

SENATE*Tuesday, August 12, 1991*

The Senate met at 1.30 p.m.

PRAYERS[MR. VICE-PRESIDENT *in the Chair*]**LEAVE OF ABSENCE**

Mr. Vice-President: Hon. Senators, Sen. Allan Alexander has been granted leave of absence from August 3, 1991 to August 31, 1991. Also excused from sittings with effect from today until August 26, 1991 is Sen. Dr. Sahadeo Basdeo.

SENATORS' APPOINTMENT

Mr. Vice-President: Hon. Senators, by the powers vested in him under Section 44 of the Constitution, His Excellency, the Acting President, has appointed to be temporary Senators, Mr. Abdul Wahab, during the absence of Sen. Sahadeo Basdeo, and Sen. Wilton Fitzroy Paul, during the absence of Sen. Kelvin Khan.

OATH OF ALLEGIANCE

Senators Abdul Wahab and Wilton Fitzroy Paul took and subscribed the Oath of Allegiance as required by law.

ORAL ANSWERS TO QUESTIONS

The following question stood on the Order Paper in the name of Sen. Wade Mark:

Development Finance Corporation

46. Could the Minister state whether the Development Finance Corporation falls under the purview of the tax laws governing financial institutions in Trinidad and Tobago?
- (a) If the response is in the negative, could the Minister offer the reasons for such exclusion?

Question, by leave, deferred.

BUSINESS OF THE SENATE

Sen. Alloy Lequay: Mr. Vice-President, with the kind leave of the Senate, this being a special sitting, may I respectfully suggest that we defer "Motions" until tomorrow and the "Bills Second Reading" until the next sitting of Parliament, and that we continue the next stage of the bill that we were dealing with last Tuesday?

Assent indicated.

TELECOMMUNICATIONS AUTHORITY BILL

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee

1.40 p.m.

Clause 1 ordered to stand part of the bill.

Clause 2.

Question proposed, That clause 2 stand part of the bill.

Sen. Furness-Smith: Mr. Speaker, I to suggest that we take clause 2 after we have considered the substantive parts of the bill because the question of definitions depends to a large extent on what we decide on the other matters.

Clause 2 deferred.

Clause 3 ordered to stand part of the bill.

Clause 4.

Question proposed, That clause 4 stand part of the bill.

Sen. Broomes: Mr. Chairman, I beg to move that clause 4 be amended as follows:

Add immediately after subclause (4), the following subclauses:

- “(5) The validity of any proceeding shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any member or by reason that any person not entitled to do so, took part in the proceedings.
- (6) The Board may co-opt any person to act as adviser at any meeting of the board, but no person so co-opted shall have the right to vote on any matter coming before the Board for a decision.”

Sen. Mark: Mr. Chairman, I would like the Minister to justify the insertion of these new subclauses into the bill. If you look at subclause (5), you will realize that what the Minister is referring to here already taken care of in the bill. The question of a quorum is already taken care of, so I do not understand the validity of this particular proposal that is being parachuted into the bill at this time.

Secondly, I do not understand why you want to co-opt persons onto your board. I do not know if there is precedent for that, but quite frankly I think that your board is supposed to be sufficiently competent to deal with matters before it. Why do you want to extend the authority to the board to co-opt any person to act as advisor in the meeting of the board? What is the basis for it? What is the rationale for that? Is there any precedent for that? What is the reasoning behind that? What is the justification?

Sen. Broomes: Mr. Chairman, perhaps there may be other Senators who may wish to comment on this.

Sen. Mansoor: Mr. Chairman, I had suggested that the six members be increased to eight on the basis that the ambit of this bill has to do with the technical considerations with regard to telecommunications and also content. I think that if the number of directors were increased, there would be no need to co-opt persons with expertise.

Sen. Furness-Smith: I really have no objection to the Minister amendment. The first one I think is rather routine language to make it clear that if any chance there should be some defect in the appointment of a member, proceedings are not aborted because of that technicality. That is very, very usual certainly in companies and I think it would be wise to include it in a body such as this.

The second one, I am a little concerned that it appears to provide that they will co-opt an advisor to be sort of co-opted under the board as an advisor. Now, surely if they have power to regulate their own procedures which they do, they could always ask an advisor to be present and give them advice, but he would not be a member. I am a little worried with the expression "co-opting" when he is not really a member. He is to just give advice. But apart from that, I cannot see any reason why the board would not invite outside people in to give them advice as and when they need it.

Sen. Spence: I agree with Sen. Furness-Smith. I think the use of the word “co-opt” really confuses the intent. I really do not see any reason why it should not be possible for the board to invite advisors to any meeting for the purpose. But I would think the word “co-opt” should be changed. I would like to support Sen. Mansoor’s proposal for an increased number of persons on the board.

I do not think that would be necessarily, as he suggests, obviate the need for advisors on certain occasions, but certainly I think the board should be larger.

Sen. Bharath: I too agree with Sen. Mansoor’s submission as far as the composition of the board is concerned. I too had made the submission that the board should be increased to nine.

Mr. Chairman: So you are accepting an increase in the size of the board. You are not adamant about nine.

Sen. Bharath: I am just strengthening the support that Sen. Mansoor has given.

Mr. Chairman: Would you go with Sen. Mansoor’s amendment?

Sen. Bharath: Yes, Sir, that is quite all right.

Mr. Chairman: What we are dealing with substantially is the amendment proposed by the Minister. I think Sen. Mansoor was saying that the two things are tied together, but we are dealing with clause 4. The Minister is suggesting the addition of two subclauses.

Sen. Tiwary: May I suggest respectfully to the Minister that perhaps we should really take the clauses in order, bearing in mind that the subclauses are put forth in order. If it might not be too inconvenient, may we ask you to go back to clause 4(1).

Sen. Furness-Smith: The honourable Minister’s amendments in my view are really peripheral in the sense that whatever we decide—I see no reason why we should not withdraw one of them having started it—

Sen. Tiwary: Might I inquire whether Sen. Furness-Smith is saying that there is no need for subclause (6) at all? Because it says:

“the Board may co-opt any person to act as advisor at any meeting.”

It does not say to be a member of the board.

Sen. Deosaran: Mr. Chairman, if you put in this clause to my mind, if I were a member of the board, I would be utterly confused. It might also lead to unexpected repercussions. I do not see the need at all for this particular subclause.

Sen. Tiwary: I just want it to be clear that what both Senators Spence and Furness-Smith said is that there is no need for subclause (6) at all.

Sen. Spence: That would be my submission, but if you are going to leave it in, in any case, the word “co-opt” is inappropriate.

Sen. Broomes: Mr. Chairman, I believe the honourable Senator who raised now because this is a standard clause and the purpose I think is obvious. We on this side are prepared to withdraw the amendment proposing subclause (6).

Proposed subclause (6) withdrawn.

Sen. Mark: The Minister has not been able to convince me as to why, for instance, we need this particular clause in the bill when there is, in fact, the provision in clause 11 for a quorum. What is the Minister really attempting to indicate here? This is what I am trying to get clarification on. Somebody is appointed to the board. You anticipate defections and you are saying if people defect after they have been appointed, so you have a board of eight people and five defect. You are saying in this clause that the four people who remain, must continue to carry on the functions. I am trying to determine what exactly—

Sen. Mansoor: Mr. Chairman, I do not think that the meaning of the word “defect” is the same as “sedition.” “Defect” means that there is something wrong with the appointment. What the clause says—and one sees it in all sorts of articles of association of many companies—is that if there is a technical defect in the appointment; of a director, whatever the director has done or not done is not invalidated because of that defect in the appointment. It is not defect in terms of walking out of the board. That is very standard.

Sen. Broomes: Mr. Chairman, I am sorry that the honourable Member opposite does not have sufficient experience in these matters. But this is really a standard thing. He is saying now that four members will be able to make decisions, but this is taken care of the same clause 11 he is talking about. You must have a quorum and as Sen. Mansoor explained, a defect has a particular meaning and those of us who are either in law or business where we see the memorandum and articles of association of companies know that this is standard. So in case something happens perhaps, you know, unless you put in this saving clause, then

the whole board does not exist. So you may have all the other members properly appointed but there is some defect in the appointment of one member and although they have more than the quorum and they make a decision, the decision would be invalid, if you do not have this saving clause. I am going to start charging fees for these explanations to honourable Members opposite. I am joking.

Sen. Spence: Suppose there were so many vacancies at any one time that there were not five members, would not clause 11 supersede clause 4(5)? In other words, suppose you have four vacancies, there would no longer be a forum, so the board could not function.

Sen. Mark: As persons who are not versed in company law, we were seeking clarification on the matter for the validity. From what Sen. Mansoor and the Minister indicated, I think I would not press this matter.

Question, on amendment, put and agreed to.

Mr. Chairman: We will have to go back a bit to subclause 1(a). There is an amendment proposed by Sen. Deosaran.

Sen. Furness-Smith: Mr. Chairman, I was going to suggest that before we come to Sen. Deosaran's amendment—and there are other similar ones as to the composition—that we deal with my amendment which is quite basic in concept. If decided one way or the other, I think it could make quite a difference to the consideration of the other amendments. That is the one whereby I question whether it is the President on the advice of the Leader of the Opposition and the Prime Minister or whether we get away from that concept and go back to the ordinary concept of this board being appointed by the Minister.

Mr. Chairman: One way or the other they will be treated separately. It seems to me that they are different arguments.

Sen. Furness-Smith: I was just saying that my own goes to the root of the whole proposal. It is up to you, Sir.

I think the first one which caught my eye was Sen. Deosaran's. I am sure we will have to deal with his separately. Yes, Sen. Deosaran, you have a proposal.

Sen. Deosaran: During the debate and from the Minister's own contribution it appears to us, Sir, that there were many functions other than of a purely technical nature—

Mr. Chairman: If you would just pause a bit, Sen. Deosaran, I now understand what Sen. Furness-Smith was saying. He is proposing that the appointment should be made by a Minister and not the President. You are proposing to change the number appointed by the President. What he is suggesting is that if we get down to the core of who makes the appointments, once that has been decided, we will deal with numbers thereafter.

Sen. Deosaran: On whom are you calling to make representations? Myself or Sen. Furness-Smith?

Mr. Chairman: I think I want to go with Sen. Furness-Smith and then we will take your amendment.

Sen. Furness-Smith: Mr. Chairman, I propose the following amendment:

“In clause 4(1)(a) add “on the advice of the Minister” after “President” and delete “the Prime Minister.”

This amendment follows out of my remarks in my presentation on the second reading and it follows out of my grave misgivings as to whether it is right to set up this body as a kind of constitutional commission or corporation in a quite unique way by letting the President act in his own discretion after consultation with the Prime Minister and the Leader of the Opposition. That is a constitutional formula which was adopted in our Constitution to deal with the very, very sensitive political issue of the control of personnel in the civil service, the police and the teaching services. That is the formula arrived at to assuage the worries in 1962 about the independence of the judiciary, the police, the civil service generally.

Now, that formula goes against the general formula implicit in the Westminster system, which is, that you elect the government and they have to take the decisions for better or for worse. You have to give them the power to use. If they abuse it, your rights as a citizen are to vote them out every five years. Now, that is a very clear, strong principle which should normally be adhered to. In 1962, when we were approaching independence, the question was: What kind of constitution do we have? The great question was check and balances. We do not want to hand over everything and can there be any checks and balances. Because of course the main check and balance was the judiciary, but the civil servants who I think it is fair to say were very powerful in the ruling party, they were very afraid that politicians could interfere with civil service promotions, discipline and so forth. Everybody was perhaps afraid that the politicians could interfere with the police service. When that politicians could interfere with the police service. When one is

setting up an independent state in a small twin island as we were, one is looking at it rather perhaps, from how it is looked at in America or Britain.

Mr. Chairman: Sen. Furness-Smith, I am afraid I must interrupt you. During the second reading of the bill, you stated your case on that particular point. I do not perceive that you are advancing any new arguments? I think your amendment is quite clear and I think the reason that you proposed for supporting the amendment were made very clear during the second reading.

Sen. Furness-Smith: If you think that is clear, I would certainly not wish to waste any time. My proposal is that if that is right, we should not extend the President's power in this way. We should adopt the standard formula, which is that the Government—I do not mind whether it is the Minister, the Prime Minister or whoever advises the President; but it is the Government which advises the President. And I am suggesting that because of the sensitive nature of this in the case of broadcasting and so forth, it would perhaps be right for the Leader of the Opposition to be consulted. I am not strong on that. It is again a unique proposal. I would not press it, but it did seem to me possibly one answer to the serious concerns which I know have been expressed in debate on this bill, that when we are dealing with radiocommunications, TV stations and so forth, there is sensitivity and if possible, it would be better to achieve a consensus. But when push comes to shove, Mr. Chairman, the Minister, the Government must take itself responsible for those appointments. If they appoint highly political people who interfere with the way the general population wishes to get his radio and his television things, then they will suffer the penalty.

Sen. Spence: I have a different position from Sen. Furness-Smith. I certainly prefer the route that the Government has proposed in this regard. I believe that the media have such a pervasive presence within a society that it is possible, in fact, for a government to be kept in if the media are going to play it in a certain way. So I would certainly support the Minister in the original form of the bill, rather than having it amended in this way.

Sen. Furness-Smith: Sen. Spence has said something I wanted to say and in addition to that I think that the Government would do itself well to leave that provision in at this time. I recommend that particular provision remain as it is.

Sen. Broomes: Mr. Chairman, as I said during the debate, the original draft had Minister in it, but considering the area in which we are treading and trying to find legislation suitable to our own circumstances for all citizens, we decided to

change the original proposal and put it the way we have it and all things considered, Mr. Chairman, we believe that we should stay with the proposal as it is.

Mr. Chairman: We have two diametrically opposed arguments and I must put the question at this stage. I am putting the question on Sen. Furness-Smith's proposal amendment.

Question, on amendment, put.

The Committee divided: Ayes 2 Noes 26

AYES

Horne, Miss L.

Furness-Smith, G.

NOES

Lequay, A.

Rambachan, Hon. H.

Charles, Hon. H.

Weekes, Hon. G.

Broomes, Hon. H.

Tiwary, Miss A.

Hosein, Sen. F.

Charles, Miss U.

Bhagan, N.

Rampersad, F.

Sampath, Dr. M.

Warner, C.

Wahab, A.

Hannays, G.

Mark, W.

Baksh, Miss S.

Khan, R.

Bharath, Dr. J.

Belmosa, T.

Sealey, C.

Deosaran, Dr. R.

Joseph, Fr. W.

Mansoor, M.

Spence, J.

Mahabir-Wyatt, Mrs. D.

Paul, W.

Question negatived.

2.10 p.m.

Mr. Chairman: The division indicates that the amendment proposed by Sen. Furness-Smith to clause 4(1) (a) is defeated. We have other amendments to clause 4(1) (a) proposed by Sen. Mark, Sen. Mansoor and Sen. Deosaran. I think these relate specifically to the numbers that will constitute the board. In two cases we have a recommendation for changing from six to eight and another from six to nine. Let us take the recommendation from six to nine proposed by Sen. Mark. Sen. Mark are you adamant on nine or are you directional that you want to increase the number and would accept eight?

Sen. Mark: Our position is that the board itself should be broad enough to ensure that many interests in the country are directly involved.

Mr. Chairman: Answer the question.

Sen. Mark: I would prefer to see nine.

Sen. Broomes: Do you mean nine and the chairman or the chairman and eight?

Mr. Chairman: No. he is substituting the word nine, for six.

Sen. Broomes: I want to be sure whether that is what he means or whether he wants an odd number.

Sen. Mark: So we are talking about ten on this side, here.

Mr. Chairman: Mr. Minister, how do you respond? In the first case there is a proposal to increase the number and then we will decide and if you accept an increase in number, you may want to accept one of the proposals.

Sen. Broomes: We are prepared to accept an increase in the number from the chairman and six to the chairman and eight. I believe there is an amendment from Sen. Deosaran to that effect. There is also one from Sen. Mansoor to that effect and we are prepared to go along with this.

Mr. Chairman: We have two positions, therefore: one is by Sen. Wade Mark and one is by all those others who had proposed an increase in number. One is that we go from six to eight and one is that we go from six to nine. May I put the amendment first as proposed by Sen. Mark which is very simply stated. We should increase the number of members in addition to the chairman in clause 4(1)(b) from six to nine

Question, on amendment, put and negatived. [Sen. Mark]

Mr. Chairman: I must put the question again that we should increase the number, therefore, as proposed in the amendment by Sen. Deosaran, from six to eight which is also the number proposed by Sen. Mansoor. It might be easier for me to take the amendment proposed by Sen. Mansoor because it will get away from the wording of Sen. Deosaran's amendment which specifies "President".

Question, on amendment, put and agreed to. [Sen. Mansoor]

Sen. K. Khan: Mr. Chairman, on a matter of information, notwithstanding the fact that the question has been put, according to articles of association in the memorandum, if we were to appoint nine members in addition to the chairman, would that be acceptable from a legal standpoint, to go beyond the nine?

Sen. Broomes: I know of nothing to stop us from this.

