

*Leave of Absence*

*Friday, December 6, 1996*

**HOUSE OF REPRESENTATIVES**

*Friday, December 6, 1996*

The House met at 1.30 p.m.

**PRAYERS**

[MR. SPEAKER *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. Speaker:** Hon. Members, I wish to advise that I have granted leave to the Member for Arouca South (Mrs. Camille Robinson-Regis) and the Member for Laventille West (Mrs. Eulalie James) who have both asked to be excused from today's sitting.

**SESSIONAL SELECT COMMITTEES**

**Mr. Speaker:** Hon. Members, in keeping with the Standing Orders that one should name the sessional select committees as soon as possible after the first sitting of the new session, I advise that the intention is to do that today. The names are not quite ready and this will be done a little later in the sitting.

**PAPER LAID**

Report of the Auditor General on the accounts of the Sangre Grande Regional Corporation for the year ended December 31, 1992. [*The Attorney General (Hon. R. L. Maharaj)*]

*(To be referred to the Public Accounts Committee)*

**TOBAGO HOUSE OF ASSEMBLY BILL**

**Senate Amendments**

**The Minister Extraordinaire and Minister of Tobago Affairs (Hon. A.N.R. Robinson):** Mr. Speaker, I beg to move,

That the Senate amendments to the Tobago House of Assembly Bill, 1996, listed in the appendix be now considered.

*Question proposed.*

*Question put and agreed to.*

*Clause 33.*

*Senate amendment read as follows:*

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Insert after subclause (2) the following subclause:

“(3) The President shall administer to a Secretary the oath set out in the Third Schedule.”.

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

*Clause 37B.*

*Senate amendment read as follows:*

Insert after subclause (2) the following subclause:

“(3) The President shall administer to a Secretary the oath set out in the Third Schedule.”.

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

*Clause 44.*

*Senate amendment read as follows:*

Delete from the words “within one month” to the end and substitute the words “in accordance with the provisions of Part V”.

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

*Clause 70(3).*

*Senate amendment read as follows:*

Delete the word “applied” and substitute the word “apply”.

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

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*Question proposed.*

*Question put and agreed to.*

*Third Schedule.*

*Senate amendment read as follows:*

- A. Delete the words "Section 8" and substitute the words "Sections 8, 33 and 37B".
- B. In the heading, delete the words "and the Deputy Chief Secretary" and substitute the words, "the Deputy Chief Secretary, Secretaries and Assistant Secretaries".
- C. Insert after the words "Deputy Chief Secretary" the words "Secretary/Assistant Secretary".

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

*Fourth Schedule.*

*Senate amendment read as follows:*

Delete the word "elected" and substitute the word "appointed".

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

**1.40 p.m.**

*Fifth Schedule.*

*Senate amendment read as follows:*

Re-number item 32 as item 33 and insert after item 31 a new item 32 to read: "32 Plant and Animal Quarantine".

**Mr. Robinson:** Mr. Speaker, I beg to move that the House doth agree with the Senate in the said amendment.

*Question proposed.*

*Question put and agreed to.*

#### OMBUDSMAN'S (EIGHTEENTH) REPORT

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, I beg to move,

*Whereas* it is provided *inter alia* by section 96(5) of the Constitution of the Republic of Trinidad and Tobago, Chap. 1:01, that the Ombudsman shall make annual reports on the performance of his functions to Parliament; and

*Whereas* the 18th Annual Report of the Ombudsman for the year January 1, 1995 to December 31, 1995, was laid in the House of Representatives on July 19, 1996 and in the Senate on July 30, 1996;

*Be It Resolved* that this House take note of the 18th Annual Report of the Ombudsman of the Republic of Trinidad and Tobago.

Mr. Speaker, the Constitution of Trinidad and Tobago in Part II section 96(5) says:

“The Ombudsman shall make annual reports on the performance of his functions to Parliament...”

And this is a report which has been made by the Ombudsman pursuant to section 96(5) of the Constitution of Trinidad and Tobago.

Mr. Speaker, the importance of having such a report presented to Parliament is for it to be scrutinized and debated in circumstances depending upon the commitment of the particular government. The intention, however, was that these reports should be made available so that they can be debated and this Government has decided that they should be debated.

One knows that the history of the creation of the office of Ombudsman was to give an additional machinery to the citizens to have the Government's, the public service's and the state's maladministration investigated so that the citizen could have redress in some form for his or her grievances.

One would recognize from the outset that in debating such a report the function of the Ombudsman is to investigate and make efforts to see whether the

injustice can be corrected by persuasion, and if it is not corrected, depending upon the circumstances of the matter, he has a discretion which he can exercise to have a special report laid in Parliament. In any event, he must have an annual report prepared and laid in the Parliament.

For the purposes of the record, and for Members to appreciate this, if one looks at section 96(2) of the Constitution, one would see that it states quite clearly that:

“Upon the completion of an investigation the Ombudsman shall inform the department of government or the authority concerned of the results of the investigation and, if he is of the opinion that any person has sustained an injustice in consequence of a fault in administration, he shall inform the department of government or the authority of the reasons for his opinion and make such recommendations as he thinks fit. The Ombudsman may in his original recommendations, or at any later stage if he thinks fit, specify the time within which the injustice should be remedied.”

And in section 96(4) it states:

“Where the matter is in the opinion of the Ombudsman of sufficient public importance or where the Ombudsman has made a recommendation under subsection (2) and within the time specified by him no sufficient action has been taken to remedy the injustice, then, subject to such provision as may be made by Parliament, the Ombudsman shall lay a special report on the case before Parliament.”

Mr. Speaker, it would be recognized that the weapon which is used in order to put pressure to have injustices corrected, apart from mediation and efforts by the Ombudsman to have the matter resolved, is the weapon given to him to expose his opinions, tell the world about them, so the Government would be embarrassed into action if it is one committed to having maladministration corrected.

In this report of the Ombudsman which I will come to, he documents specific cases, but I do not propose to deal with those individual cases. They are there, but may I say that this administration has investigated every case, has looked into every matter, and would be prepared to give a response to any particular matter that is stated in the report. It also intends to refer to some of the specific matters, but I will deal with them generally, and also the response of this administration to the injustices which have been shown by this report.

