those two functions. There will obviously be a certain degree of displacement, for want of a better word, a time frame in which the process of regularization will take place. It is necessary to have regulations. In fact, this was one of the major problems that most critics of the Bill had.

The experts who advised the committee were of the view that the current set of regulations was sufficient to allow the commission to operate, at least for a period of two years, and thereafter the commission would have the prerogative to change the regulations.

Obviously, the environment that we are talking about is a very dynamic one, and, therefore, we would have been failing in our functions if we had attempted to

restrict the commission to a set of regulations *ad infinitum.* Therefore, we agreed, on the advice of the specialists in the field, that for this period of two years the current set of regulations would obtain and thereafter the commission would be free to change if it so needed so as to allow the industry to exist in the way it should.

I am surprised that the regulations were not brought to the House; maybe, the Member for Ortoire/Mayaro will explain why that did not happen.

The other concern was with respect to the Securities Industry Bill and to takeovers. It is my understanding from having sat on the committee that it is now the role of the commission to manage that whole issue of takeovers and, therefore, it is not that of the Central Bank any more. If that is not the case then the Member for Ortoire/Mayaro or another Member should seek to clarify because that is my understanding of it.

At the end of the day, we are very much in support of the Securities Industry Bill. It is really about the business of bringing Trinidad and Tobago up to date with respect to what is going on in the international environment. It is a Bill that is very much needed in our environment of growing business.

There was another concern that was voiced that, maybe, the Bill was overambitious insofar as it spoke of a number of exchanges and not merely one exchange.

I agree with those who advised and with the committee that, maybe, while in the short term we might have one exchange, we should legislate, looking with a futuristic perspective such that if the industry grows in the way that we would all like it to grow, then the legislation would have already been put in place to allow for a multiple number of exchanges to function all at the same time, of course, regulated by the commission.

As has been noted, Members on this side did not sign the report because we have problems with the extent of the work done on the Companies Bill.

The Member for Diego Martin Central noted that he attended all eight meetings the committee held, while Members of the Opposition did not do so. While I agree that I am guilty of not attending some of those meetings, I would like to set the record straight with respect to the Member's statement. I would not like it to be reported in the newspapers—our reporters have a way of reporting matters in their own way.

I would just like to ask the Member where he was on Tuesday, August 29 when the committee did met.

Mr. Deputy Speaker, I have the verbatim record of that meeting and the Member is recorded as absent. I could tell the Member where he was but I am sure that in good time he will recall. Just for the record, he was certainly not at the joint select committee meeting.

5.55 p.m.

Sir, initially, when the committee came together and we held our first two meetings, we attempted to find a date that would be agreeable to all the Members of the committee. It was recognized that Members of Parliament, and the consultants who were asked to advise, had other commitments and therefore it was difficult to find time when it would be agreeable to everybody. We agreed on Wednesday mornings and, to a large extent, most people were satisfied that the meetings would be held—

Mr. Valley: Mr. Deputy Speaker, I have here the verbatim notes taken at an informal meeting. No meeting was held on August 29, 1995. I remember when I got here the meeting was aborted because there was no quorum. There were a few persons [*Interruption*] There were eight meetings held and I was here for every meeting.

Miss I. Sagewan: Mr. Deputy Speaker, could the Member for Diego Martin Central say, notwithstanding the absence of a quorum, whether work was done? Could the Member also say whether the work done was not accepted at a subsequent meeting? [*Interruption*]

As I said, the decision was taken that the meetings would be held on Wednesday mornings and that met with the agreement of most Members. However, in later proceedings, because of, I assume, time constraint, the committee met on different days, sometimes on a Tuesday or on a Friday. One would appreciate that one is not always able to put off other commitments.

I am now trying to explain the rationale for our inability to support the report. It has to do with the insufficiency of the work done on the Companies Bill. As has been expounded by other Members before me, there are significant problems with the Bill as drafted.

In fact, when the committee got to the point of looking at the Companies Bill, Mrs. Judy Chang, who is involved in company harmonizing law in the Caribbean, and who was the expert from whom the committee sought to draw, while she was able to be present at most of the discussions on the Securities Industry Bill, when it came to the Companies Bill she had to leave the country for three weeks.

As a result, the committee was left without that expertise. I think that her presence would have made a significant difference in the final report. The committee continued to meet; I think about two or three meetings were held on the Companies Bill.

I was not present at the final meeting when the decision was taken for us to report. [*Interruption*] No, I was not there. I was most surprised, therefore, when a copy of the final report was made available to me for my signature. [*Interruption*] Yes, I did attend one of the meetings, but I did not attend "the" meeting. When one considers, the two Bills we had to look at—the Securities Industry Bill and the Companies Bill, in fact, the more contentious one was the Companies Bill from all the literature I read even before my selection as a Member of the joint select committee. We held eight meetings, at six of which we discussed the Securities Industry Bill and at the last two meetings we dealt with the Companies Bill. I do not think that was sufficient time in which to deal with a Bill that is as comprehensive and complex as the Companies Bill.

The Members on this side questioned why practitioners were not invited to sit before the committee to voice their opinions, I think the Member for Ortoire/Mayaro would be in a good position to answer that. It was my interpretation and understanding—maybe I am wrong, Mr. Deputy Speaker—that it was the prerogative of the Chairman to invite such experts.