Mr. Chairman: On clause 4(2), one proposal is that it be deleted altogether. In fact, that has come from a number of people. Sen. Mansoor has proposed as such; Sen. Furness-Smith has proposed deletion and Sen. Deosaran has proposed an amendment. Sen. Mark, we have a proposal from you on clause 4(1)(b). Are you proposing that we delete subclause 4(1)(b)?

Sen. Mark: Mr. Chairman, we live in a very small country and I am of the view that you have a director who is going to be full-time in the organization and because of the fact that the other members are going to be coming to meetings

from time to time, there is a strong possibility that the director, even though, for instance, he does not have the right to vote but he sits on the board—there is a strong possibility, and we know of instances where the director actually runs the show. We are saying that the director could always be called upon by the board from time to time or whenever it is necessary.

It goes without saying that he would have some role or some part to play in the day-to-day operations of the authority, and therefore, whenever the time comes and the board has to meet, the director will be called upon to advise and give whatever information that is necessary. But you see, sometimes you have a situation where, because of the fact that the director is the man on the plan on a day-to-day basis, there is a strong possibility that he could have a very powerful influence on the members of the board. In truth and in fact, what might end up taking place, is that the director might end up running the board in a sense. So in an effort to safeguard, as far as possible, the independence of the board and to avoid any one person having such great influence over it, we are suggesting that the clause be deleted. We also recognize that in its deletion the director would have to play a role in the operations of that authority. I am saying that the board would be calling on the director from time to time to advise it, to give it information. But this sitting of the director on this board every day, this right that he has, we have some fear about. So that is why we are proposing that the clause be deleted from this particular aspect—

Mr. Chairman: This is only one proposed amendment to clause 4(1)(b). Mr. Minister, do you have a response?

Sen. Broomes: Mr. Chairman, the practice of having the managing director in a company or any chief executive officer on the board, is widespread. I think that, generally, a board is very happy to have the person who has the day-to-day running of the business of the company or other organization, on the board.

I cannot conceive of what type of man, eight of them or nine of them, we would put on the board after consultation with the President, the Prime Minister and the Leader of the Opposition—I cannot conceive of the type of Trinidadian and Tobagonian who could be led by the nose by the director. Certainly, if they are anything like me, the director will have a hard time in leading them. He is there to advise them. I would like to think that eight intelligent persons on the board, carefully selected, after consultation with the Prime Minister and the Leader of the Opposition, I have no doubt that they will be safe from domination by the lone

director. So, Mr. Chairman, with deep regret must decline the invitation to delete subclause (b). I ask that it be retained.

2.20 p.m.

Sen. Baksh: Mr. Chairman, can the hon. Senator tell us why, first of all, there is a need to have this director *ex officio* in the first place? If we are having, as you have just stated, eight intelligent persons on this board, why is there a need for the advice of this special person?

Sen. Broomes: Mr. Chairman, as I said, the practice in industry is to have the person, the chief executive officer of a company or other organization, responsible for the day-to-day nitty-gritty running of the organization. On the board, it may be noted that he does not have a vote in this case, but he is there to give advice on what has happened in the day-to-day running and it is a widespread practice. We just do not want to depart from what is a good widespread practice.

Sen. Mansoor: Mr. Chairman, if I may support the Minister's position, I venture to suggest that even if this clause were not here, this director will be attending all board meetings by invitation. I think it will be rather strange to have a board of directors meeting without the man of business. I think this clause is absolutely necessary.

Sen. Mark: If we follow Sen. Mansoor's statement, he is going to be there by invitation, why do you want to insert that in the bill? Why do you want to have him there?

Sen. Mansoor: If I may, Mr. Chairman, I think the reason for that is very clear. You could have a rather obtuse chairman who may wish to silence the voice of common-sense as represented by the people who have to run the authority. I think that director, notwithstanding the fact that he has no vote, should be able to represent the views of the business, if you will. If you were to leave that out, you could have a board that could choose to ignore the voice of experience.

Sen. Mark: We could have it *vice versa*. We could have a director who is so powerful that he could actually have the chairman in his pocket.

Sen. Mansoor: That would depend on having a very powerful director with eight persons, which is quite unlikely.

Sen. Mark: But it happens in Trinidad and Tobago.

Sen. Spence: Mr. Chairman, I believe that if a director is going to dominate, he will dominate whether he is on the board or not. I do not think that is really a strong argument. But certainly, I think it is a good idea to lock the director into decisions, so that when you come to implement them, he was a part of the decision that you are implementing. So I certainly would support having him on the board.

Sen. Furness-Smith: Mr. Chairman, I support the Minister's views. But what all speakers on all sides seem to be assuming is that this board is going to operate like any other company with a board of directors or statutory corporation. Nobody has the slightest experience of how the President is going to make these appointments, if he can make them at all. He is going to get conflicting political advice from the Prime Minister.

There is a proposal here that each member will have certain qualifications, which I hope we will be able to get rid of. The President is going to be in a completely impossible position and it may well be that he will put perfectly faceless people there, who would not make any serious decisions and will not embarrass him. Because he is going to be personally responsible for the way this board behaves. That is something which we have not properly discussed this afternoon, but which is decided. I am not really arguing it, but I am just mentioning the point now, that it is something which this Senate has totally ignored and the consequences are going to be very serious indeed. I am afraid I am not going to be able to vote in favour of this bill. I am not going to be party to it.

Mr. Chairman: Sen. Mark's proposal is that clause 4(1)(b) be deleted.

Question, on amendment, put and negatived. [Sen. Mark]

Mr. Chairman: There is a proposal by Sen. Mansoor that clause 4(2) be deleted.

Sen. Mansoor: Mr. Chairman, the rationale for that is basically that the President should be unfettered in his right to make appointments to this board. That is the first point. The second point is, I doubt very much the wisdom of having such a preponderance of people in the telecommunications industry, notwithstanding the increase from six to eight. Those are the two basic arguments. If we are going to give the President the right to make these appointments, why should we fetter him? Why should we presume to tell him how to do his job? Therefore, the proposal is, we should allow his discretion, wisdom, *savoir-faire*, jurisprudence, whatever, to make the decision for us.

Mr. Chairman: In the same vein, there was another proposal from Sen. Furness-Smith. There is another proposal from Sen. Mark on clause 4(2), but I prefer to dispose of this matter in the first instance, whether or not the President should be fettered with clause 4(2). Are there any arguments?

Dr. Deosaran: With great respect, Mr. Vice-President, I do not agree that the clause should be deleted. I believe a compromised position could be struck upon which I might have the opportunity to elaborate on later. But certainly, the intent of the bill, and in addition to the specific provisions later on, make it advisable to have some clearly technical competence on this authority. Not so overwhelming, as is obviously stated in 4(2), but certainly, I would be very hesitant to delete that subclause in its entirety.

Mr. Chairman: You are proposing that the amendment that you have offered, specifying a different kind of arrangement, but retaining the clause, be considered.

Sen. Deosaran: If you would like me to speak on that amendment now, I will be happy to do so, with your permission.

Mr. Chairman: I thought you were.

Dr. Deosaran: No, no. I was responding to Sen. Mansoor's amendment.

Mr. Chairman: This might be a good time to raise your opposition.

Dr. Deosaran: If I looked at the overall intention of the bill, I see at least a minimal need for people with technical competence. I am suggesting that of the nine members appointed—that is the chairman and the eight other members—at least three shall have the kind of direct competence that the bill seeks to accommodate. There are other provisions in the bill which will require a wider array of competence, because you have to judge complaints from the public; you have to judge the programming performance of these different television and radio stations and so forth. So I believe you need people other than those who are directly versed in telecommunication as a technical area.

I am proposing that some discretion be left to the President and I am therefore submitting an amendment to 4(2), which will read:

"Of the nine members appointed under 1(a), at least three shall have qualifications in fields related to telecommunications or experience"

Sen. Furness-Smith: I strongly support that.

Sen. Mansoor: Mr. Chairman, if I may, I will go along with that recommendation if it finds favour with the Government. Three persons with telecommunications experience is fine, having regard to the fact that we will have six others.

Mr. Chairman: Could we hear the Minister's response to that position first?

Sen. Mark: Mr. Chairman, I would like to put forward a view. We could go along with Sen. Deosaran's position in terms of the three, instead of the five, but we want to make it very clear that if you have a board of nine persons, we believe somebody must come from the field of journalism, on that board and that must be specified. Because we are talking about telecommunications and people who are actually involved in the business of telecommunications on a day-to-day basis. We are saying that, for instance, some provision must be made to incorporate their views in such an Authority.

2.30 p.m.

We go further, the labour movement is represented in every telecommunications industry in Trinidad and Tobago. Whether you talk about TSTT, that is the Telecommunication Workers' Union; you talk about the print media, we have the Bank and General Workers' Union; and you have the Electronic Workers' Association at TTT.

Mr. Chairman, I see no reason why labour cannot be incorporated. That must be specified in this provision. We are proposing *[Interruption]* Well you will never agree to that. You are anti-labour.

Sen. Furness-Smith: Mr. Chairman, on a point of order. What is labour? The hon. Member's amendment speaks of the labour movement. I wonder if the two things are the same. We must have accurate language. I want to know what is labour and what is the labour movement.

Sen. Mark: You see, there are so many anti-labour voices here, that every time you raise, you get *[Interruption]* When we talk about labour, we are talking about the new trade union center; the National Trade Union Center of Trinidad and Tobago, which is a united body and it represents all workers in the country.

Sen. Furness-Smith: No! I am not for that one.

Sen. Mark: Mr. Chairman, I am arguing the point that, one, you have unions involved in the telecommunications industry and we are arguing that by right they

ought to have a say on that authority. We are strongly advocating—and I think that the Minister is talking about consensus, because we wish to warn here, that if you all continue to just reject, we will not be supporting this bill.

We have to recognize that we are talking about social partnership in this country. We had an economic conference recently at Queen's Hall, and the very Prime Minister of this country went out of his way to ensure that the labour movement was properly and adequately represented.

Sen. F. Hosein: Mr. Chairman, on a point of order. I am wondering whether at this stage, we are indulging ourselves again in a debate over the merits or demerits of this bill or whether we are addressing particular clauses. Therefore, arguments should centre around the desirability of having a particular clause contained in the bill, rather than about economic conference and the Prime Minister and that kind of thing.

Mr. Chairman: Thanks for your intervention. Sen. Mark, at this stage, you had proposed an amendment to a particular subclause of the bill. I will allow you to expand on your arguments to some extent, if you are re-enforcing a point that may have been made in the second reading of the bill. But if you are going to bring new arguments into supporting your position, I am afraid at this stage, it would be difficult for me to allow it.

Your position, however, is very clear. It is clearly stated and you have defined what you consider to be labour. I think that the Senate has enough information to be guided on his particular point.

Sen. Mark: One final point, Mr. Chairman. I think that the hon. Minister, based on his own presentation, indicated that he is willing to entertain consensus on many important matters here. We are simply submitting that labour be given an opportunity to be represented on that authority.

Mr. Chairman: I may make the point that whatever the Minister would like in terms of consensus, the Senate decides on each point on the basis of a majority vote.

Mr. Minister, do you have a position?

Sen. Broomes: Thank you, Mr. Chairman. To comment on the last remarks of Sen. Mark, I would point out that recent experience would militate against the kind of specificity that he is asking for. I refer, for example, to membership in the NPC and a recent invitation to the Media Association of Trinidad and Tobago to name a journalist to a certain board, and they declined.

Now, if we were to put into this bill, that the board must have a journalist and MATT decided that nobody would go onto the board, then we would not be able to constitute a board and the whole purpose of this bill would be defeated. So the kind of specificity he wants will have to come from convention and he will have to talk to, for example, the Leader of the Opposition and tell him that when he is talking to the President about this, he should mention a journalist and a representative of the labour movement. The place to put it is not in this bill which we are going to be passing with a three-fifths majority and then MATT says, "We are not putting anybody" and we have to come back to this Senate to amend the bill.

We, on this side, are unable to accept and we support the amendment proposed by Sen. Deosaran and I ask that the question be now put.

Sen. Mark: This wanton approach—

Mr. Chairman: Excuse me, it is up to the Chair to decide whether the question be put or not. As a matter of fact, since the Minister has asked that the question be put, I can judge that it is time to do that, and I have only heard two arguments. I am allowing you, if you wish, to make an additional comment.

Sen. Mark: Mr. Chairman, I think that the arguments advanced by the hon. Minister are quite spurious. To indicate here that because of recent experiences at the NPC, where the National Trade Union Center—before that CPTO and TTSC—

Sen. Sampath: I cannot hear exactly what Sen. Mark is saying. Can he speak louder?

Sen. Mark: I have a cold which is going around called the "NAR". My voice is a bit husky today.

The point I am making is that I find the Minister's response, as it relates to labour, to be quite spurious. I say this against the background of the fact that you cannot sit here and judge what took place at the NPC. That was a specific situation and labour responded specifically to it. An argument is being advanced here, because of the sensitivity of telecommunication and the importance of having wisdom and some kind of grassroots influence and insertion into that area, that we are proposing that consideration be given, and not merely when the Leader of the Opposition is being consulted that he would indicate or intimate to the President that he should appoint—

Mr. Chairman: I take it that you have not changed your position.

Sen. Mark: No.

Mr. Chairman: I would now put the question on Sen. Mark's proposed amendment, that clause 4(2) be amended as follows:

That after the word "telecommunications" in line 4, the subclause be amended by inserting "one member shall have experience or training in the field of journalism, two members shall be representatives of the labour movement."

Question put.

The Committee divided: Ayes 6 Noes 19

NOES

Lequay, A.

Rambachan, Hon. S.

Charles, Hon. H.

Weekes, Hon. G.

Broomes, Hon. H.

Tiwary, Miss A.

Hosein, F.

Charles, Mrs. U.

Bhagan, N.

Rampersad, F.

Sampath, Dr. M.

Warner, C.

Wahab, A.

Hannays, G.

Mansoor, M.

Furness-Smith, G.

Deosaran, Hon. R.

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

AYES

Mark, W.

Baksh, Miss S.

Bharat, Dr. J.

Belmosa, T.

Sealey, Dr.

Joseph, Fr. W.

The following Senators abstained: H. Khan, L. Horne, F. Paul.

Amendment negatived.

Mr. Chairman: As a result of the division, the proposed amendment is defeated. Shall we take the amendment proposed by Sen. Deosaran. I suppose Members have all been circulated with copies of Sen. Deosaran's amendment but I shall read it:

"Of the nine members appointed under 1(a), at least three shall have qualifications in fields relating to telecommunications or experience in the industry or be members of organizations connected with the maintenance or promotion of telecommunications and one member shall be an attorney-at-law."

Question, on amendment, put and agreed to. [Sen. Deosaran]

2.40 p.m.

Mr. Chairman: It has just been pointed out to me that Sen. Deosaran's proposed amendment would need to be strengthened by specifying after "under" and before "1" that "subsection" be added.

I shall just read the proposed amendment.

"Of the nine members appointed under subsection 1(a), at least three shall have qualifications in fields relating to telecommunications or experience in the industry or be members of organisations connected with the maintenance or promotion of telecommunications, and one member shall be an attorney-at-law."

I take it that meets with the approval of all Members. We have no amendments to subclauses (3) and (4).

Sen. Furness-Smith, I understand that you have one. You have an additional subclause.

Sen. Furness-Smith: I have a new subclause.

Mr. Chairman: Yes, but does it not interfere with the existing clause?

Sen. Furness-Smith: No.

Mr. Chairman: That is unchallenged. We have proposals for subclause additions to (4) by Sen. Wade Mark and Sen. Furness-Smith. Do you want to take yours, Sen. Mark?

Sen. Mark: Yes. We had argued that largely absent—and we believe that it was a question of oversight on the part of the drafters—was how the members were to be removed. There was no provision in the proposed bill as to how they are going to be relieved of their duties. What happened is that I in fact referred to the White Paper 1987 and it was clearly stated in this White Paper at the time how these people were to be removed.

I certainly believe it was an oversight on the part of the drafters why it was left out. I believe that for instance, the Minister would have no hesitation in incorporating the same in the present bill before us.

Mr. Chairman: In his proposed amendment it is going to be a new subclause (6). You have stated (5), but we have already accepted a subclause (5). It reads *inter alia*:

"The President may terminate the appointment of any Member of the Board who:-

(1) becomes of unsound mind or incapable of carrying out his duties,"

Could you hold a while so that the Minister can familiarize himself with the proposal?

Sen. Furness-Smith, you had a proposal as well to add, a new subclause (6) very much along the same line probably not entirely in the same vein. I think it might be just as well that you comment at this stage.

Sen. Furness-Smith: I entirely endorse Sen. Mark's proposal. There must be provision for getting rid of members of this body. I just dressed up things a little because there seemed to be one or two minor drafting problems. Perhaps with my legal knowledge I felt that I could be of some assistance. I did not think that he

should include (v) "fails to carry out any of the functions carried out, confirmed or imposed on him under this Act."

I think that is a somewhat dangerous provision to say that if he failed to do something which the Act required him to do, that one Member for instance voted against the proposal, somebody could argue well, you have failed to do your duty under the Act. You are out. Although I understand Sen. Mark's thinking I think it is misconceived to put it in a section of the Act, but otherwise I entirely accept his suggestions.