Mr. Speaker, I think I should mention, so that Members who have forgotten would remember, that when this administration had to deal with the Seventeenth Report of the Ombudsman, it dealt with it by having a motion filed so that the Members of Parliament—the representatives of the people—could debate the report. It went a bit further and decided that the time had come to look at the functions and duties of the Ombudsman to see whether recommendations can be made, or consultations had, in order to have the office of the Ombudsman reformed to be a more effective machinery for giving redress for public wrongs which are suffered by individuals. That Joint Select Committee started its work and it is going to continue. At the end of the last session of Parliament, a procedural motion was done in order to enable that committee to continue its work.

**1.50 p.m.**

This Government places a very high priority on all its actions to deliver fair and just government to the people of Trinidad and Tobago. It regards the office of the Ombudsman as one mechanism in which it could, in effect, close or shorten the distance between the Government and the people.

The office of the Ombudsman is recognized as contributing to, and enhancing the quality of government. Here is a person who is really the Parliamentary Commissioner; that is, in effect, an assistant given to Parliament. That office is normally referred to as the office of the Ombudsman but, as I said, he is really a Parliamentary Commissioner and does a non-judicial investigation of the wrongs committed by a government.

If the office of the Ombudsman functions in the way it is supposed to function, and if governments react in the way they should react to the reports of the Ombudsman, then it would provide greater accountability of the Government and of the state to the people of Trinidad and Tobago.

It is recognized that if a government studies the report of an ombudsman and responds to the requests from time to time; have allegations investigated and take honest actions in relation to these complaints, it would eliminate much maladministration and corruption which occurs in government services.

Mr. Speaker, the PNM administration did not place much weight on the Ombudsman's reports. As a matter of fact, it was not a practice of the PNM administration to have these reports debated. The PNM administration was quite content in merely having the reports laid in Parliament. One saw that during the PNM era there were many complaints about maladministration and rather than

having them scrutinized and telling the people, through the Parliament, what they intend to do about them, the reports were just laid in Parliament as part of the total bureaucracy which has engulfed Trinidad and Tobago.

When one looks at the report of the Ombudsman for the period January 1995 to December 1995, one would see that it outlines a number of matters on decisions or recommendations made which were referred for investigation. Most of the complaints received by the Ombudsman had to deal with the following:

1. Failure of state agencies to deal reasonably and to practise administrative fairness.
2. Misinterpretation or wrongful application of Government's policies, procedures, rules and regulations.
3. Failure or refusal to meet with the complainants to discuss their problems and so arrive at solutions.
4. Taking of unilateral decisions without proper consultation and even consultation with the complainants and an adamant refusal to change a decision even though a decision may have been wrong or unjust.

It should be noted that these types of complaints also formed part of the Seventeenth Annual Report of the Ombudsman. Selected cases presented in the Ombudsman's report questioned the competence and efficiency of accounting officers; raised concerns over questionable legal opinions; questioned the procrastination on the part of particular ministries and departments; the failure to pursue disciplinary actions at the appropriate time, followed by attempts to put penalties at the time of retirement.

One sees that these are very serious matters which even an irresponsible opposition would have the opportunity to debate, even though they relate to matters which occurred under its administration in Government. The Opposition would not consider that such matters are laughing matters or matters to fiddle with because they affect the lives of the people of Trinidad and Tobago.

I am sure that some Members on the other side have not even read the Ombudsman's report; they have not studied it and they are not concerned about some of the injustices which they have done to the people of Trinidad and Tobago. According to the report, in many instances, overtures and intervention by the Ombudsman were met by no response at all from officials, and in some instances recommendations made by the Ombudsman were not readily accepted.

The report under review covered the situation with the public utilities: the Telecommunications Services of Trinidad and Tobago (TSTT), the Water and Sewerage Authority (WASA) and Trinidad and Tobago Electricity Commission (T&TEC). It has been suggested that some unilateral decisions have been made by these utilities which have not always been fair to the consumer. It also stated that these utilities have not attempted to implement some of those measures, but that they attempted to implement others.

In order to give an idea of the number of complaints that were received in respect of the functioning of the utilities, one sees that according to the report in respect of the Trinidad and Tobago Electricity Commission, there were 19 complaints; in respect of Trinidad and Tobago Telecommunications, there were five complaints; in respect of the Water and Sewerage Authority, there were 30 complaints.

### **2.00 p.m.**

In terms of the public service the report noted a similarity in the number of complaints received. One could examine and see the number of complaints which have been made in respect of these departments. In looking at those numbers one could get an idea of some of the frustrations which the people of Trinidad and Tobago feel about maladministration in these ministries.

The ministries are:

Ministry of National Security	-	174	complaints
Ministry of Social Development	-	44	"
Ministry of Works and Transport	-	43	"
Ministry of Labour and Co-operatives	-	34	"
The Tobago House of Assembly	-	34	"
Ministry of Agriculture, Land and Marine Resources	-	32	"
Ministry of the Attorney General and Ministry of Legal Affairs	-	25	"
Ministry of Finance	-	24	"
Ministry of Local Government	-	23	"
The Judiciary	-	23	"



Ministry of Housing and Settlements	-	22	"
Ministry of Health	-	22	"

Mr. Speaker, when this administration got into office it recognized that some of these matters needed urgent attention. In that respect, not only individual cases were investigated in order to see what action could be taken and what redress could have been effected, but the Government also decided to try to resolve this situation so that public administration could be improved.

The Ministry of Public Administration and Information invited submissions and recommendations to deal with these difficulties to provide some sort of effective and timely response to the complaints of the public. As a matter of fact, the Minister of Public Administration and Information has had consultation with the office of the Ombudsman in an effort to try and get to the root of the matter to see what could be done in order to improve the public service and by extension the service to the population.

Mr. Speaker, the Ministry of Public Administration and Information came up with proposals and obtained the approval of Cabinet for a strategic review of the public service, a review which would address many issues, among which are:

1. The restructuring of operations to make for speedier and more efficient responses.
2. Improvement of management operations and systems.

The Ministry of Public Administration and Information is taking steps to have the public service reassess its critical role as implementor and facilitator of Government's policies and programmes, by enhancing its functional relevance and building flexible structures and systems to facilitate adaptability to the changing realities which it faces.