Mr. Deputy Speaker, that is my short contribution. We on this side support the amendments with respect to the Securities Industry Bill, we think much work was done. The Bill is not perfect but we did extensive work on it. With respect to the Companies Bill however, very minimal work was done.

Mr. A. N. R. Robinson *(Tobago East):* Mr. Deputy Speaker, I would have preferred to wait until the next continuing day, having regard to the fact that I was not a Member of the joint select committee which sat on this very important matter. Nevertheless, since I was called upon to speak, I shall make use of the opportunity to make the very short remarks which I had intended to make as the nucleus of my contribution.

I have no difficulty whatever in departing from traditional jurisprudential norms and updating legislation in the context of revolutionary requirements. I remember much of this discussion took place around the time of the achievement of Independence, when we had to restructure the whole economic sector to meet the requirements of a developing independent country.

It meant dealing with matters such as the taxation system, fiscal reform, tariff reform, reform of direct taxations, the income tax regime, reform of the banking system, establishment of the Central Bank, reform of the insurance system, and later on seeking to do something about the business sector. At that time, the business sector was dominated by family firms and the companies' organization was of minimal importance in the context of that kind of structure.

We had to introduce the separation of the corporation from the individual and that is the system we are following now, where we have separated the corporation from the individual, which did not exist before, and introduced the withholding tax. That is the reason for the negotiation of double taxation treaties. We had to negotiate double treaties with countries such as Norway, Sweden, the United States of America, the United Kingdom and so forth. On that basis, we have been able to acquire much money through withholding tax on distributions abroad.

The purpose of the double taxation treaty is not so much to facilitate foreign investments; it is more to acquire for one's treasury, money which would normally go to the foreign treasury, so that one would add to one's revenue. In that process, one avoids the company from being taxed twice. Prior to that, the company was not taxed at all, once it was taxed in its own country. We wanted to introduce the tax regime over these distributions in Trinidad and Tobago so as to withhold some of that money which was going to the foreign treasury.

We had much difficulty with countries such as the United States; I remember that, eventually, curiously enough, the only reason we were able to arrive at an agreement with the United States was that we first arrived at an agreement with Texaco—so much interference these private corporations exercise in a country like the United States.

6.05 p.m.

So the point I am making is that the whole programme of reform started with independence and we knew very well—I want to emphasize this—what we had to do as an independent country in order to make the business sector more efficient, and more capable in the delivery of goods and services, not only to the domestic market, but also the foreign markets as well if we were to improve and increase the services and goods available to the population and so improve the standard of living.

The whole question of foreign competition—competition abroad, a competitive economy—is nothing new; it is something we knew we had to achieve, and the introduction of protective measures was intended to be a very

short-term measure in order to assist some of the local industries and entrepreneurs who were very few in those days and who did not have the skills to compete with the foreigners to start businesses and to acquire some experience.

We are well aware that after the passage of time, it was very necessary that they became competitive both in the domestic economy and the foreign economy. We also knew that we had to search for markets and that is why Caricom and so forth—and now the whole process has mushroomed a great deal more.

We also knew that in the process of expanding the business sector and making it more competitive and more efficient, one had to protect not only the domestic and foreign investors, but also the consumer, and the local person going into business had to be facilitated, either participating in the form of share participation or being an entrepreneur or investor through financial participation in some way or other. This whole process of reform of the economic sector has been a continuing one.

The question of the updating of company law, which is based on the 1929 British model arose even in those days as a result of which it was not only Prof. Dr. Pennington who came; we had Prof. Greene and Prof. Gower from the London University to assist and engage in consultations with our local people to update this legislation. This matter has been going on for something like 30 years, not 20 years. It is about 30 years the whole question of the updating of company legislation and the introduction of securities industry control legislation has been in process.

I agree that it is time something definitive should be done. What I am concerned about is that after the joint select committee has sat, there is so little time to consider the recommendations of the joint select committee and, indeed, the Bill as a whole. One cannot look at those amendments in isolation; one has to look at them in the context of how they fit into the scheme of the Bill, how they operate in terms of amendments, relationship to other sections of the Bill and so forth. It is a highly complex exercise and we are dealing here with something like 528 clauses.

I do not necessarily support the view that because we have had legislation based on the British model we should continue with the British model, though, indeed, there is a tremendous corpus of learning based upon the British model—concepts, formulae and so forth. I can understand the reluctance on the part of the technicians to get away from that corpus of learning and enter areas where they have to acquire new knowledge and quite often, with a great deal of speed.

This is an age in which we are talking about being competitive in a global economy in a very highly organized and technological adventure or area of activity; we therefore have to learn to operate very speedily. I see we have introduced the internet now; I am sure much information will be available through the internet where one can source material from professionals abroad and, if it is sufficiently developed, there is an enormous amount of information which will be available in a short space of time.

Professional people would know that they can access libraries now, even without the internet, quite easily in different parts of the world. This is the area to which we have to introduce our youths as quickly as possible if we are talking in terms of being competitive in terms of the global economy.