He will see that there are minor amendments which I think tighten up particularly (iv). I have expanded it a little in accordance with what I think is more usual language to read:

"is absent from meetings with the Authority for a continuous period of three months unless by leave of the Authority."

Mr. Chairman: Before you intervene, Sen. Mark, do you want to respond to the position advised by Sen. Furness-Smith to your (v)? Or do you want some time to think about it?

Sen. Mark: Yes.

Sen. Tiwary: Mr. Chairman, bearing in mind that Sen. Furness-Smith is proposing in his new subclause (7), which should be subclause (6), that salary and perquisites be determined as under the Constitution, and bearing in mind that we have accepted the amendment as is, that the President has the power to appoint the members of the board, since their positions will be similar; is he proposing that they be similar to members of service commissions appointed under the Constitution and their perquisites be the same? I know that under the Constitution there is provision for the President to remove those persons under section 126:

"may be removed from office by the President acting in his discretion for inability to discharge the functions of his office, whether arising from infirmity of mind or body or any other cause, or for misbehaviour."

I wondered whether Sen. Furness-Smith had considered there is this provision here in the Constitution when he was drafting the particular amendment spelling out the circumstances in which an appointment should come to an end. I am well aware that we are not giving the power to the President to appoint them as under the Constitution, but if you are proposing that they get salaries and perquisites as spelt out in the Constitution, I wondered whether it makes a difference.

2.50 p.m.

Sen. Furness-Smith: I had a great problem with that. Sen. Tiwary may be aware that my view of the bill would have avoided that particular difficulty because we would have had the conventional format whereby the Minister could advise. I really do not know how you are going to put this. I repeat my warning that you are putting the President in an impossible position. A particular member of this board gets sick or he shows signs of senility, he happens to have been the person recommended by the Leader of the Opposition, who, we are to understand is to be the party representing the labour movement, and immediately, the President is in the middle of a political turmoil. I just do not know what the answer to it is and I am asking Senators to find an answer to the conundrum which they have set themselves.

Mr. Chairman: Sen. Furness-Smith, if you will allow me. I cannot allow you to reopen that argument. You did not propose an amendment to the use of "President" in this subclause and I am not going to allow you to introduce it again. We are dealing with another matter.

The argument is fundamental here. Sen. Tiwary is suggesting that you do not need to include this new subclause and I—

Sen. Tiwary: That is not what I am saying. What I wanted to know is, when Sen. Furness-Smith was formulating this new proposed amendment, whether he considered the provision in the Constitution which already exists and gives the President the power to terminate appointments in certain circumstances. There is the other argument: do we wish really to fetter the President in view of his power of appointment?

Mr. Chairman: But for my own clarification, do you have any objection to the inclusion of a new clause?

Sen. Tiwary: What I am suggesting is that there may be need to insert some kind of new clause but I would respectfully suggest that we defer it to allow the advisors here to come up with an appropriate formula. *[Interruption]* We may accept some of it but I think that the point is only now being addressed.

Sen. Furness-Smith: Do you agree that there is a provision in the bill to dispose of a member, if necessary?

Sen. Tiwary: Whether it is by invoking the very provision in the Constitution or accepting the draft either of yourself or of Sen. Mark, but we would certainly need an opportunity to consider which is more appropriate.

Sen. Furness-Smith: But you cannot invoke the constitutional provision in this bill.

Sen. Tiwary: We can repeat it, but we need an opportunity to consider what is the appropriate course.

Sen. Broomes: Mr. Chairman, while the matter is deferred, I would invite Sen. Furness-Smith to consider section 39 of the Interpretation Act, to see whether that is the case. It says clearly that the power to appoint carries with it the power to remove, suspend and so forth. I ask him to consider whether we need to put in a specific provision at all and I also ask the hon. Sen. Mark to consider that. We ask for a deferral on this matter.

Question put and agreed to.

Subclause (6) deferred.

Mr. Chairman: At this point to dispose of clause 4, we need to consider your further amendment. You have a proposal that there should be a subclause (7) relating to salaries and perquisites of members of the board. Are you willing to pursue your argument?

Sen. Furness-Smith: Yes Sir, sure. Mr. Chairman, I beg to move that clause 4 be amended by adding a subclause (7) as follows:

"The salary and perquisites of the members of the board shall be determined in the same manner as those of the Service Commissions under the Constitution."

It struck me at a later stage that there is some provision there that says that—dealing with the perquisites of the board—there is no provision for perquisites of the board. Then it struck me that possibly the board could argue that being entirely self-sufficient and appointed by the highest officer of the land in his discretion, they would certainly be entitled to fix their own remuneration. After all, if they are people of such importance and independence, they must have the right to have proper salaries and so forth, and the whole purpose of the bill is to set them up in the right way. I myself feel that we ought to be quite clear that they do not have that kind of blank cheque and I suggested without going into it, because it is quite an elaborate study and I am sure the legal draftsman can help us. I am sure he has it all at his fingertips. It seems to me that these people should be under the same basis as the service commissions are. I forgot the name of the committee which looks into these things from time to time. The Salaries Review Commission, that is right.

Mr. Chairman: Mr. Minister, what is your response?

Sen. Broomes: Mr. Chairman, we, in our continuing efforts to reach consensus, will not oppose this proposed amendment.

Mr. Chairman: We have deferred Sen. Mark's proposal. We are now considering a proposal for subclause (7), provided that we accept the subclause (6) later on. But whether it becomes subclause (6) or (7) eventually, it will read as follows:-

"The salary and perquisites of members of the Board shall be determined in the same manner as those of the Service Commissions under the Constitution."

Sen. Furness-Smith: I suggest to the hon. Minister that, I am not sure that it is the appropriate language. It is certainly rather unique language. There must be a proper formula somewhere. I just did not have the time, particularly as I was not in my office, to put my hands on it, but I do feel that the legal draftsman would be able to find more appropriate language. If the Minister agrees, and the legal draftman has the opportunity to put what is the right language. I think this should be done. I do not think this is the right language. It must be effective.

Mr. Chairman: Can I therefore ask, without taking a vote for acceptance in principle, and we can consider in detail the final draft, which may very well, Sen. Furness-Smith, considering your own demonstrated capability as a draftsman, be exactly as this one is. But you want to give the Minister some time to consider it. Shall we consider acceptance of proposed subclause (7), in principle?

Question, on amendment, put and agreed to.

Subclause deferred for final drafting.

Clause 5 ordered to stand part of the bill.

Clause 6.

Question proposed, That clause 6 stand part of the bill.

Sen. Broomes: Mr. Chairman, I beg to move that clause 6(2) be amended by inserting between the words "Chairman" and "may" occurring in line 1, the words "or Deputy Chairman".

3.00 p.m.

Sen. Furness-Smith: I am concerned about this clause which provides that three months' notice has to be given by these gentlemen before they can resign. I do not know yet what kind of officers they are, but I do not think there is a precedent for this requirement. If you are appointed to an office, you are normally able to resign from it right away. Certainly, you can be removed from it right away, as I think the Interpretation Act says. So it seems to me that you must be entitled to resign right away. If you have a disagreement in principle with the Minister and you think you are being harassed in some way, contrary to the provisions of the Act, you must be able to resign right away. You cannot have a lame duck occupancy for three months. Based on that principle, I think—well my amendment will speak for itself, namely, that any Member can resign.

Sen. Spence: I support that, Mr. Chairman. I think Sen. Furness-Smith is right.

Sen. Broomes: Mr. Chairman, if hon. Senators wish to go that way, I do not know. Subclause (1) states that "The Chairman and Deputy Chairman may resign by giving three months' notice." These people are in a very special position. As the hon. Senator himself has pointed out, this board has a sort of uniqueness to it because of the unique area in which we are dealing and this is the reason for this apparently unique position.

If I may draw hon. Senators' notice to subclause (2), they would see that ordinary members of the board would be entitled to give the usual one month's notice. We feel that because of the unique nature of the board, and if I may say so, the amount of power that the board has, we should make it longer for the chairman and deputy chairman. But as I say we are quite prepared if hon. Senators press the point, to accept the amendment.

Mr. Chairman: Sen. Furness-Smith has proposed a complete deletion. Are you standing on your position that the subclause be deleted entirely?

Sen. Furness-Smith: Subclause (1) goes and subclause (2) be amended to provide for—

Mr. Chairman: I am dealing with subclause (1). Are you insisting that you want a complete deletion?

Sen. Furness-Smith: Well, I feel it is right, Sir. I can understand the Minister's feelings, but I think this is without precedent and I think it is wrong in principle.

Sen. Broomes: Mr. Chairman, may I point out that unless the hon. Senator withdraws his proposed amendment to subclause (2), everybody will be taken care of in subclause (2). He has an amendment to subclause (2) in which he proposes the removal of the words “other than the Chairman”. Unless he withdraws that, if that is accepted, we will find that any member, including the chairman and deputy chairman would be able to resign by giving one month’s notice. So that when we give our consent—

Sen. Furness-Smith: I have deleted “one month’s” I think.

Sen. Broomes: Well, Mr. Chairman this throws a different light on the matter. I believe the hon. Senator is saying that they could get up one Monday morning and go to the Minister and hand him a letter and thereupon are freed of all responsibilities. In light of that, Mr. Chairman, if we could defer subclause (1) and go to subclause (2) and then return to subclause (1), I would be in a position to deal with subclause (1) at that stage.

Sen. Spence: I support this motion. What he is saying is that in principle you should not force anyone to have to continue to serve after circumstances may have arisen in which he needs to withdraw. Sen. Furness-Smith pointed out that it may be a matter of principle, or it may be a matter of illness; the person has some illness and is no longer able to function in that way. It would seem to me reasonable that anyone—it is not going to be the norm, and one would expect in the normal function of the board, if anyone is going to resign, they would give notice, whatever is convenient to the functioning of the board. But one must have the provision that one can resign forthwith. And I think this is what Sen. Furness-Smith’s two amendments are seeking to do.

Sen. Mansoor: Mr. Chairman, I support that, except that I think the director, who is the ex-officio member of the board, should have a constraint on him to give one month’s notice. All the other members of the board, in my view, should be able to resign forthwith. The director who is in charge, the chief executive officer, I think he should be perhaps required to give three months’ notice.

Mr. Chairman: Sen. Mansoor’s point introduces another technicality in the wording of the proposed subclause (2).

Sen. Mahabir-Wyatt: Mr. Chairman, I would like to support Sen. Furness-Smith and Sen. Mansoor, but I think Sen. Mansoor’s point bears a distinction to be made between the chief executive officer insofar as his capacity as an employee of

the authority is concerned and in his capacity as a member, ex-officio, of the board. He is not really appointed to the board. He is an ex-officio member of the board, so there are terms and conditions in the employment contract under which he would give resignation notice, which is a little bit different. But I agree with the previous three speakers, that if you are going to get the calibre of people you are hoping to get to serve on a board like this, you cannot restrict them in terms of giving notice. It could very well be a matter of principle, but it could also be a matter of domestic emergency that dictates that somebody may have to give notice and leave immediately. I do not think we can restrict people like that. It is too much like forced labour.

Mr. Chairman: I think I am understanding the arguments that are coming forward, but Members must consider that there are positions that are to be taken into balance here. Firstly, it appears that the Minister will want to modify subclause (1) somewhat as subclause (2) would allow for the chairman and deputy chairman to give one month's notice. That is the feeling I get coming from him. Sen. Mansoor has just introduced a new argument relating to the chief executive and if he is going to specify a particular time-frame for the chief executive to propose his resignation before it is accepted, then I think that subclause (2), even as the Minister may want to have it modified, will be affected.

Sen. Mark: Mr. Chairman, I do not think we have agreed on the deputy director.

Mr. Chairman: Deputy Chairman.

Sen. Mark: Mr. Chairman, we would go along with Sen. Mansoor's amendments.

Sen. Broomes: Mr. Chairman, we, in principle, note the consensus that is emerging towards Sen. Mansoor's position. If he can get the form of words for the amendment, I believe we will be in a position to support it.

Sen. Furness-Smith: I would like to suggest that we do not need to make any provision for the resignation of the director. That is a matter of contract. If he terminates his contract, then ex-officio, he ceases to be a member. So I would suggest that clause 6 reads:

"A member other than the Director may resign by giving notice in writing addressed to the Minister."

Sen. Broomes: To the President through the Minister.

Sen. Furness-Smith: Well, whatever.

Sen. Tiwary: Should it then read:

“A member other than the Director may resign by giving notice addressed to the President through the Minister.”?

Sen. Furness-Smith: On that point, if we are accepting the present language of the Bill, if the President appoints me, I have no business sending my resignation to the Minister. The Minister has absolutely nothing to do with the case. I am appointed by the President and I send my resignation to the President, surely.

Sen. Rampersad: Mr. Chairman, just before we conclude on that particular point, I would like to introduce, perhaps, a new dimension to the argument. Let us assume, for instance, that member of that particular board is in the middle of a transaction, a project and he is holding vital information with regard to that, perhaps, satellite or something, are we going to allow him to resign *carte blanche* the next morning, for instance, or immediately without passing on that kind of information to the other members of the board?

Sen. Furness-Smith: These people are just board members.

Sen. Khan: I would like to explain the rationale for our supporting Sen. Mansoor's amendment. In my view, it is very simple, logical and reasonable in that the managing director of the organization, as we have already discussed in detail, will be the person with the major responsibility in that organization and would know the day-to-day operations of that organization.

In the event that the managing director as a member of the board has to depart from that organization, obviously it means that he would take some time within which to hand over whatever hanging business or overhanging business there is, to other members of the board. The important responsibilities which are attached to his position have been elucidated upon already. We have gone into that area, into quite a bit of detail, and that is the reason, the rationale, the logical and reasonable explanation behind our support for that amendment. Now, he being the key person in the organization for its day-to-day operations, I think it is of paramount importance that he should be the one, particularly, to give that one month's notice.

The other persons, for example, as Sen. Rampersad has just mentioned, if another member of the board, has a transaction which he is doing, I am certain that he will not be doing that independently. The other members of the board, including

the managing director, will obviously be aware of the transaction or transactions in which he has been involved. So that is not an important area, really, as that of the managing director.

Mr. Chairman: I just want to point out that Sen. Furness-Smith had clarified to Sen. Mansoor that it is very likely that the contract under which the chief executive officer operated would specify all those things relating to his termination.

Sen. Tiwary: Mr. Chairman, clause 8 states the terms under which he will be appointed and how he could be terminated, 8(1) and (2). Might I indicate that if, of course, there are no further arguments, we will be prepared to accept Sen. Furness-Smith's amendment. But I agree with him that there is no need for "through the Minister". Clause 6 should now read as follows:

"A member other than the Director may resign by giving notice in writing addressed to the President."

Would you accept that it should be "Any member" or "A member"?

Sen. Furness-Smith: "Any member."

Mr. Chairman: Could you repeat that?

Sen. Tiwary: "A member other than the Director may resign by giving notice in writing addressed to the President."

Mr. Chairman: Let me see if I have it correctly. You are accepting a deletion of subclause (1)?

Sen. Tiwary: Yes.

Mr. Chairman: What will now be clause 6 in its entirety will read:

"A member other than the Director may resign by giving notice in writing addressed to the President."

Question, on amendment, put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Sen. Furness-Smith: Mr. Chairman, I propose that clause 7(1) be amended as follows:

“The Board shall appoint a Secretary who shall be an attorney-at-law on such terms and conditions as approved by the Minister.”

Do you accept that, Sen. Broomes?

Sen. Broomes: Mr. Chairman, I wonder whether now that the hon. Senator has got it into the Bill that the members of the board, their salary and perks will be determined in a certain way, whether he does not believe that is a sufficient check and balance to ensure that they do not do anything extraordinary and go overboard with the salary of this attorney-at-law, and whether in those circumstances, he would not consider withdrawing the proposed amendment.

Sen. Furness-Smith: Mr. Chairman, it is a question of principle. Here we are setting up this new statutory body like a bird flying free and all I am concerned is that they will not fly too freely with our money. I want to see controls just like any other government body at every stage, but that is the principle which I am trying to adopt in this amendment. I really think it is important. I do not pretend to be an expert on salaries of public officials. I know it is quite a complicated subject, but I want to be sure that this person is not taken on just because he is a lawyer who is particularly friendly with the chairman or anything like that, and they give him a fancy salary and then all the way around the public service everybody starts saying, “Well, look, he gets so much, what about me?”

It seems to me whatever you say about the appointment, the Government must be responsible for that kind of thing in this body. I can see that there could be problems, but I think it is important.

Sen. Tiwary: Mr. Chairman, with respect, I am afraid I do not agree with Sen. Furness-Smith in this case. While it may be desirable in the case of the appointment of attorneys in certain state bodies and so forth, bearing in mind that the board here is appointed by the President and the argument of the Minister is that salaries and perquisites are fixed in accordance with the Constitution, do you think that it would be appropriate for the Minister to have any sort of limitations as to what can or cannot be granted to a member here? But it must be taken in the context of the kind of business that this board runs, the kind of attorney that they can attract at what kind of salary. Should they really be fettered by general public service considerations?