Mr. Speaker, attention is being paid to developing within public institutions, appropriate policy frameworks which would facilitate decision-making at various levels and which freeze top management to deal with the issues of strategic direction, organization, development and productivity. Mr. Speaker, one sees therefore, that this administration recognized that the public was being short-changed by not having an efficient service and it took steps to improve the public service. That review is being done because this Government is committed to the principle that it must not only be able to give reasons for decisions or actions by any arm of the state, but also that these actions or decisions must be subjected to public scrutiny.

What the Government has done in respect of this measure shows a commitment which has manifested itself in other directions. For example, the whole concept of the office of the Ombudsman is really to be a watchdog of the rights of the people so that the Ombudsman would be able to get information and put pressure upon Government agencies to try to redress the injustices. Apart from taking this step and appointing a Joint Select Committee to give the office of the Ombudsman more teeth, this administration has taken steps to have freedom of information legislation passed in Trinidad and Tobago so that persons in Trinidad and Tobago would be entitled, as of right, to Government-held information. That is all part and parcel of this Government being open and transparent with its actions.

As a matter of fact, in order to prevent *mauvais langue*; in order to direct complaints where they should be directed, once there are facts to support them, the Ombudsman is a machinery whereby, even if the Opposition believes that the Government is corrupt, it can ask the Ombudsman to investigate any complaint.

Mr. Speaker, it is very significant that with respect to the office of the Ombudsman there has been no special report since this administration took office and one must only conclude from that, the person who is given the powers under the Constitution to investigate maladministration; investigate patronage; investigate corruption has not had any cause to put any special report in this Parliament.  
[*Interruption*]

**Dr. Rowley:** You are insulting these (*Inaudible*).

**Hon. R. L. Maharaj:** Mr. Speaker, I know I am insulting him—I am insulting the PNM.

This Government, through the Ministry of Public Administration and Information recently launched an excellent service, customer care and dependability programme to focus on improving relationship and communication processes as follows:

1. Timely responsive customer service to the public.
2. Internal and external customer service.
3. Competence in performance.

One sees that the administration is sensitive to the problems and injustices which are in the society and is taking steps to redress those problems.

**2.10 p.m.**

Mr. Speaker, may I mention that you would have noticed, and Members would have noticed, that one of the areas which the Ombudsman talked about in his

report and which is mentioned in the case summaries, has to do with the question of scholarships, and the complaints and allegations which have been made in respect of the award of scholarships.

Mr. Speaker, may I announce that this administration took steps to have an appeal mechanism for the review of allegations that injustice was done in respect of the award of scholarships, and for the committee to review its policy and criteria for such awards.

Mr. Speaker, only recently, this Government, through the Ministry of Public Administration, published a Green Paper entitled "A Policy Agenda for the Public Service of Trinidad and Tobago." That Green Paper speaks of a new vision for excellent service, and delivery of service to the public, and for the public service to be customer-oriented. That Green Paper has been published for public comment and one would see, on page 27, paragraph 80, in respect of the policy objective of the public service, that it would focus on the following outputs:

- "Timely, responsive, helpful, courteous and supportive customer service to the public.
- Putting a human and humane 'face' to service to the public.
- Structuring, and delivery of interaction skills/communication skills/customer service training programmes.
- Reorganizing, restructuring service delivery processes and systems.
- Structure and delivery of Human Resource Management programmes, and Organisational Development programmes with a focus on team building, conflict management, managing difference and diversity, the learning organization, *et cetera*.
- A package of customer entitlements and customer service instruments."

Mr. Speaker, one therefore sees that there is need for the public service to be improved in its delivery of services, and this administration has recognized that, and is taking steps to correct some of these deficiencies in order to make the public service more customer-oriented.

Mr. Speaker, in respect of some of the specific matters mentioned in the report, one would see that at page 44, it dealt with the case of the Water and Sewerage Authority, improperly billing customers. The ombudsman had disagreed with the process of billing and considered it to have been illegal. This administration, through the Minister of Public Utilities, decided that the Water and Sewerage

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Authority would not disconnect or resort to any punitive action for non-payment until each case was investigated and determined. The Government therefore decided that it was going to act decisively on that issue, and the Minister of Public Utilities acted in that way.

Mr. Speaker, on page 68 of the report, there were several complaints to the ombudsman in respect of persons having to pay. Although there were malfunctioning meters, they had to pay charges which were considered to be retroactive. The Ministry of Public Utilities issued a ministerial policy—which came into effect on October 28, 1996—that where retroactive payments exceeded a period of one year, TTEC was culpable. The Ministry of Public Utilities took steps to ensure that these injustices as a result of retroactive charges and malfunctioning meters were redressed.

Mr. Speaker, this administration, in the short time it came into office, within a matter of weeks, took action which the PNM could not have taken in four and a half years.

Mr. Speaker, on page 22 of the report, there are complaints which revolve around the issue of the Special Reserve Police, who work on a "temporary whole-time basis," receiving retirement benefits. The Ministry of National Security has considered that matter, and steps have been taken. Very shortly regulations for the terms and conditions of Special Reserve Police would become effective, and there are going to be discussions about those regulations with the relevant associations: the Trinidad and Tobago Police Service Second Division, and other relevant associations and bodies.

Mr. Speaker, the Minister of National Security has asked me to announce that with effect from January 1, 1997, the Commissioner of Police would ensure that all Special Reserve Police Officers would be placed on normal roster duty, to curtail the practice of SRPs working on a temporary full-time basis. That situation would be corrected. So that, from January 1, 1997, the Commissioner of Police would ensure that the injustices to SRP Officers would be corrected.

Mr. Speaker, there have been other specific complaints, but I will wait to see whether the Opposition will want me to respond to any specific matters. May I say that the office of the Ombudsman is one which the Commonwealth Law Ministers recognize must be updated, and must be given the necessary resources to improve governance of people.

Mr. Speaker, part of the communiqué coming out of the last Commonwealth Law Ministers meeting in April, 1996, under the heading, "Advancing Commonwealth Fundamental Values", gave priority to a further consideration of the fundamental values identified in the Harare Declaration and to the means by which they could contribute to the realization of the Milbrook Commonwealth Action Programme which identifies issues of particular concern to them.