One cannot ignore the fact that the whole society has been based on the background of British traditions and particularly the business sector. One does not move recklessly or rashly into new areas without taking into account, as much as one can, the interests involved. What I am particularly concerned about is the short space of time between the report of the joint select committee and consideration here in Parliament and I hope that the matter will not be rushed through this evening, but that some time be left over the weekend for further consultations.

Some of these matters can be dealt with—I think the Member for Oropouche quite rightly and wisely raised some very specific matters which need to be attended to as the very Members of the joint select committee made, to me, this rather unsettling comment. And I refer to page 3 of the report of the joint select committee, paragraph 7.2 which says:

> "Although your committee has dealt with the Companies Bill, 1995 to the best of its ability, there were severe limitations...

I want Members to note those words—

> “on the capacity of your Committee to treat with certain issues because of:
>
> (a) the highly complex and bulky nature of this Bill; and
>
> (b) at no time did your Committee have the benefit of the full breadth of talent that comprised it."

Those are very, very serious comments. I think any professional person ought to take those comments, coming from a committee of this nature, very seriously indeed, and it therefore, warrants this Parliament’s taking some more time to go

into some of these areas with much more clarity in order to ensure as far as possible that what comes out of the exercise appears to take into account the very serious representations made particularly from the business community.

I can see the point made by the Attorney General about the difference in the conceptual approach, but the very Bill itself has differences in conceptual approach. It retains some of the features of the British jurisprudential system and it incorporates much of the Canadian system.

We also need to take into account—and I am not sure to what extent, even though this has been referred to—the membership now of the Association of Caribbean States which goes beyond the question of the harmonization of legislation in Caricom, and whether we should not be looking more closely at the jurisprudential norms and patterns which exist in a wider area and seek to arrive at legislation which will be more readily comprehensible to a wider jurisdiction.

6.15 p.m.

I see some of our lawyers going to Cuba, for example—and I think, quite rightly—in order to study the system there. While I am sure that much of that system is not going to last forever, the point is, the people are reaching out. I think we need to go to Venezuela, to Central America and countries such as those. I think that the country is, generally, getting to recognize the need to be more acquainted, not only with the Spanish language, but also with Spanish concepts of jurisprudence and legal organization.

So what we are engaged in here is a very fundamental and wide-ranging exercise. Much work has, indeed, been done. Many competent professionals have been engaged in the process already. Consequently, there is all the more reason why we should not allow the value of that work to be diminished by rushing too much at this late stage, when a little more time, a little more consideration, a little more thought, a little more attempt to reconcile the differences that exist in terms of the particularities of the legislation as mentioned by the Member for Oropouche—when we can do these things, we could arrive at something which is more acceptable to the population at large, and in particular, I would think, to the commercial sector.

This is the nucleus of the contribution I intended to make. I do not think that I would want to go into any detail because I have not been able to give the matter that degree of intense study that it really deserves. I was hoping that after the joint select committee reported, we would have had a specific period, adequate, to enable study of the legislation as a whole. If it must go through because of the

Government's programme which requires that certain commitments to the IDB be met, then I suppose everybody should make an effort to assist. Even if Parliament is prorogued, I do not see why the legislation could not be brought back, except, of course, there is a general election pending, as the Leader of the Opposition so confidently predicts. But then I know sometimes he is in close consultation with the Prime Minister, so I cannot dismiss such predictions lightly.

Mr. Manning: Mr. Deputy Speaker, it was once said that the Leader of the Opposition is in close consultation with all Prime Ministers.

Mr. A. N. R. Robinson: Well I think the present Prime Minister admits the consultation. so that we may all take note and take very seriously the prediction of the Leader of the Opposition.

But I do think that the matter of the constraints attendant on the need to prorogue Parliament should not stand in the way of a more thorough study of this legislation subsequent to the report of the joint select committee. If it is a financial constraint, then that is more credible, but if it is prorogation of Parliament, legislation can be brought immediately after. I do not expect that prorogation would be more than two weeks, so legislation can come back.

Of course, there is a budget. But I am sure the Leader of the Opposition would know that the budget would not be coming before the middle of November at the earliest. So I would strongly suggest that time be permitted for further study of this legislation and I am sure that everybody would be much more satisfied and that a better result would be achieved.

Thank you very much, Mr. Deputy Speaker.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Deputy Speaker, I want to thank Members who have contributed to this debate. There were some concerns which I thought I had dealt with in my introduction of this Motion, but perhaps I should touch on those concerns once more.

The primary concern appeared to be the so-called objections of certain sectors of the business community in particular, to this legislation. I had indicated that we were at the crossroads, as it were. There was a view expressed, by the Chamber of Commerce, certainly, and that is not a recent view; it is a view which was expressed from very early. In fact, I have a copy of the proceedings of the Company Law Reform Seminar of 1989 which preceded even the 1991 legislation. The legislation had not yet been drafted. This seminar was held after

the working committee of 1989 was appointed in order to elicit the views of all the major actors in this area.

From even at that time, there was a concern expressed by some members of the business community with respect to the road we should take. It is significant, however, to note that it was not until 1993 that those who expressed a view that the UK model should be followed, began to seriously look at the legislation and come up with comments on it.

The point, quite simply, is, that from 1989 we have had the benefit of debate as to which model should be adopted. That debate will never be closed; it will always continue. But there is a point when the experts who deliberated on this matter have to take a decision, and a decision was taken as early as 1991 that we should not follow the UK model but that we should follow the Canadian/Barbados model.