Sen. Furness-Smith: Well, maybe not. But as far as I am concerned, I am not having any set of people spending my money without some control, and that is a basic principle which I am not departing from at all.

Dr. Deosaran: I think we are all concerned about over-expenditure and corruption, and so forth. But my submission is along the lines that Sen. Tiwary raised. You have to look at the overall intent and the area of jurisdiction that this Bill seeks to cover and certainly if you are giving the prerogative of appointment to the President, I believe that spirit of semi-autonomy or autonomy in many parts ought to pervade the Bill. I can look at it the other way and say you can have ministerial interference or political interference at a very unexpected level in the administration of this authority. That is another way to look at it.

So on balance, I submit that this provision be retained as it is without adding any clause of the Minister's interference. And this is not to disrespect the Minister whoever it might be, or to encourage the possibility of corruption. It is really looking at a new area of functioning in here and a special area of our lives, telecommunications. I submit that the amendment not be accepted.

Sen. Spence: I support that and point out that there is another safeguard. In fact, the practice which operates with autonomous boards, and that is, once the Government has to provide a part of the budget, a substantial part of the budget, in practice what happens is when you are negotiating with the Ministry of Finance, you negotiate for the whole package including salaries. In fact, many boards that do not have a provision that the Minister must say what the salaries are, do their negotiations with the CPO involved. So that I do not think it is the case that the Board would be able to given any salary that they want. As long as they are receiving a substantial part to their budget from the Treasury, they are going to have to negotiate with the Minister of finance and that means the CPO would be involved as well.

Sen. Mark: Mr. Chairman, according to the Public Service Commission, their standard procedures for the appointment of persons beyond a certain level within the public service—of course the Prime Minister is the only person under the Constitution who is allowed the leeway to either express a disapproval in the appointment of somebody and so forth, maybe to such officers as permanent secretaries, chief technical officers, *etc.* So I would say that it follows logically that if you are going to appoint a director, to involve the Minister, and in this instance it does not specify the Prime Minister, the Minister—and we are assuming that the

Minister in this instance is the Minister here—I feel that it is highly dangerous. There is a case involving Endel and the Attorney General in 1981. That situation was clearly spelt out at the level of the Privy Council; the need to insulate the public service from political interference.

I will go along with the proposal to let the commission determine the terms and conditions of the director and if the Constitution requires that the Prime Minister be consulted in this matter, so be it. But I do not think, for instance, the Minister should be involved in that exercise at all.

Sen. Furness-Smith: I would accept that amendment. I do not mind who it is. If it is to be the Public Service Commission, if that is the proper body to do these things, sure.

Mr. Chairman: What Sen. Mark has said in a voluminous presentation, if I may refer to it as that, is that he does not accept your position.

Sen. Furness-Smith: He said it should be done by the Public Service Commission.

Mr. Chairman: No, he was making a reference to the Public Service Commission, the way it operates under certain circumstances.

Sen. Furness-Smith: All I am saying is that I want these people to be subject to control and if it is the Public Service Commission, then sure. I put in the Minister in my ignorance. I am very happy that somebody can correct me.

Sen. Mark: Mr. Chairman, he has “the Minister”. I am saying delete “the Minister” and deal with the Public Service Commission.

Mr. Chairman: I cannot accept that because you have not proposed an amendment.

Sen. Furness-Smith: I am proposing that amendment.

Mr. Chairman: We have just two positions and there seems to be a growing consensus in one direction. I want to put Sen. Furness-Smith’s amendment to the vote.

Sen. Furness-Smith: My amendment is now subject to the amendment that we delete “the Minister” and insert “the Public Service Commission”.

Mr. Chairman: Are you amending your amendment?

Sen. Furness-Smith: Yes, Sir.

Sen. Spence: Mr. Chairman, I am a bit confused. Are we talking about Public Service Commission deciding on salaries or have I got confused?

Mr. Chairman: What he is saying is that he wants the terms and conditions of the attorney appointed to be approved by the Public Service Commission. I have accepted your modification of the amendment.

Sen. Lequay: You cannot have it accepted by the Public Service Commission and continue with "as the Board thinks fit".

Mr. Chairman: If we accept Sen. Furness-Smith's amendment, what he is proposing is that the terms and conditions of an attorney-at-law be approved by the Public Service Commission. Firstly, he said "Minister". He is modifying his position to change "Minister" to "Public Service Commission".

Sen. Spence: I just wanted to be clear on the procedures. I have always assumed that the Public Service Commission made appointments but did not determine terms and conditions of service. Am I wrong in that regard? Well then, what are we talking about? How can the Public Service Commission determine terms and conditions of service of anybody.

Mr. Chairman: That is the preference of Sen. Furness-Smith. It may be an impossible position to accept. I will have to put it to the vote so you can vote on it.

Sen. Furness-Smith: Sir, mine was an amendment I put down. I have done my best to express it properly. I have explained the principle. How, if any Member of this Chamber finds that my amendment is improper, well please let us have some co-operation and let them tell me what is the proper language. I am not an expert, as I have pointed out, on all these things. One cannot know all the public service regulations. Sen. Mark appeared to know about these things and I accepted his knowledge. But if somebody else says the Public Service Commission is wrong, surely rather than just vote it down, let us have a proper proposal.

Mr. Chairman: We are not ready to vote, but you must accept that this is a natural development. You have made an amendment and Sen. Prof. Spence has made an input based on your amendment.

3.30 p.m.

Sen. Tiwary: I believe when Sen. Deosaran supported my original submission, I thought we had made the decision quite clear. What Sen. Furness-Smith is suggesting, that there must be somebody or some office or official who would approve the terms and conditions of the appointment of the secretary who is the attorney-at-law, I pointed out to him that the very nature of the business this Telecommunications Authority is going to carry on, may make that unworkable. If one wants to have the Minister approve of those terms and conditions. We have the President appointing the members; he has certain limitations on the appointment but, insofar as doing their work, I find it is undesirable to limit or to fetter the powers of the board in this fashion.

A little experience of how the Public Service operates and if you contrast that with how the private sector operates, would be that it would make it unworkable to say that either the Minister or, as is suggested, the Public Service Commission, approve terms and conditions. It is either you are going to fetter the board by having them approve terms and conditions, or you are not going to do so. If, as Sen. Furness-Smith is saying, there is need to put some check on it, I am trying to point out that the check cannot come from either the Public Service Commission or the Minister. It ought not to come from either of those persons because the Public Service Commission cannot go outside what they normally do, and they do not fix salaries. They are responsible for appointments.

In considering an attorney-at-law for an appointment, it is a different kettle of fish where you are appointing an attorney in the public service, as opposed to outside the public service. Terms and conditions vary vastly. So I think it is wrong to fetter the board here, by telling them, appoint a secretary, but have the terms and conditions approved by the Minister. Whether you call it the Public Service Commission or the Minister, you are really giving them very limited powers as to what terms and conditions would be given. Therefore, unless we can find some other formula to say who would approve the terms and conditions, I really feel that we should support the Minister's proposal. I urge Sen. Furness-Smith, in the circumstances, if he would be prepared to reconsider.

Sen. Furness Smith: I will be prepared to reconsider, but all I want to know is, when these people engage all kinds of fancy employees at fancy salaries and they ask for a vote at the end of the year of say \$1 million, what is to happen? I just want to know what budgetary controls are there.

Sen. Tiwary: On the other hand, if you are going to give a board, an authority, the kind of powers that you are going to give it, to say that you want to limit that board insofar as its appointment of a secretary and a director, really, is out of proportion to the general powers that you are giving this corporation anyway.

Dr. Deosaran: Mr. Vice-President, we have so many checks and balances all over the place and the last Auditor General's report put a lie to that in so many different ways. Let us be realistic. You will have problems searching for proper people to serve on this board, already having extended the size of the board. If you put in so many restrictions, you are therefore making it virtually more difficult to get people properly trained and competent in the kinds of areas you are looking for to serve on this board. It is an amazing spectacle to see the Government insisting that it does not want further political interference, and against one of our distinguished Senators who have always cried out against political interference and bureaucratic red tape. I find this very amazing in this particular instance.

Sen. Spence: Mr. Chairman I just wanted to reiterate the point I made earlier. In practice, having been the chairman of a board which is set up under an Act of Parliament, I can tell you that in practice once you are receiving money from the Ministry of Finance, you have to negotiate with them, and one of the things you negotiate on is what salaries you pay the people. In theory, you have the right to give them a new salary. In practice, if you do that, they will just reduce your subvention from the exchequer and then you cannot run your outfit.

Sen. Fr. Joseph: I support Sen. Deosaran but I am with Sen. Furness-Smith. There must be some competent authority and who is the competent authority with respect to the salary of this "animal" called the secretary, who is an attorney-at-law?

Sen. Spence: The Minister of Finance who gives you your budget.

Sen. Fr. Joseph: So we are saying the Minister of Finance.

Sen. Spence: No, you do not have to say it there.

Mr. Chairman: At this stage the Public Service Commission. There are strong reasons, as argued by Sen. Tiwary, why it cannot be the Public Service Commission, but that is the black and white of the argument.

Question, on amendment, put and negatived. [Sen. Furness-Smith]

Clause 7 ordered to stand part of the bill.

Clause 8.

Mr. Chairman: Sen. Furness-Smith has withdrawn his amendment to clause 8.

Sen. Broomes: I have made some proposed amendments to clause 8 as circulated on page 2 of the list of amendments. Substitute the following:

"8. (1) Subject to section 70(3) the Board shall appoint—

(a) a Director who shall be responsible to it for carrying out the business of the Authority;

(b) a Deputy Director who shall act for the Director as required.

(2) The appointment of the Director and Deputy Director and the termination of either appointment whether by death, resignation or otherwise, shall be published in the *Gazette*."

Sen. Furness-Smith: How does the Minister explain the necessity for a deputy director?

Sen. Mark: Mr. Minister, while you are on that particular point, could you indicate whether he is going to be full-time or part-time and what you perceive to be his responsibilities? Because, I have some queries on the necessity for this deputy director, like Sen. Furness-Smith. What is the rationale?

Sen. Broomes: Mr. Chairman, I wonder if there are any more contributions; I am waiting. Subclause (2) states what the deputy director will do. May I hear Sen. Mark's question again, please, Mr. Chairman?

Dr. Deosaran: Mr. Chairman, on a point of procedure, are these committee deliberations open to the media?

Mr. Chairman: The media is allowed to film the footage of some of what is transpiring here without audio. I have given approval.

Sen. Mark: My question really is, what is the rationale for this deputy director, whether he is going to be full-time or part-time and what are going to be some of his functions, apart from saying "the deputy director who shall act for the Director as required"? I am trying to get some clarification to justify that.

Sen. Broomes: Mr. Chairman, the present position, as I explained in presenting this Bill, is that the functions proposed for this bill, are to the extent possible, now being performed by a division of the office of the Prime Minister. There is now there, a director and a deputy director, and we regarded this as an over-sight that the post of deputy director was not contained in the bill. So to that extent this is the rationale for it. Secondly, the job that would be assigned to the director, the role and function of the director, is described, firstly, in subclause (1)(b). He shall act for the director; he shall carry out the functions that he now carries out, which I am afraid I am not in a position to detail at the moment. This is as far as I can go to assist.

3.40 p.m.

Sen. Spence: I really find myself very puzzled over the way the hon. Minister has stated it. After we have gone through great pains to set up a board to ensure its autonomy, and before it has started and decided what the institution is going to do in detail, we have put in a framework for its staffing. Clearly, we have to have a director because we have to have a executive officer. But after that, surely it is for the board to examine what its functions are and to decide what staffing it wants to have. It may be three deputies; it may be an assistant, but certainly that decision should not be made at this stage. This is quite contrary to the whole process that we have been going through to make it autonomous.

Sen. Mark: Mr. Chairman, I am arguing that too often we find ourselves in a situation via legislation, assigning responsibility, or giving power, or establishing a post, but there is no subsidiary section or appendix that will give the population or parliamentarians, an appreciation of what the functions of these people are going to be. What is happening here is that the matter is extremely vague. I know that people do not like to refer to other experiences but in the Federal Communications Commission, it is clearly defined what are the functions of the directors, what are the functions of the deputy director, the chief administrative officer. So, at least, you would not be creating a situation where we would not be clear at this level what the functions of the deputy director would be.

I was just enquiring what is the rationale for the establishment. If we are simply saying it used to exist under the Telecommunications Division and you just want to put it here, I am asking whether that is sufficient justification for that input, on amendment.

Sen. Lequay: Mr. Chairman, I cannot agree with Sen. Spence that merely by adding a deputy director, we would be removing the autonomy of the board. The

Minister has said that we are transferring the Telecommunications Division of the Prime Minister's Office which now has a director and a deputy director and one could look at the bill and see the additional responsibilities that the new authority will have. One must certainly perceive that the new authority will have so much added responsibility that there will be need for a deputy director and the mere appointment of a deputy director does not seem to me to remove the autonomy of the board at all.

Sen. Spence: It may well be that the present structure is the incorrect one for the functions that have to be carried on. That is why we are setting up an authority. I do not want to reopen the argument, but what Sen. Lequay has said is a good argument for leaving things as they are, which was my position in the first place.

Sen. Mansoor: Mr. Chairman, if I may ask, would it not be possible if something is wrong with the substantive director, to immediately appoint someone in his stead? So it is not necessary to create a deputy director as a creature to this legislation. There is a director. If the director is not there, the board appoints someone to act as director. But to enshrine this new position, this ancillary position, in the legislation seems to me to be quite preposterous.

Mr. Chairman: The duties of the deputy director are spelt out in 1(b).

Sen. Mansoor: I know. But I do not think there should be any deputy director. You only need an *ex officio* director if something is wrong with the person who holds the substantive position. There is no need for this appointment.

Sen. Spence: By spelt out, you mean he shall act for? That is the reference to spelling out of the duties? That is not spelling out of the duties. That just says what will happen when the director is not there. It has nothing to do with the duties of deputy.

Sen. Broomes: Mr. Chairman, hon. Members may wish to consider whether all the arguments that they have put in respect of the deputy director, particularly the arguments of Sen. Spence, are somewhat equally applicable to the post of director, whether we should not say, do not tell the people what staff they have at all, just appoint them. From that point of view, I am not as moved by those arguments as I would otherwise have been.

Secondly, I would like the record to show that clause 73—and I think clause 70—makes provision for the possibility, even the probability of all the staff moving

over from the Telecommunications Division; they have the option to leave the authority.

Also, there is provision in this bill for the authority to determine its staff. So when you combine those two things, what we are doing is taking care of the staff who are there, giving them the option to move over and once they are there, they have the option to return to the Civil Service; various options. The authority in the meantime has the power to determine what its staff should be. Having determined what its staff should be, it would determine whether it has a deputy director. But I am surprised that Sen. Mark is not supporting us in this bid to establish a post for the deputy director to go to, in the interim, while the board decides whether they want a deputy director or not. I am astonished by his position on this. I thought his main concern would have been to see that all the staff can move over, and once they move over, the board can say, "well, look we do not want a deputy director". Then they have to negotiate with the deputy director. If I were he, I would take that position. I urge him to reconsider his position in that light and let us leave it here. I urge Sen. Spence as well, let us leave it here and let the board decide whether they want a deputy director. Otherwise, I will say that Sen. Spence's arguments are just as valid for the director.

Sen. Spence: If you are saying that the board may subsequently decide that they do not want a deputy director then we must not enshrine it in the legislation, that is the soundest argument that I have heard for not enshrining it in the legislation.

With respect to the post of director, clearly you have to have a chief executive officer, otherwise you have no organization. We have already said that he shall have a function as being a member of the board. So I do not see how you can remove that post. But the management structure under the chief executive officer is something which you have to determine subsequently and the Minister has omitted that by saying that the board may subsequently decide they do not want a deputy director. Now if you are arguing that it has to be enshrined because there is staff there, then we have to enshrine all the posts. Because the only way we can ensure that all staff is taken care of, is to list all the posts below the director which currently exist in the Telecommunications Division. We must do that, if that is the argument.

Sen. Mark: Mr. Chairman, let me lay to rest the astonishment of my good colleague here. I was attempting to get clarification essentially on why the post of

a deputy director. I was not aware until the Minister brought it to my attention that there is, in fact, a deputy director existing in the Telecommunications Division.

3.50 p.m.

Again, as Sen. Spence has said, these people are going to be transferred, and according to clause 70, they are going to have options. So, what you might want to look at is to determine what new structure you may wish to establish. Because, if you single out the deputy director—as again he rightly pointed out—you might have to single out and define other posts as well.

In other words, we know that these people are being transferred and when they are transferred, according to the kind of structure that is necessary to carry out the functions and responsibilities of the authority, then you classify and categorize people accordingly. But to do that in advance, I feel that, for instance, we might be rushing the gun. That is what I would like to advance here. It is not to say that I am opposed to anybody being a deputy director.

Mr. Chairman: Are there any other new arguments?

Sen. Furness-Smith: I want to record my concern that here in Parliament we are doing our best to make sure that the charges on the public expenses are controlled. We obviously need a director. I just ask the question, do we need a deputy director? I entirely agree with the remarks made by my friend, that it may not be necessary. It is a technical matter. I entirely reject the idea that because there is a deputy director in some department of government at the moment, that it is necessary. I just do not know.