**2.20 p.m.**

They recall that the heads of government had identified the rule of law as an essential part of the shared inheritance which in combination with the diversity of its members is a special strength of the Commonwealth. Good governance involves the whole political structure and its socio-economic context. Although legal rules and procedures in themselves can be misused, the principle of the rule of law is an essential basis for protection and promotion of human rights.

On page 2, paragraph 12, of the report, the heading Ombudsmen, Human rights and Equal Opportunities Commission, says that ministers recognized the multifaceted nature of human rights issues and noted with approval, the growing practice in the constitutional arrangements of many Commonwealth countries, to provide for the establishment of separate institutions and mechanisms that support the promotion and protection of specific human rights in the context of the well-being of a society as a whole. They also noted that in a number of Commonwealth countries the offices of the Ombudsman, Human Rights, and Equal Opportunities Commission rule in enforcing and giving practical meaning to constitutionally protected rights which might otherwise not be realized. They acknowledged that where these offices existed, they formed an important part of the democratic edifice of the state, contributed to the improvement of the democratic rights of citizens, and recognized the importance of promoting a culture of good governance and factors that contribute to achieving this goal, including the respect for human rights.

In order to promote and deliver good governance, offices like the Ombudsman, Human Rights and Equal Opportunities Commission, should exist. They must not only have the necessary structure, but they must be reviewed from time to time, to glean their effectiveness.

It is in this context that this administration has decided that, quite apart from the office of the Ombudsman, good governance should be the heart of government, and if one has to be in government, one must promote this. It decided

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that, quite apart from reforming the office of the Ombudsman, it should also give to the people of Trinidad and Tobago additional mechanisms to get justice against the state. Those mechanisms would include the Equal Opportunities Commission, and the powers under the Freedom of Information Bill, which would become law. In addition, this administration has committed itself to, and is in the process of bringing to the Parliament, reforms in respect to the functioning of select committees of Parliament. These committees would comprise both Government and Opposition Members, and be able to monitor and scrutinize every Government ministry and department. This reform has occurred in the United Kingdom and several Commonwealth countries.

This administration believes that the Government must be able to provide the mechanism and institutions whereby the actions of ministers and public officers can be scrutinized by the population and Members of Parliament. The reason for this is, this Government is committed to open, and not secret government, as the PNM was. It is also committed to having all its actions scrutinized.

This administration, in the short time since it has taken office, has taken another step to promote good governance, and to prevent maladministration. It took steps to have the integrity laws, and the laws of corruption reformed, so that persons who occupy public office could be more greatly scrutinized and there would be promotion and enhancement of integrity in public life. Only an administration which has nothing to hide and which believes in open government can do that. The PNM could not have done that.

Democracy depends for its health and quality, on an open and trusting relationship between the governed and the Government. More people today are demanding explanation from their governments, as to the reasons for what they are doing, and to get the thinking behind decisions made by them. There must be an obligation on governments to have a considerate approach, and to treat the public in a sensitive manner. It is in this context that it has been recognized, that governments must reform existing institutions, and create additional ones, in order to reduce the distance between the officials and the people, so that they can understand each other. Institutions like the office of the Ombudsman, are to try to right the wrongs committed against people by the powerful arm of the state. This office is therefore one which administers justice. It rights the wrongs. It fights to uphold human rights. It mediates and arbitrates, to get justice for people, and to prevent the heavy and powerful hand of the state from oppressing people.

If one tries to find a definition of maladministration, one would not find it in a statute. One would have to look at what has happened over the years, where these offices have functioned, to understand what is considered to be maladministration. This would include an unwillingness to treat complainants as persons with rights, or neglecting to inform them of their entitlements; when state officers knowingly give advice which is misleading or inadequate; when public officers ignore—and when I say public officers I include ministers and all state officers—valid advice; when no redress is offered or when disproportionate redress is offered; when it is known to the state that redress should be given in a particular case.

**2.30 p.m.**

Mr. Speaker, when one looks at the development of the office of the Ombudsman, one sees that since it was created, there has in effect been a world coverage of this institution, and quite recently Sir John Robertson, former Chief Ombudsman of New Zealand, prepared a paper entitled the *Ombudsman Institution*. I would like to read from page 2, paragraph 8, of that paper in order to show how the office of the Ombudsman has developed and how it is recognized by the international community as an institution, in effect, to protect the rights of people.

I am doing this in order to show that we must not consider that the work of the Ombudsman is negligible; we must not in any way try to undermine it. We must not try to dismiss its importance. As a matter of fact, in the United Kingdom, there is a Joint Select Committee in respect of every institution, every department, and every year the Joint Select Committee on the Ombudsman prepares a report.

One of the matters contained in one of the reports recently, is to the effect that where state authorities do not place emphasis on the work of the ombudsman or do not treat it with the importance it deserves, and replies are not given to the requests of the ombudsman, it undermines the office and, therefore, in the United Kingdom, they have called for the ombudsman to prepare weekly or monthly newsletters to identify the problems and to have them circulated so that government ministers and even members of Parliament would be able to take note of what the ombudsman is saying.

Mr. Speaker, there are many other recommendations made and I am sure the joint select committee would look at some of them or all of them, but I would like to read what is stated in three of the paragraphs here, to show the world coverage of the institution of the office of the Ombudsman.

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The Ombudsman is an institution which has already won acclaim and proved its worth all around the world. Apart from its Swedish precedent which has existed from about 1809, this acclaim has been earned mostly over the last 40 years when the great majority of institutions were set up. In the last decade and a half, the institution has had spectacular growth in Latin America, Africa, Asia and Eastern Europe. According to the latest issue of the *International Ombudsman Institute Directory*, the institution as defined by the International Bar Association, and including Executive Ombudsmen with the same role, has been set up in 79 countries with an Ombudsman in 207 posts. There are hundreds more officials titled Ombudsman who do not fit the institution model mentioned by the International Bar Association.

I shall read that definition of an ombudsman, because one knows there are two main kinds of ombudsmen. One is a Parliamentary Ombudsman, that is an ombudsman appointed to be accountable to the Parliament and there can also be an Executive Ombudsman appointed by the Executive, but accountable to the Executive. There has been many criticisms of the Executive Ombudsman, and one can recognize that there will be criticisms in some quarters of that kind of ombudsman because the Executive appoints him, he is answerable to the Executive and, therefore, there is not the feeling or the perception that there can be fair play and justice.