I want to give some idea of the way this debate proceeded. This is a record of the 1989 Law Reform Seminar. At the end of the session there was a question and answer period and there were certain comments made by persons whom I consider to be expert in this field, not only from their position as legal practitioners, but also from their involvement in business.

Sir Fred Phillips, in response to a concern raised by David Collens, who was even then at the forefront of the UK model, had this to say:

> "I appreciate that points made by David Collens, in fact those were the same sort of reservations I had before we entered into this venture."

This venture of new legislation. It goes on:

> "But once we entered into it, I came around to feel just as Brynmor said, namely that we live in a world where opinions, decisions of Caribbean Courts, believe it or not, are being cited and accepted in the Supreme Court of Canada. We live in a shrinking world, a world, as Brynmor says, that in the year 1992, Europe becomes..."

There seems to be a typographical error in this part of it. It should be:

> "Europe becomes integrated."

And not: "...becomes quite an integration", as is noted here.

6.25 p.m.

The point he was making is that there was Canadian material available to the Caricom countries which were pursuing the Canadian model and that one should not be afraid to take the step moving forward on that particular road.

Again, we have a response from Mr. Michael de la Bastide, now Chief Justice of Trinidad and Tobago, in dealing with the same point. He said:

> "Generally speaking, I don't agree with David Collens, not to say that I never agree with him, but with regard to his general theses here this afternoon, that is, we better stay with the English model. Because after all, we know Lord Denning and others and those are good boys....
>
> Well the amount of respect we have for these English judges really is mind boggling, we will not let go their hands. We have to have the security of the Privy Council...The point has already been made, there are very good judges in Canada. There are lots of Provinces and each has its State Courts, so in terms of the volume of precedents in case law, textbook writers etc I don't think we need worry..."

The fundamental issue between certain segments of the business community and those who are moving towards the harmonization of the Caricom laws, is always the question of the UK model versus the Canadian model. That argument continued into 1993 and, in fact, has continued into 1995. It is a situation where there are hard positions one way as opposed to hard positions the other way. That debate, as I said, could go on forever and ever.

As a responsible Government, we have to make a decision based on the best information available to us and the experts' advice—and I have cited the views of two experts in this particular area. We have decided along the route of the Canadian model, and nothing ventured, nothing gained. That is the course we have decided upon. There is no further consultation that could result in a reconciliation of views where one is at the crossroads one to the other.

Mr. Deputy Speaker, whilst—as I said in introducing the Bill—we are always sympathetic and sensitive to the views of others, there is a point when one has to analyze all the deliberations, and come to a determination, one way or the other.

I think it was the Member for Oropouche who raised the question as to whether there was any available information on the Barbados experience. Again, in the course of these deliberations, which were fairly exhaustive, the 1989

seminar, for example, among other things, dealt with the Barbados experience at a specific session.

There were views of legal practitioners from Barbados—the accountants were from Barbados—during the panel discussions. At this time, the Barbados legislation would only have been two years in being. In fact, it was passed in 1984, but was not implemented until 1985 or 1986. There was just about two or three years between the actual implementation and this seminar of 1989.

On page 130 of the *Proceedings of Company Law Reform Seminar*, dated July 7 and 8, 1989, Dr. Trevor Carmichael, who contributed to that debate, had this to say, based on the then limited experience of the Barbados practitioners:

> "So that I only say this to say that from Barbados' perspective, the three years that we have engaged ourselves in this new legislation has not taken us away from the mainstream, has not put us in a position with a lack of guidance, has not caused us to reinvent the wheel. What it has done is that it has sought, and has achieved and helped us to achieve, modernisation, using many of the harmonization techniques."

Even though it was still in the early days, the Barbados practitioners who have been dealing with the legislation were able to comment then favourably on the experience.

At the 1993 seminar which was held in Trinidad—again an entire session was devoted to the Barbados experience—there was a panel discussion which followed that session and, perhaps, it might be instructive to Members to have a view of the further experience gained after another four years. Bernard St. John, who is a well-known Caribbean person—a Queen's Counsel of Barbados—presented a report on the Barbados experience. He had this to say by way of introduction at page 87 of that report:

> "We have found that although - as you are finding - there was an initial resistance to the radical change that took place, now that the Bill has been in operation for a ten-year period the people have become convinced that no great harm was done and, indeed, many beneficial effects have occurred as a result of the introduction of the Bill."

And, he says optimistically—

> "I have absolutely no doubt in my mind that your experience will be the same."

Again, at page 91 he says:

"It is also useful to share our experience with respect to the transition from the old regimen to the new regime. We passed the Bill in 1982. After two years, in 1984, we decided that we would proclaim the Bill on 1st January, 1985. So that there was plenty of time for everyone to study the Bill and to prepare themselves for the change."

The Member for Oropouche, he did remark on the difficulty that was experienced in Barbados in relation to the continuation certificates. He noted that the Bill, which was the subject of the seminar in Trinidad in 1993, had gone a step further. Whilst they have had the difficulty of having to extend the period for the continuation exercise, we had put a provision in our legislation which was, in fact, based on the Barbados experience with that continuation provision.