I want to hear somebody in the Government, who is responsible for our continued indebtedness of our Government, and the continued apparent insolvency of our Government—that is to say it is spending more than it receives—I want somebody to tell me, whether these questions were gone over to determine whether this or that office is necessary, whether it is doing any work or performing any function for the money which all of us, collectively, are putting in?

Therefore, on those principles, unless the Minister can assure me that the deputy director is necessary, I am not being a party to that. Maybe it will come under section 70, or wherever it will be found necessary—and I know we would have little control over it. But just to put it in the bill like that, to my mind, is irresponsible.

Sen. Broomes: Mr. Chairman, in the further spirit of co-operation that we have demonstrated so much here, we withdraw this amendment.

Amendment withdrawn.

Question put and agreed to.

Clause 7 ordered to stand part of the bill.

Clauses 8 and 9 ordered to stand part of the bill.

Clause 10.

Question proposed, That clause 10 stand part of the bill.

Sen. Furness-Smith: I submit that the word “special” in clause 10(1)(c) is redundant and should be deleted. I do not know what “special meeting” is.

Mr. Chairman: How does the Minister respond?

Sen. Broomes: Mr. Chairman, clause 10 deals with special meetings. The whole clause deals with special meetings and there is no sinister motive behind the use of the word “special” in that case. I believe that the hon. Senator overlooked the fact that the whole clause deals with special meetings and I am sure that I can persuade him to withdraw this proposal.

Sen. Furness-Smith: The question I asked is: Is there provision somewhere else obliging the chairman to give notice of ordinary meetings? If there is not, then I think this clause could give rise to confusion. That is all. I do not feel very strongly about it. I presume the board will lay down its own procedures for that. I withdraw it.

Amendment withdrawn.

Question put and agreed to.

Clause 10 ordered to stand part of the bill.

Clause 11.

Question proposed, That clause 11 stand part of the bill.

Sen. Mansoor: Mr. Chairman, it is suggested that because we have increased the size of the board, that the size of quorum be also increased.

Mr. Chairman: There is a proposal here from the Minister that the quorum should be increased from five to six. There is a proposal by Sen Mansoor that the

quorum should change from five to seven, taking into consideration the fact that the board is now nine members. It is a question of deciding on a number. We either decide on five—

Sen. Mansoor: Mr. Chairman, I am just wondering—I have not thought this through—is there any problem in having an even number as opposed to an odd number to form a quorum? Are there circumstances in which you can, sort of, hamstring yourself if you had an even number?

Mr. Chairman: What happens if you have eight?

Sen. Mansoor: I had said five to seven.

Mr. Chairman: What happens if eight people attend the meeting?

Sen Mansoor: The same problem would arise.

Sen. Furness-Smith: I submit, Mr. Chairman, that although I can understand the concerns of Members who want to increase it, my submission is that it is misconceived. It is difficult enough sometimes to get quorums. Endless meetings—I mean, just take special committees of Parliament. One spends hours sitting here waiting for a quorum to turn up. I do not know what kind of public service sitting on this board would be, but people are busy and even these admirable gentlemen, appointed in such an admirable and unique fashion, will be busy people and you cannot guarantee that they will easily turn up.

So my advice would be to leave it at five. You must get notice of the meeting. Now, if it is an important matter, you would be sure you are there. Or you ring up the Chairman and say, "Look, I am going to be late, just hold that back because I am going to make a row about it."

Sen. Mansoor: Mr. Chairman, if I may add, the reason for the increase in the number of directors was to ensure that one had all the brands of expertise and experience that one wanted at these meetings. So, if one left the size of the quorum as the same, one would not get the benefit of the earlier amendment. I am quite prepared to go along with the Minister's recommendation of six, but I think that there must be an increase in it in order to put into effect all the points that have been made with respect to getting a broad range of experiences to the deliberations of the board.

Sen. Tiwary: Mr. Chairman, I urge that since the board consists of nine members, three of whom must have special qualifications and one the attorney; that is four members there, I accept everything that Sen. Furness-Smith has said about the ability of people to attend meetings especially—and I urge that an odd number be prescribed and we retain the five. I ask the Minister to consider that, please.

Sen. Spence: I would go with six. The Chairman has an original and the casting vote, so it does not matter whether it is odd or even.

Mr. Chairman: There are two positions therefore. I get it that the Minister has modified his position. He had proposed an increase in quorum from five to six and now he is saying that he is agreeing with Sen. Furness-Smith that the quorum should be five people. So, there is only one other competing position, that of Sen. Mansoor, that the quorum should be seven members. I want to put Sen. Mansoor's position to the vote, therefore.

Sen. Mansoor: [*Inaudible*] If the Minister has not abandoned that position.

Sen. Spence: I am supporting that.

Mr. Chairman: Sen. Mansoor is now modifying his number. He is saying he would go to six. but the Minister has already changed position. So you are no longer on the same ground as the Minister.

Sen. Broomes: Mr. Chairman, my colleague urged me to change position but I have not really expressed this. [*Laughter*]

Mr. Chairman: I am afraid that we all speak as individuals at this stage of the proceedings. [*Laughter*]

Sen. Broomes: Considering the argument put forward by Sen. Mansoor earlier when he was talking about increasing the number, and considering that, as the Chairman himself has pointed out there may be eight even without this, I believe that six is a nice number even though it is an even number and I urge hon. Senators to accept that. I have very, very great respect for Sen Furness-Smith. I was on the verge of accepting his very valuable advice but in the end I am afraid that I have decided against it.

Mr. Chairman: It seems, therefore, that we have almost approached a consensus. I want to put it to the vote however, that the Minister's amendment, that at any meeting of the board, six members of the board shall constitute a quorum.

Question, on amendment, put and agreed to. [Sen. Broomes]

4.00 p.m.

Clause 11, as amended, ordered to stand part of the bill.

Clause 12 ordered to stand part of the bill.

Clause 13.

Question proposed, That clause 13 stand part of the bill.

Sen. Mansoor: My suggestion there was that all members of the board of the authority be required to disclose their holdings in the telecommunications industry. I think the reason for that should be self-evident; that the public should know and it should be gazetted, what holdings and interests these persons have in the industry over which they are going to have such awesome powers.

Sen. Spence: I support that strongly.

Sen. Mark: I support that amendment as well.

Mr. Chairman: I am hearing that Sen. Mark is also supporting your position, Sen. Mansoor. Do we have any differing positions?

Dr. Deosaran: I just wanted to affirm my support to Sen. Mansoor.

Sen. Furness-Smith: I have no objection to Sen. Mansoor's suggestion being part of the bill but he is substituting his subclause (1) for the existing subclause (1).

Certainly, it would make sense to make a general declaration of all your holdings as he suggests, but that I do not think removes the necessity for the Minister's subclause (1) which says that if something comes up—

Sen. Mansoor: I am suggesting that 13(1) be renumbered. I am not suggesting that it be deleted. I am suggesting that 13(1) remains but as 13(2).

Sen. Furness-Smith: That is fine.

Mr. Chairman: Sen Mansoor, would you clarify that for me please? You are saying that you want to retain 13(1) under a different numeric?

Sen. Mansoor: Yes. I am basically saying that 13(1) could become 13(2).

Mr. Chairman: In fact, your proposal is an addition.

Sen. Mansoor: Yes. It is not a deletion.

Sen. Broomes: May I ask the hon. Member to whom the declaration should be submitted?

Sen. Mansoor: I am suggesting that it should be put in the gazette.

Sen. Broomes: There are many people who now have to make declarations and they make it to the Integrity Commission. I do not believe that going the way of gazetting people's personal holdings is the right way to go.

I understand the trend of thought of the hon. Senator but I think he has gone too far down the road. I think perhaps he would like to consider the possible role and function of the Integrity Commission.

Sen. Mansoor: I have no difficulty in saying that the declaration should be made to the Integrity Commission or the President.

Sen. Broomes: The hon. Senator perhaps does not insist then that it should be gazetted.

Sen. Mansoor: I am not insisting on that.

Sen. Tiwary: I wonder whether I am correct that the Integrity Commission is limited. It can only receive and request or require declarations to be made in respect of persons who fall under the ambit—I do not believe members here will fall—

Sen. Mansoor: Could it be that they submit it to the President?

Sen. Tiwary: Yes. I would say to the President.

Sen. Sampath: I would like to ask Sen. Mansoor a question. If I had a telephone, would I have to declare that? The question may sound ridiculous but it is not facetious by any means. If I had a walkie-talkie or a telephone, most people would have that sort of instrument of communication. You see how broad the net is going to be spread.

I may be approached to be a member of the board. Nearly every person who is approached will fall in that category.

Sen. Mansoor: I have not asked you to declare whether or not you have a telephone in your house. What I said is if you have a holding of stocks, shares, bonds or other securities.

Dr. Sampath: In that case I think you would have to specify what sort of interest.

Sen. Mansoor: It is specified in the amendment.

Sen Sampath: I beg your pardon.

Sen. Furness-Smith: With respect to Sen. Sampath I do not think Sen. Sampath would come under it.

"Any beneficial interest in a contract for the construction of works or the furnishing of a service to any mass media agency."

I do not think Sen. Sampath could regard himself, though I respect his oratorical and other powers, as a mass media agency.

Sen. Mansoor: I would like the amendment to say "shall submit to the President annually a declaration of".

Sen. Furness-Smith: The other thing about this amendment is that once you make that declaration, you are probably going to have to stand back from almost every decision of the board. It is just as well that you make the declaration.

4.10 p.m.

Sen. Tiwary: If Sen. Furness-Smith acknowledges that the subclause (1) of the draft refers to a declaration of interest, so if he has an interest on any matter to be decided, I would think that is different from declaring what holdings you actually own at a particular time.

Sen. Furness-Smith: If I am a shareholder in TSTT, or in television, Channel 4, whatever we have, surely I have an interest, direct or indirect.

It is coming to my amendment now, but subclause (1) as it is framed, is extraordinarily wide. I think it needs to be carefully considered otherwise we will frustrate this board, from the word, go.

Sen Rampersad: Mr. Chairman, would it be possible for me to ask Sen. Mansoor a question? What is the rationale behind submitting the declaration annually?

Sen. Mansoor: You want to ensure that you have accurate data. The President would wish to have accurate data.

Sen. Rampersad: Surely, if you submit a declaration on entering the board, that can be used as a broad guideline down the road.

Sen. Mansoor: Yes, but a simple letter on the anniversary of your appointment saying that there have been no changes or there have been changes, I think that is important information.

Sen. Tiwary: If you allow me, the proposal by Sen. Mansoor, the Minister is prepared to accept, but as subclause (4). If you allow me, I can read our proposed amendment at this stage:

"Every Member of the Board shall submit annually to the President a declaration of—

- (a) all holdings, acquisitions or beneficial interests in any shares, stocks, bonds, debentures or other securities of any newspaper, radio or television station, or cable television system, any advertising or programme production agency, or other mass media agency held by him;
- (b) any beneficial interest in a contract for the construction of works or the furnishing of a service to any mass media agency referred to in sub-paragraph (a) by any of them.

Sen. Mansoor: In addition to "annually", perhaps we should also say "on appointment and annually".

Mr. Chairman: Would not clause 13(1) cover his initial declaration?

Sen. Mansoor: It could. It is a declaration of his interest.

Sen. Furness-Smith: And annually thereafter, which would read—

Sen. Tiwary: "Every member of the board shall on appointment and annually thereafter submit to the President a declaration...", and at the end of sub-paragraph (a) "held by him" instead of "them" and at (b) "held by him".

Mr. Chairman: Let me see if I have it right. This new subclause, which is intended to be subclause 13(4), shall read as follows:

"Every Member of the Board shall on appointment and annually thereafter submit to the President a declaration of—

- (a) all holdings, acquisition or other mass media agency held by him..."
- (b) any beneficial interest in a contract for the construction of works or the furnishing of a service to any mass media agency referred to in sub-paragraph (a) by him"

Question, on amendment, put and agreed to.

Sen. Broomes: Mr. Chairman, as a result of the addition of subclause (4), I have to propose that in subclause (3), the words "this section" should be deleted

and in their place should be put "subsection (1)". This is to avoid any misunderstanding as to whether the disclosure called for in the new subclause (4) is subject to subclause (3).

Mr. Chairman: So you are substituting the words "subsection (1)" for "this section". Let me put the question therefore. The question is that subsection 13(3) be amended to read as follows:

"A disclosure made under subsection (1) shall be recorded in the minutes of the meeting at which the disclosure was made"

Question, on amendment, put and agreed to.

Sen. Furness-Smith: I have a problem here, Mr. Chairman, with 13(1) and 13(2). My concerns are that 13(1) seems to me to be a little too widely drawn.

Mr. Chairman: Your concern is with 13(2)?

Sen. Furness-Smith: Clause 13(1) to start with. That is the first lot of amendments. It seems to me that almost everybody in the country could be affected by some of these decisions. Almost all of us own television sets, we own radios and it seems to me that we could be obliged under 13(1) to declare our interests as a recipient of television or radio contracts, or contracts with TSTT. Of course, having done so, everybody on the board will be prohibited from taking part in any procedure. It seems to me that we ought to try and find some language which would modify that, and what I have suggested is that we add in 13(1), after "on any matter whatsoever", words in brackets "but not in a way merely common to the general public". I do not know if you would like me to deal with (2).

Mr. Chairman: No. I prefer to deal with one subclause at a time. Sen. Furness-Smith has offered a proposal to amend subclause (1) on line 3 by including after the word, "whatsoever", the words "but not in a way merely common to the general public". That is the sum total of his proposal.

Sen. Tiwary: I wonder whether Sen. Furness-Smith can tell us—I myself am not familiar with this language.

Sen. Furness-Smith: I agree, there is no precedence for it. It was done at home on the weekend. It is my best effort. But I would certainly expect better language to be available somewhere if we can find it.

Mr. Chairman: I think the Senator would be pleased to hear your inner self on the matter. Apart from the words, what do you mean?

Sen. Furness-Smith: I tried to explain the principle which is worrying me. I think I am probably right. I think the clause is too widely drawn. The point is, how to limit it without limiting it too much. The concept I have got here is that everybody, in some way or the other, could find themselves with an interest, in which case the law says that you would declare it, and having declared it, you will not take part. I want to avoid the embarrassment. That is all.

Sen. Tiwary: On the other hand, might I enquire, is it that Sen. Furness-Smith is saying that maybe we should rethink subclause (2) as to whether it is desirable that once you have declared an interest you must sit out, or the board should have some discretion as to whether you should sit in or not?

Sen. Furness-Smith: Yes, Well I have made an amendment on that too, which we have not yet come to. I think the Chairman is right. One needs to take them bit by bit.

4.20 p.m.

Mr. Chairman: But they are not entirely the same.

Sen. Furness-Smith: My point about that is what subclause (2) says at the moment, if you have made a disclosure, you are not to be present at the meeting at which the matter is to be discussed. I am trying to limit that to "You are not to be present when that matter is discussed". So you could leave the meeting while it was being discussed and come back in. That is the essence of my amendment.

Mr. Chairman: I think the two things are sufficiently separate for them to be considered.

Sen. Furness-Smith: I agree with you.

Mr. Chairman: But we need to clarify language in your amendment.

Sen. Broomes: Mr. Chairman, I am very interested. I understand clearly what the hon. Senator is saying. It may appear to some as really splitting hairs, but I understand what he is saying. We on this side are prepared to go along with it in principle, but no form of words has occurred to any of us on this side as yet to properly represent what we understand his position to be. In those circumstances, I ask that this be deferred and that the hon. Senator be kind enough to assist us with a form of words that we can accept.

Clause 13(1) deferred.

Mr. Chairman: Do you want to proceed with subclause (2)?

Sen. Furness-Smith: Yes, Sir. It is a very narrow chain. My amendment is as follows:

“A member making a disclosure of interest of any matter shall not be present when such matter is discussed.”

I am saying he should not be present when such matter is discussed. I am not saying that he is not to be present at the meeting. “not to be present at the meeting,” might be read as saying that he cannot attend that meeting at all which would be unfortunate.

Sen. Broomes: Mr. Chairman, actually what subclause (2) says is: “...at any meeting at which the matter is being decided by the Board.” Mr. Chairman, I do not think we have any difficulty accepting this.

Mr. Chairman: Do you want to decide on the wording?

Sen. Furness-Smith: Well, I think my wording is all right.

Mr. Chairman: Did you have an input on this particular subclause?

Sen. Khan: Mr. Chairman, I want to make a suggestion here. We could change the wording to read, for example:

“A member making a disclosure of interest shall not be present at any meeting at the time during which the matter is being discussed by the Board.”

Sen. Tiwary: I think the language is very clear, “shall not be present when such matter is discussed.”

Mr. Chairman: Have you looked closely at Sen. Furness-Smith’s proposal? I am not trying to railroad you into accepting it. If you feel strongly about your proposal—

Sen. Khan: No, Mr. Chairman. What I believe he is saying is that the person ought to be eligible to attend the meeting, but when the matter is being discussed, then he should be asked to leave, in other words.