We have a Parliamentary Ombudsman appointed in a particular way and answerable to the Parliament, and so the office holder has security of tenure and he cannot be removed by the whims or fancies of any Executive. Therefore, it makes the Ombudsman free to criticize, regardless of the consequences of the actions of any government. Continuing it says, "Included in the 79 countries, are 31 Commonwealth countries, with a total of 69 Ombudsman posts."

Mr. Speaker, one sees that there is in effect, a recognition throughout the world that governance should be improved and some countries have decided to use the office of the Ombudsman in order to effect some of that improvement. Some countries, however, have opted for an Executive Ombudsman, because those governments do not want to have a Parliamentary Ombudsman. We are fortunate in this country because we have a Parliamentary Ombudsman. One also would recognize from reading, that the whole concept of the ombudsman has been taken at different levels. For example, in the United States, there are ombudsmen even in the private enterprise, the whole concept being that he is the person to right the wrongs which are occurring. Also, in the United States, with respect to the media,



in order to ensure that media rights are not violated or abused, there is in effect, the concept of ombudsmen. Maybe we should change that word from "Ombudsman" to "Ombudsperson", having regard to the question which is being now agitated.

Mr. Speaker, I promised to read to you what is regarded as the international definition of an ombudsman by the International Federation of Ombudsmen. This is important because one would see when looking at it, whether we have such an ombudsman, and if we do not have such an ombudsman, whether we should not in our reforms, consider it.

Paragraph 2 of the International Bar Association defines ombudsman as an office provided for by the Constitution or by action of the legislature and headed by an independent high-level public official who is responsible to the legislature or Parliament; who receives complaints from aggrieved persons against government agencies, officials and employees; and who acts on his own motion and has the power to investigate, recommend corrective action and issues reports.

Mr. Speaker, it would seem to me that we have such an ombudsman with those powers. However, the way the international movement is moving in respect of the ombudsman, is that there are now several questions being asked as to what countries should do when they have to divest public enterprises and the services which those public enterprises performed, which would now be performed by the private sector or be provided by a combination of the private sector and the public sector, what sort of machinery should be put in place, if there should be any machinery, to have such actions or allegations of maladministration against the operation of these services investigated by an ombudsman.

As a matter of fact, Mr. Speaker, in the United Kingdom, apart from having a parliamentary ombudsman, there is also a local government ombudsman and a very wide interpretation is placed in respect of the functions of the local government ombudsman.

#### **2.40 p.m.**

As a matter of fact, special legislation was introduced in order to give the local government Ombudsman very wide powers to permit the ombudsman to investigate transactions which involve external contractors—that is, contractors from the private sector and any relationship which the private sector may have with the local corporation—and even to investigate contracts which are not awarded by the normal tendering procedures as mentioned in the legislation.

The aim of this local government ombudsman, with the reforms in the United Kingdom, is to meet the reforms which have occurred in the economic field in which governments have had to divest state enterprises. Also, to ensure that after divestment the public would not suffer if those services are not delivered. This administration is looking at that matter and I am certain announcements would be made. We want to give the assurance that this Government has recognized that in some of these areas consideration would have to be given to reform in order to ensure that the public is not treated badly and there is no state machinery, apart from the courts, in order to investigate these matters.

Mr. Speaker, it is probably significant to note that what the United Kingdom did in a similar situation with the health service, was to create a health service ombudsman. That health service ombudsman was even given the power to investigate complaints about actions taken in consequence of the exercise of clinical judgments by doctors. So that now in the United Kingdom patients and their families are assisted at least in getting an explanation in respect of the exercise of clinical judgments of patients and, in some instances, have even got an apology where the exercise of that discretion has in effect caused harm. In some of those instances recommendations have been made for money *ex gratia* payments to be made and the government in the United Kingdom has acceded to those requests.

One sees, therefore, that the office of the ombudsman gives government a flexibility in which it could use and reform the institution in such a way to meet the adjustments which have occurred in society.

Mr. Speaker, there is a matter that this administration, through the office of the Attorney General, is looking at which deals with the question of what is considered to be an injustice. Under the present law there is no way in which a victim can get compensation for the non-exercise or improper exercise of public power in administrative law, or even in private law. The only damages one can get in respect of wrongful exercise of power is under the Constitution where one would have to show that a constitutional right was infringed. Assuming that a public official did not infringe a constitutional right, but did not exercise his power properly or misused his power in exercising it—

**Mr. Panday:** Like the expense in La Brea.

**Hon. R. L. Maharaj:** Like the expense in La Brea—there is no right to damages.

Mr. Speaker, in English law—the law which we have inherited—there is no general right to damages for maladministration. As a matter of fact, Lord Justice Wolfe, who is one of the world renowned experts in administrative law examined this question quite recently in a lecture. He said that one should look at this issue again. Under the existing law in our country, even if one gets judicial review against a public official and it is held by the courts that the public official has violated the right in public law of the victim, one can only get damages if the wrong would have amounted to a wrong in private law; that is in contract or thought. One would not get damages merely because it amounted to an improper exercise of public power.

So, what we want to do is consider the trend which has been taken in some of the countries of the world. For example, in some of the countries on the Continent—I think, France and some other countries—they have dealt with this matter in a different way and they provide damages for maladministration.

Mr. Speaker, one of the arguments in favour of providing damages for maladministration in providing compensation for maladministration by public officials is that it would create a greater awareness by public or state officials of their duties and of the need for them to exercise power in accordance with law.

As a matter of fact, Mr. Speaker, if one studies the trend which occurred over the last four or five years one would see that the state had to pay a lot of money for compensation in respect of violation of fundamental rights. If the state had to pay compensation for misuse of power in maladministration it would obviously be in a situation today in which some of the moneys would not be there.

Mr. Speaker, what governments obviously have to do, in considering this question, is to consider whether it is important to send a signal so that public officials who violate and abuse power would know that the state would be liable.