We have been able to gain not only from the operation of the Canadian model for 20 years, not only from the seminars over the period 1989 to 1994/1995, but we have also been able to gain from the experience of the practitioners in Barbados, their experience over the period of the last 10 years in a very meaningful way to the extent that we have been able to incorporate provisions in this legislation which met with some of the difficulties that they experienced.

We are not reinventing the wheel; we have not brought this legislation in wholesale as has been suggested; we have looked at the working experience and we are well aware that we still have to continue to monitor the experience, because much of the interaction between the administration of the legislation depends on the training at the Companies Registry and the degree of computerization.

May I say for the benefit of Members that all of that has happened and is continuing: training for the new legislation; the question of computerizing of the Companies Registry and so forth. All those matters are being attended to so that at the point when the Bills become law we would be ready and equipped to deal with the change.

6.35 p.m.

The other general concern which I noted was the continuing criticism on the completeness of the committee's work on the Companies Bill.

The Member for Caroni East, who is not now here, spent some time giving her own personal explanation as to why she was unable to participate fully in the committee’s work, as no doubt she would have liked to.

I think the comparison was made that some five of the eight sessions were spent on the securities legislation whilst only three sessions were spent on the companies legislation.

I was a Member of the committee both in 1994 and 1995, and it became clear to us on those two occasions, that the Bill had gone through a distillation process such that we had reached the point by 1993 where, after all the discussions and the deliberation, the Bill was refined to the extent that the committee would not require the time that we thought, initially, if one simply looked at the size of the Bill. In fact, there is a major section of the Bill which deals with winding up of companies which is essentially a repeat of the existing provisions.

At first glance one may feel that the task was all that formidable, and I suppose some Members might have been put off by the sheer weight of the document itself, but the winding up provisions at Part VI, comprise probably one-third of the legislation itself and virtually incorporates the present provisions relating to winding up and dissolution which we have found to be effective except for minor changes which were made.

It is true that some more time was spent on the Securities Industry Bill which was a newer set of legislation and, if I may say so, a more complex piece of legislation even though it was slightly smaller. This is why one would find that in the report itself the amendments to the securities legislation far exceed the amendments which the Committee thought necessary to introduce with respect to the companies legislation.

It is inaccurate to say that insufficient time was spent on the companies legislation. In fact, much more time was spent over the years on getting the companies legislation right, than has been spent on the securities legislation. Much more opportunity has been given to professional organizations and parliamentarians to review the Companies Bill than had been given with respect to the securities legislation.

I am glad that the committee was able to devote more time and had the benefit of expertise during committee sessions so that those who operate the present securities regime were able to aid the committee significantly in going through clause by clause that particular piece of legislation.

I think the Member for Tobago East sought to limit the committee by saying one should be given more time between the report of the committee, and the final debate on the report. Again, whilst I sympathize with that view, one has to appreciate that the business of Parliament has to continue, and having regard to

the fact that Members had the legislation for a considerable period, it was merely a question of marrying the report of the committee.

Appendix II, as you would appreciate, does not make many changes to the companies legislation. The more significant changes, as I pointed out, were to the securities legislation. In fact, there is just over a page of amendments with respect to the companies legislation as compared to some 23 pages of amendments to the securities legislation. I did not see that Members here today would have been at any significant disadvantage. This report was laid more than a week ago, on September 11, and the amendments as proposed by the committee are not very many.

All in all, I thank those who have contributed to the work of the committee. Again, I must refer to the lengthy memorandum submitted by the firm of FitzWilliam, Stone and Company on specific provisions of the legislation. It aided the committee considerably in looking at the legislation.

In fact, if one looks at the comments of the Chamber of Commerce, which today in a release listed 19 specific provisions, and compares them with the Furness-Smith documents, one would see basically the arguments raised by the Chamber with respect to these 19 provisions were treated with by the committee and in a preliminary way by the professional staff at the Ministry of Finance.

Mr. Robinson: May I ask the Attorney General whether this document was circulated to Members of Parliament other than Members of the joint select committee?

Hon. K. Sobion: I am not in a position to say what documents were circulated to Members of Parliament. As a Member of Parliament myself, and quite apart from being a Member of the committee, I did receive the report of the committee. I believe that the documents of the committee or of any committee are available from the Parliament at any time.

Mr. Deputy Speaker, even coming as late as they were, the comments of the Chamber on specific provisions, these matters were already contained in the document which was before the committee and formed part of the deliberations of the committee during the sitting on these matters. I think we have done well as a Parliament and the committee which considered this matter in getting this Bill to the point where it has reached.

Mr. Deputy Speaker, I, beg to move.

Question put and agreed to.

Report adopted.

COMPANIES BILL

Question put and agreed to, That the Companies Bill be now read the third time.

Bill accordingly read the third time and passed.

SECURITIES INDUSTRY BILL

Question put and agreed to, That the Securities Industry Bill be now read the third time.

Bill accordingly read the third time and passed.

6.45 p.m.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Deputy Speaker, in moving the adjournment this evening, I take this opportunity to thank the Members of this House. In fact, I think today is a record day for the Parliament of Trinidad and Tobago.