Mr. Chairman: Are you one with Sen. Furness-Smith on the essence of the argument?

Sen. Khan: Right. The wording was changed here.

Mr. Chairman: If you want to propose that the wording be changed, you are entitled to do that. What is your position?

Sen. Khan: I am suggesting the wording—

Mr. Chairman: You do not seem to be very strong on it.

Hon. Senator: No, not really.

Mr. Chairman: So you go along with Sen. Furness-Smith's proposal. Therefore, let me put the question on subclause (2).

Question, on amendment, put and agreed to.

Mr. Chairman: Sen. Furness-Smith, you have made a proposal for subclause (4) which if you want to pursue it, will become subclause (5) since we already have a subclause (4).

Sen. Furness-Smith: I am just wondering if looking at discussions on Sen. Mansoor's amendments, whether it is really needed now. I think it may. My proposal is to have a new subclause reading:

“A member may declare his interest under subsection (1) generally in respect of any organization.”

Mr. Chairman: Your specified “may”; is there any specific reason why?

Sen. Furness-Smith: Well, yes. Because you have a provision that he is to declare his interest in respect of any matter. That is under (1). Now, my idea was that supposing that I was a shareholder of TSTT, for instance, which might come up at every board meeting, so every board meeting I have got to make a declaration of that. What I am suggesting is that I could tell my board members from the word go, I am a shareholder of TSTT or a member of the board of TV 6, or something, so that anything that comes up about that I am going to be out, which is the common practice in companies. Rather than having to declare it every time and have it recorded in the minutes which means that somebody is writing it all down.

Mr. Chairman: Sen. Furness-Smith, inasmuch as the wording of 13(1) is being looked at, is there any possibility that the ethos of the proposal that you are making here can also be included in the rewording of that subclause?

Sen. Furness-Smith: It probably could, Sir. I am a little surprised we are having difficulty with this particular subclause because it must have come up time and time again before. But it does not seem usual language to me. Maybe I am wrong.

Mr. Chairman: I want to make a suggestion. I suggest that we defer a decision on this particular subclause and seek in the redrafting of subclause (1) to

incorporate your thoughts on the matter. If not, then you can continue to insist on the subclause (5).

Mr. Chairman: Hon. Senators, there is need for the Senate to resume to consider a procedural motion.

Senate resumed.

PROCEDURAL MOTION

The Minister in the Office of the Prime Minister (Sen. The Hon. Horace Broomes): Mr. Vice-President, I would like to report that we have made progress at the committee stage of this Bill and I beg to move that we continue sitting in committee after the tea break.

Question put and agreed to.

Mr. Vice-President: Now that we have reached this particular point, I want to exercise the option to take a break for tea. It is now roughly 4.30 p.m. I suggest that we be back here by 5.00 p.m., so that we will continue our deliberations on the committee stage of the Bill.

Before we rise, however, I want to make one small announcement. This is coming at the request of His Excellency, the acting President. He wishes to inform all Members of the Senate that their invitation to cocktails on Thursday at 6.30 prefers that they be dressed in lounge suits, for those who are wearing suits. At this stage, therefore, I wish to declare that this sitting is suspended temporarily to 5.00 p.m.

4.30 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

TELECOMMUNICATIONS AUTHORITY BILL

Committee resumed.

Mr. Chairman: Before we took the break for tea, we had deferred consideration of clause 13. We now move on to clause—

Sen. Broomes: No, you have another amendment to clause 13.

Mr. Chairman: Are you asking for a new subclause? Would you want to advance your arguments, Sen. Mark?

Sen. Mark: Mr. Chairman, I propose the following amendment:

“Any person who fails to comply with the provisions of subsection (1) is liable on summary conviction to a fine of two thousand dollars and to the

termination of their appointment, unless they prove that they did not know that they were directly or indirectly affected in any way.”

Mr. Chairman, we have many declarations taking place in the proposed bill as well as the amendments that have been accepted so far in principle, but nowhere in clause 13 is there any provision to deal with sanctions and penalties in the event of a member of the board violating the very declaration that we are talking about. So what is being suggested here is that we have to incorporate a subclause that will give some teeth to what we are proposing in clause 13. The subclause that I am proposing is as defined in the amendment.

I feel it is very important, Mr. Chairman, because we have a lot of conflict of interest in this society and persons must be aware that if they violate the disclosure of interest clause, there are sanctions or penalties attached to any such violations. I suggest, Mr. Chairman, it was again probably an oversight on the part of the Minister and I am certain he would have no objection in accepting this proposed amendment as being suggested. We had a similar situation with the National Trust Bill and we almost, word for word, put in this particular clause that I am now purposing here. So there is precedence for it.

Sen. Broomes: Mr. Chairman, I am in agreement with the intent of the hon. Senator's proposed amendment. If I recall correctly, I believe he circulated his amendment before I circulated my list. I invite him to look more closely at my list to see whether in light of the proposal with respect to clause 49, page 7 of my list whereby it is proposed that acts in contravention of clause 13 be included under clause 49 which deals with penalties. I ask the hon. Senator to consider whether this will meet the case and if it does, whether he will consider withdrawing his proposed amendment.

Sen. Mark: Mr. Chairman, I am for imposing very stiff penalties. The fine that is being proposed here in clause 49 is \$15,000 and to imprisonment for three years. Now, I have no problem with people going to jail if they do these things. But I find for the extent of the crime, if, for instance, someone fails to do so, whether the penalty should be that harsh. The reason for saying this, Sen. Broomes, is that I recall some time ago when we were dealing with the National Trust Bill, we had proposed, I think it was about \$2,000 but, again, having regard to the seriousness of this Bill, maybe it ought to carry stiffer penalties. I do not know if you understand the point I am making in terms of this.

Sen. Broomes: Mr. Chairman, when I was winding up debate on this Bill and when we were dealing with the question of penalties, I invited hon. Members to consider the provisions of section 68, subsections (2) and (3) of the Interpretation

Act which show clearly that these penalties are maxima and there are also penalties in the alternative. If the hon. Senator now recalls that, which—

Sen. Mark: What I am saying, Mr. Chairman, is that I will go along with section 68. I have no problem with that. I am just drawing to your attention the fact that given the severity of the penalty in relation to the offence committed, whether, for instance, you do not think it is too severe. I have no problem in sending people to jail for a long time too, if that is the position. I just wanted him to give it some reflection.

Sen. Broomes: Mr. Chairman, since the hon. Senator agrees here, certainly there is no need for me to continue with the explanation I was giving, but in the interest of camaraderie I will explain again that section 68, subsections (2) and (3) of the Interpretation Act provide by the laws of Trinidad and Tobago that a penalty expressed in this way does not prevent the court from putting a fine of \$2,000 and no imprisonment, *etc.* These penalties are to be construed as maxima and also penalties in the alternative. There was no need for me to go on since the hon. Senator accepts, but I thought this would be in the best interest.

Sen. Mark: Mr. Chairman, I withdraw the amendment.

Amendment withdrawn. [Sen. Mark]

Clause 14.

Question proposed, That clause 14 stand part of the Bill.

Sen. Furness-Smith: Mr. Chairman, I propose the following:

- (a) In subclause (3) delete all the words after “by the Board”.
- (b) Add a subclause (4) as follows:

“A copy of the minutes both when prepared and when confirmed shall be forthwith forwarded to the Minister.”

I made the amendment here, but I really do now know whether it is suitable. It occurred to me that the hon. Minister who has now absolutely no control over this body, but who will presumably be responsible for various aspects of what the body is doing, would want to be informed right away of the decisions of that body and not wait a month later when the minutes are confirmed, and then have to wait for a further seven days before he gets a copy of them. It is obviously very much a matter for the Minister and if he feels that my proposals are not *a propos*, then I will certainly withdraw it.

Sen. Lequay: You seem to be dealing with an addition to the clause as 14(4).

Sen. Furness-Smith: All I am doing is amending subclause (3) and putting the business of the Minister but I have expanded it. That is a matter of wording. It is nothing much. The point I am making is that it seems to me that this Minister who is responsible for all this area and Parliament having set up this body which is free as a bird, entirely independent, would find it very embarrassing not to know exactly what that body is doing immediately. I feel that in this case, at least the Minister should be sent the draft minutes as soon as they are prepared to be followed in due course by the confirmed minutes.

Sen. Broomes: We on this side are prepared to accept the amendments proposed by Sen. Furness-Smith.

Mr. Chairman: Sen. Furness-Smith has made a proposal to split subclause(3). He wants to terminate subclause (3) at "Board." And he has proposed a rewording of the rest of that clause as subclause (4).

Sen. Tiwary: Mr. Chairman, would Sen. Furness-Smith agree to accept his amendment to subclause (3) as well as the new subclause (4) incorporated into one subclause?

Mr. Chairman: In other words, it will come as an amended subclause (3).

Sen. Tiwary: The new subclause (3) as amended should read:

"The minutes shall be confirmed at the next meeting by the Board and a copy of the minutes both when prepared and when confirmed, shall be forthwith forwarded to the Minister."

Mr. Chairman: Accepted?

Sen. Furness-Smith: Yes.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the bill.

Clause 15 ordered to stand part of the bill.

Clause 16.

Question proposed, That clause 16 stand part of the bill.

Mr. Chairman: In clause 16, there is an amendment proposed by Sen. Furness-Smith.

Sen. Furness-Smith: My amendment is that in subclause (2), we substitute for the words, "as referred to above," the words "in good faith in the course of the operations of the Authority."

Now, that is just a verbal correction. It just seems better wording. I will accept the Minister's views on that. You are making a penal remark. I would prefer myself to have it utterly clear because "as referred to above" does not necessarily refer to the other section or previous section or what section. I think it would be clearer to state "in good faith in the course of the operations of the Authority" which I think is what is intended.

Sen. Broomes: Mr. Chairman, we would accept this.

Mr. Chairman: We are amending clause 16, subclause (2) to read as follows:

"Any sums of money, damages or costs recovered against the Authority or any member of the Board for anything done, omitted, or permitted in good faith in the course of the operations of the Authority, shall be paid out of the funds of the Authority."

Question put and agreed to.

Clause 16, as amended, ordered to stand part of the bill.

Clause 17 ordered to stand part of the bill.

Clause 18.

Question proposed, That clause 18 stand part of the bill.

Sen. Broomes: Mr. Chairman, I would like to move the following amendments:

- (a) In paragraph (e) substitute for the words "to represent" occurring in line 1, the words "to advise the Minister on the representation of."
- (b) In subclause (1) insert between the words "determine" and "tariffs" occurring in line 1, the words "subject to the approval of the Minister."

Mr. Chairman: I take it that Members have taken a very close look at this because clause 18 is probably the longest of all the clauses in this bill. Shall we deal with the first one please.

Sen. Furness-Smith: What does that mean? How do they advise the Minister on the representation? Does it mean who is to represent, or how they are to represent, or what they are to say? I find the concept a little difficult, not that I wish to reopen.

Sen. Broomes: Mr. Chairman, I think those details were not intended to form part of this. It is left open. The fact of the matter is that the Authority would decide a lot of technical know-how, a lot of communication interaction with other authorities around the world. They would have their thing on the day-to-day operations of the inter-telecommunications organizations community and in that context they would generally advise the Minister.

In such a context you want to know who is the best to represent the Government at certain conferences depending on what is coming up, the nature of it and so on, and to advise on the backgrounds to agenda items and things like that. So it is generally to advise the Minister. Of course, the Government will eventually decide who is to represent, but it is in that context that the advice on representation will be given and it is in that context that it appears to us to be desirable that it should be stated in these wider terms rather than with exclusivity that might hamper functioning.

Sen. Mark: Mr. Chairman, I am not happy with the Minister's proposed amendment. It does not deal with the fundamental issue. You see this bill is riddled with contradictions. On the one hand we talk about autonomy. On the other hand, we see political influence so we are not too sure where we are going.

What we are really doing is playing with words here. We are saying that this authority will have the power to advise the Minister on the representation to be made on any of the clauses and so on, particularly international conferences. I thought, for instance, that the Minister should be vested with that authority and he can delegate persons from the authority to represent Trinidad and Tobago or maybe not only to represent Trinidad and Tobago, but engage in other activities.

Somehow I believe that the Minister is being transformed into a prisoner, virtually, of the authority, when in truth and in fact, the Minister—because I agree with Sen. Furness-Smith, we have a parliamentary democracy here. We have elections. People are elected every five years. They are responsible, the Government that is in power is responsible to other people. I am suggested that they way how it is couched her, you do not get the impression that the Minister has any kind of real authority in this matter.

In other words, you are merely advised. Something needs to be stronger there instead of just being advised. So this board advises the Minister that these people should represent Trinidad and Tobago when in truth and in fact when we are talking about telecommunications, we are talking about national security; we are

talking about representing Trinidad and Tobago abroad, I feel that the Minister in charge of that particular area ought to have greater input, Mr. Chairman, than just merely being given advice.

5.25 p.m.

Sen. Furness-Smith: May I ask the labour movement why it did not support my amendment earlier on?

Sen. Spence: Mr. Chairman, I do not see anything wrong with the amendment. It obviously replaces the responsibility for selection in the hands of the Minister. All it is saying, this expert group will give him some advice. He does not have to take that advice. He decides who goes. The responsibility has been shifted from the authority to the Minister, and I am in full support of that. This is where it should be. I think he is misunderstanding the change.

Mr. Chairman: It seems that there has been a clarification on the matter.

Sen. Furness-Smith: How could the Minister represent Trinidad and Tobago at International fora which will include the International Telecommunications Authority?

Sen. Spence: The Minister would not represent, necessarily. All international fora on which the Trinidad and Tobago Government is represented, it is the Government who has to decide who represents it. That is why the original format could not have been allowed to stand, because the independent authority cannot decide what representation the Government sends to an international forum of which they are a member. So the new version merely states that they will get some technical advice, which they need not take, from this group.

Sen. Furness-Smith: Mr. Chairman, how could the Minister exercise Trinidad and Tobago's rights of membership at international level and leave the implementation of that membership and the fulfilment of its obligations which the Government has agreed to in solemn conclave with the international body, to be executed by a body over which it has absolutely no control? Now we are beginning to see where we are going. The answer is we are going into one big, confusion.

Sen. Broomes: Mr. Chairman, I think if Sen. Furness-Smith should pay close attention to 18(a), he probably will not stand by the last statement. In any event, I think it is time that the question be put.

Mr. Chairman: The Minister's amendment to 18(e) reads as follows:

"to advise the Minister on the representation of the interests of Trinidad and Tobago in all telecommunications matters at international, regional and national fora."

Question, on amendment, put and agreed to.

Sen. Broomes: Mr. Chairman, it is proposed that in subclause (l), between the words "determine" and "tariffs" occurring in line 1, the words, "subject to the approval of the Minister" be inserted.

Sen. Mansoor: Could the Minister tell us whether or not—in determining these levels of taxation, which are what tariffs are presumably about—the Minister would have to come to Parliament to, sort of, get the final approval for these tariffs.

Sen. Broomes: Mr. Chairman, I think there are innumerable instances in which tariffs of this nature are made by order of the Minister. In any event, there would be regulations made covering this and these regulations, as can be seen, in clause 77, will show that matters relating to fees are to be done by regulation and that these regulations are subject to—we have “negative” at the moment, but when we come later on you will see that there is a proposal to change “negative” to “affirmative” to meet further objections from the other side.

Sen. Mansoor: I accept that, but I am wondering whether or not—I saw those amendments but, if in clause 18(l) you leave it on the basis of “subject to the approval of the Minister”, will there not be confusion in the Act? In the latter clauses you say that tariffs and taxation are subject to Parliament, but in this earlier clause you do not stipulate the same. Surely, there is a need for consistency.

Sen. Broomes: My understanding of what we have here is that the authority will propose tariffs to the Minister before they include them in regulations which are to come to Parliament. I do not think there is any conflict there. The point is that they will be included in regulations which have to come to Parliament. This is my understanding of the proposal.

Sen. Mark: Could we make the necessary amendments to ensure that it is understood clearly in the bill? “subject to the approval of Parliament.”

Sen. Broomes: Mr. Chairman, I will be very happy to hear the formulation of the proposed amendment by the hon. Member. I said earlier that I have always

been impressed by the way Sen. Furness-Smith approaches these things. He always tries to put a formulation that we can deal with. But if we have to sit and do drafting when hon. Members want amendments, it becomes tedious.

Sen. Mansoor: Mr. Chairman, I had submitted an amendment under 18(l). I said to replace “determine” with “recommend to the Minister levels of”, which would take care of exactly what he is saying; that authority would recommend to the Minister levels of tariffs and the Minister would then have to bring it to Parliament.

Sen. Furness-Smith: I am just wondering—some of us have put forward proposals under which one function would be exercised subject to the approval of the Minister and I put forward amendments, subject to a resolution of Parliament and so forth. But the Minister is right. These are meant to be the functions and not meant to define the limits in which the functions are to be exercised. I am wondering whether we could not do a better job if we just put at the beginning, something to the effect, “the functions of the Authority subject to the provisions of this Act”, so as to make it clear that these are the functions and they are to be subject to any specific provisions which would, in fact, limit them. As the Minister rightly points out, the tariffs would be made by regulation and we are going to control that. Of course, one could say that would be implied.