As a matter of fact, there is another point of view which is that where the state is made liable and the public official has, in effect, clearly misused and abused power, the public official should pay the money instead of the state. There is also a view that if a public official—

**Mr. Panday:** Life if one gives bad legal advice?

**Hon. R. L. Maharaj:** Yes. If the public official does not have money or property, if he has benefits to get from the state, the state should take those benefits.

**Mr. Panday:** Then we would have to give him a job so that we could get money to take away.

**Hon. R. L. Maharaj:** Mr. Speaker, one would recognize, therefore, that the whole field of public administration must be looked at in light of what is happening throughout the world. Let me say that we have accepted the challenge in order to have some of these matters redressed.

**2.50 p.m.**

In conclusion, this administration would deal with these reports in a similar manner. That is to say, whenever the Ombudsman presents a report we would take steps to debate it in Parliament. We would like the Opposition to tell us about some of the matters contained in that report and show us that they have studied those matters. They could probably give an explanation why, when their party was in government, they had abused and misused power, and why they did not take steps to correct these situations.

When one looks at the report one would see that they are put under very clear headings. The previous Minister of Agriculture, Land and Marine Resources can talk about it. The Opposition Chief Whip can say why all this injustice occurred and what they did to correct it. We look forward to hearing this.

I beg to move.

*Question proposed.*

**Dr. Keith Rowley (Diego Martin West):** Mr. Speaker, like the previous speaker, I too, have nothing to say.

Thank you.

**Mr. Panday:** That is so original!

**Mr. Kenneth Valley (Diego Martin Central):** Mr. Speaker, I consider what has taken place here this afternoon to be an abuse of parliamentary time. [*Desk thumping*] We are aware that the Seventeenth Report of the Ombudsman is now the subject of study by a committee that is chaired by the Minister of Legal Affairs. I remember in that debate there was general agreement that there were certain shortcomings with respect to the operations of the Ombudsman, and there was unanimous agreement that we should subject the whole office to review. Just before the last Parliament was prorogued the committee reported progress. It had been meeting all over the country, had valuable information and wanted time to

continue its work. If this matter were in a court of law one would say that it was *sub judice*.

Quite frankly, one knows the intent of the Leader of Government Business. He called us here and the Business of the House was finished within five minutes, and so he takes up parliamentary time by wasting our time. I would use this opportunity to protest the abuse of the Parliament by the Leader of Government Business. The normal day of sitting is on Friday. One saw on the last occasion that Parliament sat on Monday and Tuesday. Normally, Tuesday is set aside for the Senate. Parliament did not sit on the Friday. There is no planning any more.

**Hon. Members:** “Crazy ants” government.

**Mr. K. Valley:** I respect the right of the Government to determine when Parliament sits. However, if the intent is to change the days of sitting in Parliament, then the Government should let us know so that we can arrange our affairs. I have to ask: Why are we here today? We spent two days last week debating the Tobago House of Assembly Bill. The Senate made some simple amendments which could have been dealt with at any time when the Parliament sat. Five minutes, for all practical purposes!

One knows that this report should be referred to the committee that is now examining the whole office of the Ombudsman. That is what needs to be done. The committee is doing its work by meeting with people throughout Trinidad and Tobago and we should await its report. Taking us through matters which were discussed on the last occasion on the Seventeenth Report, and reading the contribution of the Member for Siparia adds nothing to this debate. When one looks at what is happening in this House one would see that we operate on fits and starts.

The Leader of Government Business said, “walk with your toothbrush we are going whole night”, then he jumps on a plane and goes to London. One has to protest that type of behaviour. When one looks at it, we are on more holidays or vacation in this Parliament rather than doing the people’s business. We came to Parliament thinking that this Government would give us the date for the annual budget and lay the budget documents. That is what is important for this country today.

**Mr. Panday:** In time.

**Mr. K. Valley:** In time? The President of the Chamber of Commerce said not to worry about the dollar and everything would be fine, but now he is saying that

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he is flabbergasted. "How could we make such a change and mess up such a good thing?" Those are his words. At this time, confidence in the economy is at an all time low. Instead of coming here with serious issues, the Member for Couva South and Leader of Government Business is wasting Parliament's time.

We know what has to be done with the report. At the end of the day whether he takes five or 75 minutes, this report would go to the committee that is examining the office of the Ombudsman. We support that! We do not want him to waste our time. Come here with the budget and let us debate direct issues!

Thank you.

**3.00 p.m.**

**Dr. Rupert Griffith** (*Arima*): Mr. Speaker, like my colleagues from Diego Martin West and Diego Martin Central, I really do not wish to waste any more of the Parliament's time on such a very important subject.

When the Member for Couva South talked about the various types of Ombudsman, he mentioned that there was an Ombudsman who reports to the Executive. I want to know, when the Executive Ombudsman submits his report to the Executive, whether that report comes to the Parliament, since the Executive is responsible to the Parliament. He did not show the relationship between the Executive Ombudsman and the Parliament Ombudsman. I would like him to elaborate on that.

He went on to say that in some countries there is a local government Ombudsman. Does the local government Ombudsman also report to Parliament or to a local government minister who reports to Parliament? What is the relationship between the Parliament Ombudsman and the local government Ombudsman? He took us through different kinds of Ombudsman and really did not say what are the relationships; what are the benefits to the Parliament; how they relate in terms of the types of work they do; and how the public benefits from these various types of Ombudsman.

I really would appreciate if he could give some power to his presentation and meaningfully leave something with us by showing the relationships between the various types of Ombudsman. It is one thing to get up and say that there are so many types, but what benefits do they have for our country and for this Parliament? Can he state these things?

I thank you.

**The Attorney General (Hon. Ramesh Lawrence Maharaj):** Mr. Speaker, it is quite clear that Members on the other side have not done their homework. It provides cogent evidence of what we have been saying—that they are irresponsible and unfit to perform the role of opposition. Here it is, on an important issue like this, none of them can refer to the report. Let us see what those Members call nonsense and unimportant. Page 1 of the report states:

“Water and Sewerage Authority;

The Trinidad and Tobago Electricity Commission and

The Telecommunications Services of Trinidad and Tobago Limited...”

The Ombudsman mentioned in this report that during the past five years there have been increases in the number of complaints filed, which relate mainly to the increase in rates and charges imposed by the public utilities and injustice done by the state enterprise. It has had an effect on the enjoyment of life of people, but that to the PNM is not important.