As the Member for Tobago East mentioned, during the period of the 1960s there was this burst of financial legislation and I really ought to congratulate the Member on that. That was a period just after independence when we had to have the Central Bank and quite a bit of financial legislation. I know that is when this whole issue started and now, some 30 years later, we are able to update our legislation. I think this a move of which we should be justly proud.

Mr. Deputy Speaker, I beg to move that this House do now adjourn to Wednesday, September 27, 1995 at 1.30 p.m.

Also in moving the adjournment I would like to inform hon. Members that the Government would be following the Order Paper on Wednesday. The Government will be doing the Motion on the Order Paper with respect to Privileges and Immunities (Diplomatic, Consular and International Organisations) Act, Chap. 17:01. We will also be doing Bills Nos. 2 and 3 on today's Order Paper—a Bill to confer certain privileges and immunities on the Commonwealth Development Corporation and a Bill to amend the Institute of Marine Affairs Act, Chap. 30:01.

Mr. Deputy Speaker, I beg to move.

Mr. Deputy Speaker: Hon. Members, before I put the question, we have two Motions, one from the Member for Princes Town and one from the Member for Caroni Central. I shall take the Member for Princes Town first.

Road Improvement Fund Reports (Non-presentation of)

Mr. Mohammed Haniff *(Princes Town):* Mr. Deputy Speaker, may I for the record remind this honourable House that this Motion on the non-presentation of the Second and Third Biannual reports to Parliament on the Road Improvement Fund, and its related effects was originally tabled on August 3, 1995; it however lapsed and came back again.

The non-presentation of these reports is having serious effects on members of the public and Members of this House in following the programme. When this Road Improvement Fund was introduced in this House, the hon. Minister of Works and Transport indicated that these reports would be laid in the Parliament on a six-month basis. That being said, we looked for these reports and we all know what happened. One report came approximately four months later than it should have come and there were all sorts of mistakes, as was stated by the Minister; we recognized that things were not right with that report. I wish to indicate that these reports are of major concern. For us to be in a position to follow what is happening with the Road improvement Fund, we depend on these reports. We have not been getting them and we do not know what the reasons are. We do not know when we shall get them or if we shall get them. Now when that fund was introduced, there was a listing and there was the understanding that one would always be provided. By that listing we were in a position to follow what was happening with the expenditures incurred under that fund, but, as it is, we cannot follow.

When the hon. Minister answered certain questions recently, he made mention of patching, cleaning and clearing drains and so forth and associated that activity with the expenditures under the Road Improvement Fund. We do not know for sure what is happening, what has happened or what is likely to happen. The fact is that this Parliament agreed that every six months we would get a report, are we now to expect that these reports would come as long as nine to 12 months after the end of each six-month period? If that is the case, then what we were told at the beginning about having a report every six months is not materializing.

Further to that, I daresay that the issue of reports, the issue of accounting for expenditures undertaken in this country has been and continues to be a major

issue. In yesterday's *Guardian* I saw where major expenditures are likely to be undertaken. I refer to that in the context of what sort of information would be brought to this Parliament prior to those expenditures. If, and when, those expenditures are undertaken, what sort of report would be made to this House? It is in that context that I, point out that it is crucial for us to get those reports so that we would know what is happening.

On my examination of the works to be carried out, I saw that nothing is happening at this time especially in the constituency of Princes Town and surrounding areas. That is why the report is so crucial. Mr. Deputy Speaker, can you imagine, in a constituency where the roads are terrible—and I am being bombarded with reports and questions from members of the public—we cannot say for sure whether the Road Improvement Fund is functioning at this time?

I raise this issue here today in all honesty, trying to point out the importance of reports generally and these reports concerning the expenditure of the Road Improvement Fund, especially in a situation where it was expected that after every six months we would be presented with a report.

We all know that there have been reports and statements of corruption and if we are to get rid of that situation, the best thing they can do is to present those reports, have them debated so that the nation would be in a position to better understand and appreciate what is taking place, thereby, removing all the suspicion that is usually associated with reporting on financial expenditures.

That is my motive for raising this Motion. I would be grateful it if the Minister concerned could tell us the problems preventing him from bringing those reports, whether we will get them, when we will get them and whether we are expected to wait as long as nine to 12 months before they are laid in this Parliament.

I await the response of the hon. Minister of Works and Transport and Minister of Local Government.

6.55 p.m.

The Minister of Works and Transport and Minister of Local Government (Hon. Colm Imbert): Mr. Deputy Speaker, I responded to a question from the Member for Siparia not too long ago, I think it would be a little under two weeks; it was a Monday, I believe. The question asked the reason for the non-appearance of the second and third Road Improvement Fund Reports, when they would be laid and so forth.

At that time I indicated the two reports had been acquired and that they would be laid in Parliament within two weeks, I should have thought. I also indicated at that time why there had been a delay. We thought it necessary to thoroughly check the information to minimize the possibility of errors.

There were errors in the First Road Improvement Fund Report, which generated much discussion and controversy on the other side and we thought it best, to have a delay while we checked the information thoroughly. This required the officers of the Head Office of the Ministry of Works making visits to the various district offices to do spot checks and so forth in the field to verify that the information provided by the districts was accurate.