Sen. Broomes: Mr. Chairman, it is obviously arguable that it is implied that everything here in this bill is subject to the provision of everything else in the bill and that it is superfluous, but I have no objection to being a little superfluous sometimes, especially if it increases the general level of well-being. So subject to our putting the expression at the beginning, we agreed to put in “subject to the provisions of this Act”. That is to say, before the words, “the functions...” in clause 18, the following words be inserted, “subject to the provisions of this Act”.

Question, on amendment, put and agreed to.

5.35 p.m.

Mr. Chairman: Can we get back to 18(l) please? How does (l) stand having regard to that recent amendment?

Sen. Broomes: Mr. Chairman, it does not seem necessary to proceed with the amendment in the circumstances and I respectfully withdraw.

Mr. Chairman: There are other proposals for the amendment of 18(l).

Sen. Mansoor: Mr. Chairman: I would also withdraw my amendment to 18(l).

Mr. Chairman: Those are the only two amendments, so 18(l) remains as is.

Amendments withdrawn.

Mr. Chairman: Sen. Mark, you had a proposal for an amendment to 18(a). Do you wish to pursue your proposal for an amendment?

Sen. Mark: Mr. Chairman, the opening sentence that was defined a short while ago, what does it do in order to ensure that the Minister, or in this case the Parliament, has some kind of influence over this matter? You see, I heard the expression being used "subject to the provisions of this Act," but I am trying to determine how would the various functions as outlined here influence it, and in what way?

Mr. Chairman: Maybe the best way to find out is to pursue your position with the amendment to 18(a) because you are dealing with exactly that point in your proposal.

Sen. Mark: Mr. Chairman, the issue of the authority having the power to formulate policies subject to the approval of the Minister and ensure there is compliance with the policies, we were suggesting that it should be the Parliament. Again, I am trying to get clarification on this particular clause that says "subject to the provisions of this Act." I am trying to determine to what extent our amendment would become redundant in light of what has been defined. I need to get clarification on that.

Sen. Furness-Smith: I think I can help Sen. Mark. It is a very difficult drafting, but I think most of the actions of the authority will be implemented by regulations. Certainly, as the Minister says, the fees, the licences, would all have to be subject to regulations. We have somewhere, a provision that there is to be a code of broadcasting. In fact, I think this is one of their functions, to do such a code.

I have put in an amendment later on which requires that all regulations, not just be subject to affirmative resolution, but insofar as they infringe the Constitution, they should be subject to the special vote which is provided for in section 13(2). That I have to admit is something unique and new but that is not the first time this afternoon, we are hearing that word. I am looking forward to that issue being debated because it raises an important principle I think, which I would be glad to have enshrined. If we can get that kind of clause, I think it would meet what I conceive to be Sen. Mark's worries about this.

Of course, it is to that kind of clause that one would be referring to when one uses this language "subject to the provisions of this Act." What the draftsman would be saying is, "well, here we have a clause which says that your regulations must be subject to Parliament and your code must be subject to Parliament, so that your functions are limited by parliamentary supervision in that way."

Quite frankly, as far as 1(a) goes, the telecommunications and its policies is a matter for the Minister really. It is a matter for the executive; it is not a matter to be brought before Parliament all the time. But when you start making regulations for imposing fees on citizens, then certainly Parliament ought to be consulted. Parliament cannot get involved in the details of administration.

Sen. Mark: Mr. Chairman, based on the clarification given, and if that is the position of the Minister on this issue, then we will be prepared to withdraw because we have a very serious concern over the authority of the management board to implement measures from (b) right down. There are some which we have no problem with, but there are some fundamental areas with which we have some concern.

We had sought to make a clear distinction between content on the one hand and technical responsibilities on the other. We were not able to convince the Minister that we should have a special broadcasting telecommunications commission that would focus on content, that will take a process and will have a particular kind of machinery established to deal with that issue. What we have in this bill, is a combination of technical requirements that this telecommunications authority will have to execute and also they will be focussing on broadcasting content. That is why we on this side have some grave difficulties with numerous provisions in terms of the functions of this authority, unless what Sen. Furness-Smith is saying is absolutely clear and the Minister is able to indicate here this afternoon that what is being said is precisely what is going to be done.

Any matter focussing on regulations, whether it is broadcasting, whether it is determining tariffs and fees, they are going to come to the Parliament and they are going to be subject to affirmative resolution of the Parliament, and an additional proviso is going to be put, "subject to three-fifths", a special provision, because of the fact that it infringes sections 4 and 5 of the Constitution of Trinidad and Tobago and the human and fundamental freedoms of the people.

So we have some difficulty, but if you could provide some clarification based on what Sen. Furness-Smith has said, we would go along, but subject to some qualifications and amendment to the actual beginning of the provision.

Sen. Broomes: Mr. Chairman, apart from forecasting what he proposes to introduce later in his amendments, all Sen. Furness-Smith did was to assist the hon. Member in understanding the bill. Insofar as that is what he did, up to that point I agree entirely with what he said. He and I belong to the same honourable profession and we understand each other. What he did was to explain it to the hon. Member. What he actually did was to refer clause 18 round to clause 77 for the hon. Member and back to the subject at the beginning so that the hon. Member would understand what the bill is saying.

As for the forecast regarding what the hon. Sen. Furness-Smith would introduce as an amendment later, I am unable to assist the hon. Member with that.

5.45 p.m.

Sen. Furness-Smith: Could I suggest—because these things are quite important and I think we can all understand Sen. Mark's concerns. Would it be possible to—subject to there being any other amendment of the language—to come back to this when we see what are the alternative arrangements we can make? Because quite frankly, I am not clear in my mind exactly. This is a heavy bill and I know we are going to come to them, but just how it is going to look when we have finished with it, I am not sure. It would help everybody who has reservations about 18(d) if we knew how we were going to eventually settle this point.

Sen. Broomes: Mr. Chairman, I am quite prepared to give the hon. Senator a little time to reflect but I am beginning to get concerned at the number of matters that we have to come back to. I think we really ought to consider this long and important clause carefully and finish with it and then go on.

I believe that Sen. Mark will understand now, because Sen. Furness-Smith was very clear in his explanation. I am saying to Sen. Mark that insofar as it consists of explanation, that is to say, that these matters will have to be put into regulations and according to the provisions in this bill, those regulations will have to be taken to Parliament and be subject to an affirmative vote; insofar as Sen. Furness-Smith has given him that explanation, I am merely confirming that I agree with the explanation.

I think that is what Sen. Mark was asking. I believe he was asking something about another amendment that he has later on. Clearly, I am not in a position to say what will be the fate of that amendment when it comes.

Sen. Mark: Mr. Chairman, this clause of the bill constitutes the heart and soul, as far as I am concerned, and it will violate and infringe on people's fundamental rights and freedoms. The Minister has an obligation to tell this Parliament precisely how these rights are going to be safeguarded to avoid any infringement, because we had many amendments to delete a number of these functions because we saw them as dangerous provisions.

I am saying that I would want to endorse the position that we defer—this is a very important clause—or if we do not want to defer, we argue it for the next hour as the case may be. But I feel that there is need for a proper formulation to ensure people's rights and freedoms are preserved.

You see, the question about content, I have made the point over and over, it should not be a responsibility of the Telecommunications Authority, but it is here. Therefore, we would insist that this be taken out from this particular provision and have some separate agency responsible for that and let the Telecommunications Authority be responsible for technical areas of work. Why do we want to confuse broadcasting content on one hand, with technical requirements?

I am saying that if the Minister is prepared to give us the assurance here that all these things are going to be subject to the affirmative resolution—and not only that alone—we qualify that, we say three-fifths majority to ensure that our rights in Trinidad and Tobago are not infringed in any way. It is not your intention, I am sure, but you might not be in office. Somebody else might be, and then the problem is “ole mas”.

So I think it is important for us to get some clarification and formulation otherwise we would not be able to go along with this clause, if we cannot get the assurances and the possible formulation to convince us that no evil intention is in this clause of the bill. So we want some clarification and formulation from the Minister on that.

Sen. Broomes: Mr. Chairman, especially when the honourable Member is in the mood he just displayed, I would prefer him not to refer to me as “you”. I will prefer him to keep saying “the honourable Minister” because then I know it is not me, it is whoever is the honourable Minister and I feel more comfortable. When he says “you” I get a little worried. So I urge him to keep saying “the honourable Minister”. I like the sound of that.

Sen. Mark: I realize that.

Sen. Broomes: Mr. Chairman, I believe that what we were trying to do was to avoid going through, one by one, the hon. Senator's proposed amendments, but it would appear to me that he leaves no choice but that we should go through them and vote on all of them; because I feel that he has had enough clarification to proceed. Perhaps, we should simply go through his proposed amendments and see how they fare. I am trying my best to assist, but I do not know.

Dr. Deosaran: I wonder if the honourable Minister could reflect a while on this because Sen. Mark, to me, is making two very important points. One, he is arguing that this bill should not have included matters of purely technical nature and matters pertaining to programme content and so forth. I do not agree with that and I think we had dispensed with that throughout the debate and through the amendments, especially with respect to clause 4 where the board has been so adjusted.

The second point, really, is one on censorship. It is either you leave this particular provision in to say that you are going to manage the extent and the rationale for any possible censorship in the public interest, or you remove it completely. On reflection, both on the Government side and on Sen. Mark's side, what I think we need during the actual programming and the development of the Telecommunications industry is a meeting of the various minds, with the authority having a mediating role and at the same time reserving the public's interest because things like advertising, pornography—there are many things that really need to be subjected to constant monitoring.

So I believe you might have in the provisions for the authority, public hearings or something of that kind, where, even if there is a block on particular programming, it would be done in public and the issue of censorship, though necessary concerns over this issue may exist, might be diluted because it would be an open hearing. Other than that—and of course, subject to what I am saying, it has to be refined in some amended form—I see no alternative. Let me restate quite properly, I would like to see that some monitoring of these programmes be in place, but at the same time, I am concerned with Sen. Mark's views on censorship and this is the only middle ground I can think about.

Sen. Tiwary: Mr. Chairman, might I point out to Sen. Deosaran that in clause 18(b), another function of the authority is:

"to formulate, on consultation with producers, broadcasters and the general public, policies governing all broadcast material and to ensure compliance by broadcasters and producers;"

I hope he will agree that this took care of the latter part of his argument.

Dr. Deosaran: No, I was referring to that, because it does not state how this would be done unless you leave it to the authority to conduct its own affairs.

Sen. Tiwary: On the other hand, are you proposing any particular formula that can be used there?

Dr. Deosaran: Well, that is the point at which I have reached. We need some refined language for the amendment and I was really referring to (b). If you can stretch (b) out to accommodate Sen. Mark's concern—

Sen. Tiwary: But the difficulty is, neither yourself nor Sen. Mark nor any other Senator has really come up with something that can assist us.

Dr. Deosaran: Well, Sen. Mark has thought about this more than I have; I am just responding as a matter of trying to assist.

Mr. Chairman: We have two extremes. Sen. Mark wants (b) deleted altogether in his original proposal and the Minister has proposed an amendment in the preamble to 18—if you may call it that—which he thinks will protect Sen. Mark's interest on not only (b) but on a number of other clauses to which he has proposed deletion.

I get the impression that at this stage, Sen. Mark's major concern is that he is not altogether satisfied that he is completely protected. Sen. Furness-Smith has proposed that we defer this clause. The Minister on the other hand, seems to think that the matter has been aired sufficiently and seems to be inclined to want to proceed. I think we should therefore decide on whether we defer or proceed, in the first instance.

5.55 p.m.

Sen. Mark: If the goodly Senator is prepared to make an amendment, I think it is clause 74 as well as 79, if I am not mistaken, which deal with the regulations. We are talking about not only affirmative resolution of the Parliament, but we are also talking about a special majority. If he is prepared to engage in that amendment, I am saying that a number of these clauses here, a number of the provisions, the function of the authority at least would have some parliamentary protection. We, as a Parliament, would be able to deliberate and debate on these matters in the interest of the population, because if he finds support or if he wants to support it, I am saying that we would be willing to consider that in the context of the various functions and responsibilities.

We want a special built-in majority in that special affirmative resolution.

Sen. Lequay: We seem to be agreeing that clause 77 which deals with the code will now be subject to affirmative resolution. I find it difficult to concede at this stage that when those regulations come here they must be subject to a special majority. I have been trying to enquire from the legal people whether we have ever had regulations passed by a special majority and we do not seem to be able to find that precedent.

It would be difficult for us to concede at this stage that regulations must have a special majority for passing. Certainly, we have a regulations committee of Parliament and they are entitled to meet and to advise the House where those regulations infringe the Constitution or any piece of legislation. We cannot find the precedent where regulations are subject to special majority.

Sen. Mansoor: Would Sen. Lequay not accept the fact that the broadcast code is something that can infringe the public's right? A broadcast code can be as wide as saying what type of advertisements you are going to have; how long they are going to be; whether political parties can use the media or not. All of those types of things can be included in a broadcast code so to say that they are merely regulations perhaps is understating the issue. A broadcast code is very wide.

Sen. Lequay: There is a committee of the House, the Statutory Instruments Committee which will take that responsibility of ensuring that there are no such infringements.

Mr. Chairman: There was another proposal for amendment to clause 20.

Sen. Broomes: I have an amendment of page 3 of the list that I have circulated. It is merely to change the word "enactment" occurring in line one, to "other written law."

I do not think Sen. Furness-Smith took cognizance of the fact that these regulations can only reach here if the Minister brings them here. If we put, as we had done, "subject to the provisions of the Act" and the Minister has to bring regulations here, then they can take care of him just as if we had not established the authority and he was responsible.

Sen. Furness-Smith: With due respect clause 79(1) states:

"The Authority shall, within a year of its establishment, by Order, subject to affirmative resolution of Parliament, promulgate a Broadcasting Code to regulate the practices of concessionaires..."

“The Authority”—and where does this authority come from? It does not come from the people. It is not elected. It is not appointed by an elected person. In fact, we are giving the authority the power to infringe the constitutional rights. We have absolutely no control.

Sen. Spence: It comes to whether the affirmative resolution requires a three-fifth majority. This is the issue. I do not think we should skip this. I suspect that the Minister in responding is losing sight of that issue because that is what it comes down to. I think we should really discuss that point.

Mr. Chairman: Clause 18 seems to have raised two particular points. One, is one of Sen. Mark's concern and the other one now is a wider concern about the legal instruments as they would apply if we have to modify or present the regulations to Parliament.

I wonder whether the Minister would not be prepared, under the circumstances, to consider a deferral of clause 18. The other clauses, as I can remember, will not impact materially upon clause 18. Clause 18 can be dealt with at another stage.

Sen. Broomes: It seems clear that this is the best way to proceed at the moment. I would agree to a deferral.

Mr. Chairman: We defer clause 18 for later consideration.

Clause 18, by leave, deferred.

Clause 19 ordered to stand part of the bill.

Clause 20.

Question proposed, That clause 20 stand part of the bill.

Mr. Chairman: I see that there is a proposal for deletion of (2)(c) submitted by Sen. Mark. Maybe the way to proceed is to deal with them as they appear before me.

6.05 p.m.

Sen. Mark: Mr. Chairman, it is very clear that if the authority is to grant a concession one has to make an application on a prescribed form. We have no form here so we do not know what the form is about. And "upon payment of such fee as may be prescribed". I cannot understand why we want to put, "(c) for such time and subject to such conditions as the Authority thinks fit".

It appears to me that smells of a kind of arbitrary rule. Why is it, for instance, if I want a concession, I am granted this, there are procedures in applying; I apply, but then there is a provision that says "for such time and subject to such condition as it thinks fit"? Now, I am not too clear in my mind, what are these conditions and what does "such time" mean in the context of this provision. We, on this side, are worried about the possibility of people abusing the powers that are invested in them in the Act, because we cannot predict the future. What we can do is to ensure that we have safeguards so that people who are in authority, the management board, does not infringe the rights of the citizens of Trinidad and Tobago. So here is where we found some opposition and dissatisfaction with this particular subclause. I think it is quite irrelevant and that it should be deleted completely. I see no purpose for this whatsoever.

Sen. Mansoor: Mr. Chairman, although I have a lot of sympathy with what Sen. Mark is saying, I cannot envision a situation where an authority can give a licence without conditions. Surely, there must be conditions, otherwise there is no status or rationale for a licence. So although, as you will remember, I had many problems with some of the conditions that current licence arrangements are imposing, I think it is very clear that licences have to be subject to conditions. What those conditions are, is perhaps a matter for public scrutiny, or Parliament's scrutiny. But it would be foolhardy, I think, to suggest that 20(2)(c) can go in its entirety, otherwise you may as well close up shop and forget about it.