Mr. Speaker, on page 3:

“Water and Sewerage Authority

Numerous complaints have been received concerning inadequate water supplies or no supplies at all and of damage to premises as a result of leaking or faulty mains.”

This is whilst they were in office, but that is not important to them, Mr. Speaker, and I understand why it is not important to them. It is not important to them because they are not committed to solving or assisting in solving any problem.

Mr. Speaker, the next heading is:

“Trinidad and Tobago Electricity Commission

During the past five years, customers of the Commission have complained about rotting or defective poles which pose a hazard to their properties, to discrepancies in their electricity bills and to irregularities in electricity supply due to surges in the system resulting in damage to their electrical appliances.”

That happened during their administration and that is not important to the PNM.

**Mr. Speaker:** Hon. Members, it just could not be right in any debate in which Members had an opportunity to speak and have opted not to speak, for those Members to engage in continuous grumbling and disturbance of a Member who is

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replying. I tell you it is extremely difficult for the reporters who have to report faithfully that which is said. Something has to be wrong with Members who have the opportunity to speak, but do not do it, but who do it "under the table". It just is not right. I ask you please to conform.

**Hon. R. L. Maharaj:** Mr. Speaker, it is not important to them because they have other things to do and they want to leave this Parliament quickly. They do not like to come here. They have been asked to come here to discuss a matter of national concern; to discuss the problems of the people of Trinidad and Tobago and they do not want to talk. They have not done their homework and they want to go. They do not like to work. Let me read again what is not important for them. On page 8 of the report:

"Complaints against the Telecommunications Services of Trinidad and Tobago (TSTT) have mainly centred around the rates which have been charged for the telephone services and delay in the provision of telephone services.

Recently, however, there has been an increase in complaints by customers with respect to charges for overseas calls..."

Mr. Speaker, people being robbed of their money, and being denied their entitlement is not important to those Members. That is a waste of parliamentary time. They have much more important things to see about. These are situations to which they contributed, situations for which they are responsible, but it is not important to the people of Trinidad and Tobago. I can understand why it is not important. They are not concerned about the people. They are concerned about themselves. The Member for Diego Martin West said that I am abusing parliamentary time by pointing out what wrongs have been done so that they can be corrected, and to give them an opportunity to say something in their defence.

Part II of the report deals with areas of concern. Illegal logging activity was damaging the environment while the Member for Diego Martin West was the Minister of Agriculture, Land and Marine Resources:

"One of the vital areas of concern to the country was the illegal and indiscriminate logging activity which is taking place throughout the country wherever there are forested areas. Apart from its illegality, such operations caused damage to road surfaces, to pipelines, bridges and culverts, to water catchment areas and a consequent spoliation of the environment."

As a result of the complaints made by the farmers and residents, the Ombudsman said he convened a meeting with representatives of the Regional Corporation—I



think one Member here was in that Corporation at the time—in order to redress the problem. Mr. Speaker, this was not important to the then Minister of Works and Transport. He was at that time more concerned about insurance companies, cement, gold and taking something from the Red House. I would have thought that he would have been transformed as a result of the defeat his party got, but here in Opposition he is still not concerned.

**3.10 p.m.**

They are not concerned, Mr. Speaker. It is Friday evening and they want to go home. If they want to go home, they could go home, no one is preventing them from going home, but at least, when one gets up to talk, one must talk.

Mr. Speaker, never before in the history of any Parliament has a Member of the Opposition got up to talk on a topic and could not talk, and that Member wants to be the leader of the PNM. That reflects what the leadership of the PNM has come to.

**Mr. Robinson:** That is why he should be the leader. *[Laughter]*

**Hon. R. L. Maharaj:** Mr. Speaker, the matter of the Special Reserve Police has affected the security of the country and has been an injustice to police officers. They had an opportunity to explain why they did not do anything about it, and give a suggestion as to what should be done. I am going to read it because the Member has not read it. I will read it so he could understand because he would not read this when he goes home.

**Mr. Sudama:** Read and spell it, too.

**Hon. R. L. Maharaj:** On page 22 it says:

“Since taking office a number of retired Special Reserve Police officers who had worked on a ‘temporary whole-time basis’ have claimed that they had been informed by the Authorities that they were not entitled to such benefits.”

That injustice to police officers is not important! People who protect and serve and promote the national security of the country are not important.

Mr. Speaker, it also reflects the ignorance of the Members on the other side. This report cannot be referred to the Joint Select Committee because that committee was set up to consider ways and means of improving the powers of the Ombudsman. That committee was established to consider reforms to make the office of the Ombudsman effective, not to consider the allegations. When they read, they do not understand. Here it is the Opposition that is supposed to be the

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alternative government of Trinidad and Tobago has come to this Parliament without reading the report, not understanding what is involved in it, and getting up and making wrong statements.

Mr. Speaker, the Ombudsman who is the watchdog for the rights of the people, and who is entrenched in the Constitution of Trinidad and Tobago—and Members are going all over Tobago and talking about entrenching something—submits a report and it is not important. That is the way they treat the Constitution and the institutions of the country. It is sheer hypocrisy! It continues:

“My predecessor, to whom several complaints of this nature had been made, took cognizance of the fact that there were no regulations governing the terms and conditions of employment of Special Reserve Policemen and had cause to initiate investigations in accordance with Section 93(2)(c) of the Constitution.”

There were no regulations and no law to govern them. For the period of time when the PNM administration was in office, it did nothing about the situation and allowed it to fester and the injustice continued.

Whenever a Special Reserve Policeman went home at night and looked in the mirror, he saw PNM injustice; when he looked at his child, he saw PNM injustice; when he looked at his mother, he saw PNM injustice and he saw it for four and a half years, and this afternoon the Opposition comes to this House and says this is not important.

**Mr. Panday:** A waste of parliamentary time.

**Hon. R. L. Maharaj:** It is an abuse of being in the Opposition. The future of policemen's children is affected, but that is not important.

Mr. Speaker, on page 29 under TANTEAK Ltd. it states:

“On March 08, 1994, the Complainants, husband and wife, complained that Tanteak Limited had illegally entered their lands at Tabaquite Road, Rio Claro, removed one hundred and fifty eight (158) teak trees which were fifty (50) years old; excavated a portion of their property and constructed a roadway.”