In compiling the information, we take a number of reports from the various districts. There are several districts in Trinidad. We have St. George East, St. Andrew/St. David, Nariva, Caroni, Victoria West, Victoria East, St. Patrick and so forth, and since in the first report we had accepted certain information from some of the districts as being totally accurate and later discovered that there were errors in respect of one or two of the roads, we thought on this occasion we would not simply accept the information from the districts but we would go out and do spot checks, and this has delayed the presentation of the reports.

In my view, it is better to do proper checking and then lay a report in which one would have some measure of confidence and minimize the controversy such as erupted with the last report. I hope; that has satisfied the hon. Member.

I have the two reports here. We will be doing final checks over the weekend to make sure the arithmetic is correct, etc; they will go before the Cabinet next week and, as Cabinet approves them, they will be laid in Parliament. I can see no justifiable—this is a motion on the adjournment, not a debate—reason why these two reports cannot be laid in the Parliament within the next week or so.

To deal with some of the concerns which the Member raised on examination of the report. I had noted that there is an even geographical spread of work done and the Members will see this for themselves when the information is laid. When I glance through the documents I see that a number of roads throughout the country, in virtually every corner of the country, have been repaired. Every district has benefited from the Road Improvement Fund. The December 1994 and the June 1995 reports are similar in terms of the coverage given.

When we launched the Road Improvement Fund, one year and nine months ago, we made the point that because of declining revenues over the period 1982 to 1992, there had been a decrease in the funding available for road maintenance

and, as a result, the road system had deteriorated; there had been inadequate maintenance, and our consultants had indicated to us that there was a seven-year backlog of road repairs in Trinidad and Tobago.

We would have to spend in excess of $50 million a year for seven years at least, to bring all the main roads of the country needing repairs up to an acceptable standard—and therein lies the crux of the problem. If we are going to take seven years to clear the backlog of roads, there are going to be some roads which cannot receive full attention—I want Members to listen carefully to what I am saying—that is, complete reconstruction or whatever, until year seven.

What we are trying to do is to spread the work as best we can so that all parts of the country receive some attention within the first two to three years of the road programme. But there will be some roads requiring major work which cannot be attended to until year seven. We have scientific criteria that we use to prioritize roads.

Regrettably, we cannot fix every road in the country at the same time. I know that there are many roads which are not in a satisfactory condition—they require repairs—but, unfortunately, if we are to repair every single road in the country in one year it would require an expenditure of $350 million. And we just do not have that kind of money.

We have $50 million a year; it is going to take us seven years, and during that period, we will try as best we can to spread the work as equitably as possible to provide some measure of relief to every part of the country. But there are going to be roads that will not be properly repaired for some years to come. I hope Members will appreciate that. I have asked for a list of roads in the Princes Town area, I have looked at it and I see that some significant work was in fact done in the area on a number of roads during the period 1994/1995.

I do not want the Member for Princes Town to feel that his area is unique or to feel that we are discriminating against him. It is not so at all. I agree that there are many roads in that area which require attention, as there are in Arouca South, as there are in Toco/Manzanilla, as there are especially in Ortoire/Mayaro: Also Barataria, Tabaquite, Nariva, Naparima, Oropouche, Chaguanas, Fyzabad, Siparia and so forth.

We do not have $350 million per year; we have only $50 million so Members would just have to accept that Rome was not built in a day, even the earth took seven days; I shall take seven years to bring all roads up to the required standard.

Mr. Haniff: Mr. Deputy Speaker, would the Minister kindly tell us whether work has been done on roads that are not listed as priority on the first listing? If so, does he not then agree that it makes it very difficult, if not impossible, for us to follow what is happening?

7.05 p.m.

Hon. Colm Imbert: Mr. Deputy Speaker, the situation is a dynamic one. It is not sterile—

Mr. Eckstein: Static.

Hon. C. Imbert: Sterile. On many occasions we get submissions from local government corporations, from UNC members in the local government system who are not in agreement with the selection of the Members of Parliament. This happens to me all the time when I meet with mayors and chairmen of the Opposition-controlled corporations. They are not in agreement with the roads recommended by Members of Parliament of the UNC. We have to reconcile all this.

There are emergencies: there are landslides; you have bridges collapsing; you have natural disasters, and so on. So that the situation is dynamic; it is living. That is what I meant when I said it was not sterile, Member for Arouca South. It is alive. It is not sterile. Therefore, one must make changes. We will try as best as we can to stick to which original list that we laid in the Parliament, but the list of roads that we have repaired is way beyond that list now. That list has a small number of roads and the number of roads we have attended to is perhaps four and five times as many as the roads on that list.

I give the Member for Princes Town my assurance. We will try as best we can to repair all the roads indicated in that list that was first laid in Parliament. I understand that is his concern.

Dilapidated Condition of Schools

Mr. Raymond Palackdharrysingh *(Caroni Central)***:** Mr. Deputy Speaker, the matter that I wish to discuss this evening is the dilapidated condition of the Rio Claro Junior Secondary School, among others, and the attendant hardships and inconveniences caused.

If the Minister would not contend that the Rio Claro Junior Secondary School is indeed dilapidated, with all the bad infrastructure and the hardships being experienced by students and parents, resulting in non-attendance at classes and

travelling inconveniences, I would shorten my presentation by just asking what I consider to be some of the pertinent questions that need to be addressed.