The Ministry of Agriculture, Land and Marine Resources under the PNM administration when the Member for Diego Martin West was the Minister—the man who wants to be the leader of the PNM [*Interruption*—went arbitrarily, illegally, and unconstitutionally into the property of the people and took away these trees, and the Member did nothing. This administration has corrected that situation. That is why I asked the Member to ask me questions, but he got up and he said nothing.

Mr. Speaker, through you, did he read the report? Did you?

**Dr. Rowley:** Yes.

**Hon. R. L. Maharaj:** Mr. Speaker, what does it have on the first page? It has the Mission Statement, and what the institution of the Ombudsman is all about.  
*[Interruption]*

The person who was the Minister of Education is not here, but in the Ministry of Health, the Ministry of Housing and Settlements, and the Ministry of Public Utilities, there were injustices. All these problems had to be resolved by this administration.

Mr. Speaker, do you know why the PNM could not respond today? The leader is not here, most of them are absent and many did not read the report and the hon. Member for Diego Martin West has come to this House and said he had nothing to say.

**Dr. Rowley:** I said, "Like you, I have nothing to say."

**Hon. R. L. Maharaj:** The hon. Member for Arima said he had nothing to say but he remembered some of the things which I talked about and he wanted some explanation. He talked about the Executive Ombudsman and the local government Ombudsman and he wanted to know the difference.

**Mr. Panday:** He, obviously, has not studied the report.

**Hon. R. L. Maharaj:** Mr. Speaker, it is not my fault when anyone speaks and the Member for Arima does not understand, but I will explain it to him again.

The purpose of mentioning an Executive Ombudsman and a Parliamentary Ombudsman was to show that apart from a Parliamentary Ombudsman, some countries have an Executive Ombudsman, but even countries with Parliamentary Ombudsman have also resorted in some cases, to have an additional Executive Ombudsman. The United Kingdom has an Executive Ombudsman as well as a Parliamentary Ombudsman.

**Mr. Panday:** What about an insurance Ombudsman?

**Hon. R. L. Maharaj:** There can be an Ombudsman for the insurance industry, and one in respect of the government's aspects. The difference is that one is accountable to the Parliament and one is accountable to the Executive. One knows that in any institution which is accountable to the Executive, it depends upon the government to determine whether it would present a report to the Parliament.

**3.20 p.m.**

Mr. Speaker, you would recall that under the PNM there was an investigation done into the airport contracts and the Government decided that it was going to release the report. The Government, however, fooled the population and released an inaccurate and truncated report. I would have thought that the hon. Member for Arima would know that it depends upon the discretion of the Executive. Therefore, if one has a committed executive, in order to present the facts to the population, the executive would release the report.

Mr. Speaker, one knows that during the last administration there was a request to have an ombudsman to investigate—not the Ombudsman—if there was any drug connection between the then Prime Minister in the sale of his car to a certain person but the Government did not appoint any ombudsman.

It is very significant that the Member for Diego Martin West as the then minister responsible for lands could not even administer the state lands properly. He did not know who were illegally on the lands and what was happening with respect to it.

I can understand why Members opposite could not get up here and make any contribution. We would, however, put on record that the people of Trinidad and Tobago must see from the evidence here that the PNM is not interested in institutions which would provide better governance for the people of Trinidad and Tobago. It is not interested in promoting the culture of good government; it is not interested in promoting institutions and in effect, having supporting structures for institutions to have open and transparent government. It seems to be committed to secret government because when it gets an opportunity to debate an ombudsman's report, it is not prepared to debate it.

Mr. Speaker, I beg to move.

*Question proposed.*

*Resolved:*

That this House take note of the 18th Annual Report of the Ombudsman of the Republic of Trinidad and Tobago.

*Question put and agreed to.*

*Budget Day**Friday, December 6, 1996*

**BUDGET DAY  
(ANNOUNCEMENT OF)**

**The Prime Minister (Hon. Basdeo Panday):** Thank you kindly, Mr. Speaker, for granting me the leave I sought of you to make an announcement to this House.

Members, please be informed that budget day is Thursday, December 12, 1996 at 2.00 p.m.

**SESSIONAL SELECT COMMITTEES**

**Mr. Speaker:** Hon. Members, I had indicated earlier in the proceedings that the names of the Members of the Sessional Standing Committees for the 1996—1997 session would be announced later.

After consultation, I wish to announce the composition of the following standing committees:

**Standing Orders Committee**

Mr. Hector McLean	Chairman
Mr. Ramesh Lawrence Maharaj	Member
Mr. Trevor Sudama	Member
Mr. Mervyn Assam	Member
Mr. Gordon Draper	Member
Mr. Fitzgerald Hinds	Member
Mr. Barendra Sinanan	Member

**House Committee**

Mr. Ramesh Lawrence Maharaj	Chairman
Dr. Reeza Mohammed	Member
Miss Pamela Nicholson	Member
Mr. Manohar Ramsaran	Member
Mr. Kenneth Valley	Member
Dr. Rupert Griffith	Member

*Privileges Committee**Friday, December 6, 1996***Privileges Committee**

Mr. Hector McLean	Chairman
Mr. Ramesh Lawrence Maharaj	Member
Mr. Ralph Maraj	Member
Mr. Chandresh Sharma	Member
Mrs. Camille Robinson-Regis	Member
Mr. Martin Joseph	Member

**Regulations Committee**

Mr. Hector McLean	Chairman
Mr. Harry Partap	Member
Mr. Ganga Singh	Member
Mr. Razack Ali	Member
Mr. Jarrette Narine	Member
Mr. Roger Boynes	Member

**ADJOURNMENT**

**The Attorney General (Hon. Ramesh L. Maharaj):** Mr. Speaker, I beg to move that the House do now adjourn to Thursday, December 12, 1996 at 2.00 p.m.

**Mr. Speaker:** Hon. Members, may I also take the opportunity of announcing that as from today, the tea room now reverts to its original position in the Members' Lounge.

*Question put and agreed to.*

*House adjourned accordingly.*

*Adjourned at 3.27 p.m.*