I would like to find out from the Minister of Education whether or not the Rio Claro Junior Secondary School is indeed a school that was earmarked for some sort of renovation or improvement, and why those works did not take place over the August vacation.

Secondly, I want to find out if there is a system for conflict resolution. Very often when we have problems in the school, we find a lot of protest taking place. In this particular case we have had feedbacks and reports of the very scant treatment meted out to the parents of students of this school. Therefore, what I would like to find out is whether the Ministry of Education has looked at the sort of responses necessary to reduce the level of conflicts which arise from time to time in the school system.

Thirdly, is there not an element within the school system that would say that the school should be inherently regenerative? That is to say, is there not a component in the education system that could lend some measure of assistance to the maintenance of schools? For example, there are the apprenticeship system and other educational systems, and if the resources are used under some sort of supervision, this can lead to the maintenance of schools in some very rudimentary form that might be acceptable.

I would like to know whether or not there is a sort of inventory that would indicate the useful life of the schools in terms of buildings that are not really worthy of repair. What sort of assessment is being done to make a determination either to renovate or to rebuild? In the case of the Rio Claro Junior Secondary School, I am told that there are students coming from Biche at one end, and at the other end, from Tableland, Robert Village, and so on. I would like to know whether it is not time also to think of decentralizing these institutions because of the number of other hardships, like transport and so forth.

We read in one of the newspapers today that many of the teachers who belong to some sort of trade union have more or less indicated—I cannot say they have taken a decision, but there is indication—that they cannot return to buildings that cannot be declared safe. I would like to know also whether the deadline would be met for making that building safe and secure.

I want to mention briefly that we have some sort of protest taking place in respect of the Pleasantville Senior Comprehensive School and the Senior

Comprehensive School in San Fernando. Because of an asbestos problem the latter is not yet reopened.

I am simply trying to get a response in relation to the issues that I have raised and hope that we can be given some sort of assurance that even if promises were made, they are likely to be kept.

Thank you very much, Mr. Deputy Speaker.

The Minister of Education (Hon. Augustus Ramrekersingh): Mr. Deputy Speaker, let me deal, first of all, with the Rio Claro Junior Secondary School. This School was not listed for any major work this year, but, in fact, for 1996 because of its condition. It has become clear to us that any repairs done to that school would be temporary. The cost of bringing the entire school back to an acceptable condition is prohibitive. In fact, I should put on the record that the school was built in the 1970s and for many years now there has been land slippage. Indeed, we have that problem in many parts of South Trinidad and some parts of Central Trinidad.

The problem at Rio Claro in the short term has been resolved. The contractors, NIPDEC, have given us every assurance that they would keep the deadlines, but there remains the longer-term solution. It is being studied. One proposal that has surfaced and is receiving serious consideration is, instead of rebuilding—because that is what we may have to do ultimately—the Junior Secondary School, we extend the facilities at the Senior Comprehensive School and have one school, because there is no problem of land slippage at the Senior Comprehensive School.

Pleasantville, has basically a problem like Rio Claro. That school was opened in 1976/77, and from the early 1980s, serious land slippage took place and foundations were threatened. Last year, for example, Block C was completely redone—foundation. It was out of use for over 10 years.

This year we are doing Block E where the foundations have been undermined for 10 to 15 years. We never expected to complete it in time for September 3. It is a piling operation and doing over of a complete floor. However, we made alternative arrangements for the staff and students. Because of a conflict between the contractor and the sub-contractor, the work did not reach where we had expected it to reach, but the alternative arrangements are more or less in place.

7.15 p.m.

San Fernando Secondary: A tremendous amount of work was done on several buildings, 80 per cent was handled, which included changing the roof. There were

some concerns as to whether two buildings were usable. All the others were done. Those two buildings were unoccupied. We have erred on the side of caution, and within one week everything should be back to normal.

In concluding, I want to put this in context. This Government inherited a tremendous backlog in relation to school repairs. In 1993, in just the vacation period, 93 primary schools were done at a cost of $10 million; in 1994, just over 200 primary and a few secondary schools were done at a cost of $21 million; and in 1995, just over140 primary and secondary schools at a cost of $20 million. There has not been such sustained attempts at refurbishment and repairs for a long time.

There is a backlog in terms of the primary schools. I think by the end of this year we would be almost ahead of the game. We would have to do much more on the secondary schools in 1996 because there were some schools built in the early 1960s and in the late 1970s which really have not been attended to for a long time.

Having more or less come to terms with the primary schools, we would do more of the secondary schools in 1996. In fact, during this vacation we did work on 33 secondary schools.

Conflict resolution: We always use dialogue, but as one would understand, sometimes in organizations there are factions. The official PTA might be quite happy with everything, but there may be an ad hoc group that just gets out of hand.

In answer to the last question about data, yes, we keep a record of the state of schools. We have regular reports and a database is being prepared for a new approach in 1996. That new approach has only been possible because of what we have done in the last three years where, firstly, we would be decentralizing the maintenance of schools and, secondly, moving to preventative maintenance rather than maintenance after the fact.

Thank you very much Mr. Deputy Speaker.

Mr. Deputy Speaker: Hon. Members, before adjourning, may I take this opportunity to wish all Members, staff and, indeed, members of the protective service, a peaceful and enjoyable Republic Day holiday.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 7.20 p.m.