Sen. Furness-Smith: I want to make a suggestion. I agree with Sen. Mansoor but equally, I can understand Sen. Mark's concerns. What we need to be concerned with is that the grant of these licences will not be on an indiscriminate, fanciful or individual basis. What we ought to be concerned about is that equal and fair treatment will be given to all. Would that not be achieved if we said that the authority is the person to give the licences, but they must give them in accordance with regulations, which will, of course, be published? So that you publish your regulations and then everybody knows the ground rules. If, subject to what happens later on, we can have some provision whereby such regulations would receive at least, attention from Parliament, if they infringe the Constitution, then I would agree with Sen. Mark, but if not, let them be by affirmative resolution. But at least, everybody would know what are the ground rules. So that it would not be just a matter of your getting a licence on these conditions, and you, because we do not like your face too much or we do not like your reputation, we will put different conditions on your licence.

Sen. Mansoor: Mr. Chairman, I support that recommendation very strongly because I think that is the only way one can ensure equity in the administration of licences, which, in the essence, is what this bill is all about.

Sen. Broomes: Mr. Chairman, I am quite sure that Sen. Furness-Smith will appreciate it when I say that an expression such as, "to such conditions as the Authority thinks fit," necessarily subsumes the responsibility of the authority to be fair to all. I am very surprised that Sen. Furness-Smith is the person who has made this point. I can see other people making this point, because if you give licences under different conditions to different people, you are really creating a course of action, and I do not suppose this is what will be done. But, since this is manifestly what is intended, if he gets a formulation which again makes it clear—I tell you Mr. Chairman, we could take this bill and go through line by line and try to make everything as clear as that, and I will be here until next year. Because, you see, these are laws we are making and there are whole bases which form their foundation. This is one case where, to me, what is going on here is reaching a point that I do not appreciate at all. I am surprised, as I said, that Sen. Furness-Smith, being a lawyer, is the one who made this point. But again, I will repeat, this is manifestly what is intended and if we gets a formulation which makes it clear, clearer than it is here, and it is put to us as an amendment I think we will support it.

Mr. Chairman: Given that position, Sen. Mark, you would probably want to get together with Sen. Furness-Smith for tidying up of that subclause (2)(c), such as you would want to present for the Minister's consideration.

Sen. Furness-Smith: Mr. Chairman, I sympathize with the hon. Minister. It is possible that what he says is true, that if we are going on like this we could be here a long time. But you know, Mr. Chairman, we have established a reputation, I think, in this place, of doing our work thoroughly and trying to make the hon. Ministers', whoever they are, bills better and to remove doubts and to prevent people's having to go to court. to protect their rights. Nobody can go to court. No sensible man goes to court. What he wants is a clear statement in the bill which establishes what his rights are. Although I sympathize with the hon. Minister, it is the Government's responsibility to bring bills before us which protect people's rights. Quite frankly—I do not want to be critical—but it ought not to be necessary to have this degree of attention in the Senate which we find we have to give. But I know his problems. I know the Government's problems. Here we have a 70-clause bill. It is a very complicated business. We do not have the array of

lawyers and people available to do the work which big countries do. But the rights of the people would just be quite as much affected as by a bill in England or America, and we want to get it right.

Sen. Broomes: On a point of order, Mr. Chairman. May I ask which amendment the hon. Senator is dealing with at the moment? Because it seems to be a speech. I take it in good heart, of course, but it went on for a while.

Mr. Chairman: I myself am a bit concerned in that we seem to be taking a lot of time to verbalize our positions. On what appear to be very, very simple statements. We are dealing at the moment with Sen. Mark's proposal for deletion of subclause (2)(c). We have got to the point where the Minister thinks that the wording of that subclause is well-intended and sufficiently self-protective. Apparently, Sen. Mark and Sen. Furness-Smith think otherwise. The Minister has offered an option that they can devise on their own, some new wording that will satisfy the legal requirements of the bill without infringing the rights that Sen. Mark wants to protect. I do not see any new wording forthcoming.

Sen. Spence: In subclause (2)(c), after "fit", change the fullstop into a comma, and insert the phrase "and in accordance with the approved regulations".

6.15 p.m.

Mr. Chairman: The Minister has indicated that he is prepared to accept that.

Sen. Sealey: I would also like to propose another wording: "for such time and subject to such conditions as have been standardized by the Authority." So rather than as the Authority thinks—"as have been standardized by the Authority."

Mr. Chairman: If you pardon me, I think you would want to consider that extended amendment very carefully, having regard to the amendment proposed by Sen. Spence and the position taken by the Minister. I am not saying that it cannot be considered, but I am asking you first to consider it very, very carefully to see if what has now been proposed as an amended (2)(c) will not cover your concerns and in accordance with the approved regulations. The regulations have to come back to the Parliament for affirmative resolution. So if the regulations do not sufficiently prescribe and detail those terms that you want included there, Parliament will not approve them.

Sen. Mansoor: May I ask the Minister whether it would be his intention to state in these regulations that the license agreements would be standardized or whether the conditions would vary from radio station to radio station.

Sen. Broomes: Mr. Chairman, I am quite unable to state what will be in the license agreement. The principle we are dealing with is that it will be given equally to everybody and we are taking care of that and if the honourable Member now wants me to draft the regulations—

Sen. Mansoor: All I am asking is whether or not they will be standardized.

Sen. Broomes: They will be applied equally to everybody.

Sen. Furness-Smith: There will have to be certain discretion of the Authority. That is the point.

Dr. Deosaran: Mr. Chairman, if you permit me, could I make a comment on 2(c)?

Dr. Deosaran: I have a feeling that perhaps some of us do not understand the function of this authority as a dynamic institution that will, in consultation with producers and radio stations, have an ongoing monitoring system as to how these institutions develop and so conditions could be prescribed from one year to another year, from one television station to another depending on the performance, peculiarities, the programme divergences amongst these different broadcasting or radio institutions. Now, Sir, with that in mind, I wonder if you can standardized to the extent where you fossilize the potential of an industry which should be in a large measure artistic, dynamic and creative.

Having said that, I understand the question about equity and people's rights, but certainly, given the spirit of this bill, at least as far as these functions are concerned, I am wondering, and it is for the Minister's consideration, whether by so standardizing and imposing rigid regulations whether or not you are not tying up certain discretionary powers that the authority ought to have in the way I have just described it.

Sen. Broomes: Mr. Chairman, equity does not necessarily mean that everybody will have precisely the same conditions. I think Sen. Furness-Smith made the point that there must be areas within. Once you have broad principles on which you are giving the licenses, the principles by which they are granted, it does not mean that everybody has to have precisely the same things. There must be areas. What we are dealing with is the principle of equity. You have rules by which you are guided and you arrive at something, so I do not share the apprehensions of Sen. Deosaran, although I appreciate and thank him for the concern.

Mr. Chairman: We have a position that the Minister has accepted subclause (2)(c) be amended to read as follows:

“for such time and subject to such conditions as the Authority thinks fit and in accordance with the approved regulations.”

Question, on amendment, put and agreed to.

Sen. Broomes: Mr. Chairman, I have an amendment on page 3 of the list that I have circulated. It is merely to change the word “enactment” in line 3 of subclause (1) to “written law.”

Mr. Chairman: That opening statement shall be:

“No person shall, unless granted a concession by the Authority for the purpose or so authorized by any other written law...”

Question, on amendment, put and agreed to.

Mr. Chairman: Are there other amendments to clause (20)

Sen. Spence: I suggested a subclause (4), which reads:

“The Authority shall cause to be published in the Trinidad and Tobago Gazette the name and address of each concessionaire to whom a concession is being granted.”

Mr. Chairman: Sen. Spence, you will forgive me, the Standing Orders require that I dispense with any other amendments before taking new clauses or new subclauses.

Sen. Mansoor: With respect to 20(3), I read this to mean that the President by Order would increase the types of receivers, *etc.*, that would have to receive licenses and concessions. I am wondering whether or not I am correct and if I am correct, whether the changes in the lists of categories of telecommunications services for which concessions are necessary, should be brought to Parliament because this essentially can increase or reduce the authority of the board.

Mr. Chairman: Sen. Mansoor, if I understand your sentiments, you are proposing that the existing subclause (3) be deleted.

Sen. Mansoor: No, to it be added.

Mr. Chairman: Where are you putting in your addition?

Sen. Mansoor: I am saying we should add to clause 20(3):

“Changes in the lists of categories of telecommunications services for which concessions are necessary would be subject to the affirmative resolution of Parliament.”

Sorry, you are right. I am suggesting that 20(3) be replaced. The reason for that being that this comes back to the question of what can be taxed and not taxed. I am saying that all of these changes in the lists of things which are subject to tariffs, *etc.*, should be brought to Parliament.

Mr. Chairman: Rather than be done by presidential order?

Sen. Mansoor: Yes.

Sen. Lequay: Mr. Chairman, it is necessary that we have a procedural motion. I wish to move that the committee do report progress.

Senate resumed.

PROCEDURAL MOTION

The Minister in the Office of the Prime Minister (Sen. The Hon. Horace Broomes): Mr. Vice-President, I wish to report that the committee of the Senate has made progress on this bill.

Sen. Alloy Lequay: Mr. Vice-President, I beg to move that the Senate continue sitting for approximately 30 more minutes.

Question put and agreed to.

Mr. Vice-President: Under the circumstances, we will resolve ourselves into committee to continue consideration on the bill clause by clause.

TELECOMMUNICATIONS AUTHORITY BILL

Committee resumed.

Mr. Chairman: Mr. Minister, the position taken by Sen. Mansoor, is that he would prefer to delete subclause (3) and replace it with the one that he has proposed.

Dr. Deosaran: Mr. Chairman, for the benefit of Members, perhaps myself only, could the honourable Minister explain what is meant here by “lists of categories of telecommunication?” I have something in mind, but I want to make sure. We need to get some examples, so we will know how serious the matter is to consider Sen. Mansoor’s alternative.

Sen. Broomes: Mr. Chairman, there are various types of telecommunications services. There is broadcasting which is a type of communication service. There is public correspondence. There is data services and so on. These are the categories we are talking about.

Dr. Deosaran: What you intend is to publish these lists by order?

Sen. Broomes: This what is intended on the basis of what appears in the bill at this time.

Dr. Deosaran: Is there a danger in this somewhere implied that would warrant the elevation of such passage to parliamentary—

Sen. Broomes: If we had foreseen a danger, we would have dealt with it differently. We do not see any danger.

Dr. Deosaran: what you told me, speaking about data base and things like that—or perhaps Sen. Mansoor might be able to tell us.

Sen. Broomes: Mr. Chairman, perhaps he would be able to. Mr. Chairman, I would point out that if you are saying “the President may be Order”, we will have to remove the entire thing if you want to put something else. But perhaps it is better if Sen. Mansoor—

Sen. Mansoor: My concern, Mr. Chairman, is that what we are essentially doing in this clause is providing a mechanism whereby new types of telecommunications services would be subject to the receipt of concessions. What I am saying is that—this is why I couched my earlier remarks in the form of a question. My view is that if one can change the lists of servers for which you require concessions, clearly you are dealing with something here that should be subject to some sort of scrutiny. If you have four things on the list on March 1, and on March 2, you have 10 things on the list—

Sen. Broomes: You see, Mr. Chairman, the purpose of the bill is to make all telecommunications services—which really are the property of the state and which are the property of the international community—subject to the provisions of this bill. And this publication by the President would be intended really to advise the public—something new comes up, is invented and so on—of the lists.

The basic purport of the bill is that they are all subject to concessions. But, of the bill is that they are all subject to concessions. But, of course, if the hon. Senator feels strongly about it, I do not know whether in light of this he is prepared to accept the clause.

Dr. Deosaran: Mr. Chairman, I am still on the point. If you are publishing a list, and as far as I understand this has nothing to do with giving permission or a hearing to grant the concession. This is a list for public knowledge. If somebody

can tell me there is a danger here in terms of putting something mysterious like a UHF or a UFO or something out of the ordinary that will really cause some cancerous effect, perhaps then I would be alarmed to move in another direction. But as I see it here, if you are speaking about a list of items under the category of telecommunications, I will have a difficulty in changing the provision as stated in the bill before me.

Sen. Lequay: It would seem to me that if somebody is going to apply for a concession, the authority must then follow the procedure that we have dealt with for concessions. So that the publication of the list in itself, to me, is merely for public information. I do not understand the fear of Sen. Mansoor. I am trying to follow it, but I do not understand the fears.

Sen. Mansoor: My basic fear is that once you add to the list, types of services for which concessions are necessary, you are doing something which you would not do without seeking to tax some other form of service which you had not taxed the day before.

Sen. Tiwary: Apply for the concession in accordance with this provision?

Sen. Mansoor: No, these are the types of services to which concessions are necessary. You are saying on day one there are four types of services for which concessions are necessary. On day two you are saying there are six types of services for which concessions are necessary and I am asking, where is the authority to increase that list? If you are going to put it where, surely, we need to say why we are putting it. There is a reason for it, because someone anticipates that from time to time you will have to increase the list of services for which concessions will be necessary. If that were not so, the clause would not be there in the first instance. I am saying that if you have put that in there, surely, you must have a reason; otherwise, you would not have put it.

Sen. Tiwary: Methodology.

Sen. Mansoor: Yes, that may be so. However, what controls should you apply when you seek to increase the list of items for which concessions are necessary?

Mr. Chairman: I think what is coming out here is that Sen. Mansoor is expressing a concern about how additional avenues of taxation may be levied simply by changing or publishing an additional list. What is at heart here is whether or not the President and the authority that advises him, and probably the Minister who advises him to publish new lists, can be trusted to act in good faith and

judgment. That, I think, has to be at the meat of whether you accept Sen. Mansoor's amendment or whether Sen. Mansoor accepts that this subclause is worthy as it is. Sen. Mansoor seems to be expressing some concern that the authorities vested in the President as advised by the Minister and the authority probably can be abused.

Sen. Mansoor: That is my concern.

Sen. Spence: I was going to reinforce the point by saying if you have passed the law for levying horse racing and you want to levy greyhound racing, do you have to pass another law, or do you just say, well, I have passed a law levy on racing of all animals and, therefore, I can now add greyhound racing?

Mr. Chairman: It is another example of the same concern that Sen. Mansoor has expressed.

Sen. Spence: I am giving an analogy which may make it more obvious.

Mr. Chairman: The basic position at this stage gets down to whether you want to put a certain level of authority in the President and his advisors or whether you want to put it in Parliament.

Sen. Spence: I would not put it quite like that, Mr. Chairman. I would say that whether it is the norm, if you are introducing new categories of activities to be taxed, that you would do it in that way. I do not know. I am not enough of a legal person to say. That is why I gave the analogy of the animals. Do you just pass a bill saying that you have animal races and then say horse racing or do you each time say, greyhound racing, rabbit racing, goat racing?

Sen. Broomes: Mr. Chairman, what we on this side would be prepared to accept—of course there would be further commentary I suppose, because we are proposing to accept an amendment to the effect that the authority, subject to affirmative resolution of Parliament, in place of the President because, of course, as long as we say the President, we are not going to be putting "subject to the affirmative resolution of Parliament". The way in which Sen. Mansoor's amendment is worded does not seem to be quite complete. However, we are prepared to accept it subject to the modifications that will make it complete.

Sen. Tiwary: I wonder whether I could also refer Sen. Mansoor to clause 40(4).

Sen. Mansoor: The same thing applies. Mr. Chairman, that would be satisfactory.

Mr. Chairman: I would suggest you go ahead and suggest the wording here.

Sen. Broomes: Mr. Chairman, if I may just direct the Minister's attention to clause 40(4) which I think tries to do the same type of thing. It says,

"The Board may by Notice published in the *Gazette* increase or reduce the number of categories of telecommunications services in respect of which a licence is necessary."

If one used, "The Board made by notice, subject to the approval of Parliament," to formulate clause 20(3), I think we would achieve consistency and probably do the same thing.

Sen. Broomes: Mr. Chairman, I will accept that, except that I believe that here as in clause 40—perhaps we ought to change "Board" to "Authority". So if Sen. Mansoor would be good enough to read his proposed amendment again, saying "Authority" instead of "Board".

Sen. Mansoor:

"The Authority may by notice publish in the *Gazette* changes in the list of categories of telecommunications services for which concessions are necessary subject to the affirmative resolution of Parliament."

I am wondering whether it makes sense though, because at what stage do you publish it?

6.45 p.m

Sen. Tiwary: If you have to bring a resolution to Parliament, it has to come through the Minister.

Mr. Chairman: Sen. Mansoor, do you understand that technicality?

Sen. Mansoor: Yes, I understand the point, and not being an attorney I am having difficulty. What I want to do is to put "subject to the affirmative resolution of Parliament". That is what I would like put in there. Whether we say, "the Board may...subject to the affirmative resolution of Parliament", or, "the Authority may...subject to the affirmative resolution of Parliament published a list."

Sen Mansoor: If we operate from the word "list", and we said:

"The Authority may, subject to the affirmative resolution of Parliament, determine the category of Telecommunications Services for which concessions are necessary, or determine changes in the categories of telecommunications services"

I think the word "list" is what is confusing the language here.

Mr. Chairman: But the authority cannot determine; Parliament determines.

Sen. Mansoor: That is what I am saying; the authority may, subject to the affirmative resolution of Parliament—

Mr. Chairman: “published a list?”

Sen. Mansoor: I think the word “list” is what is causing the problem.

Sen. Tiwary: I was proposing, Sen. Mansoor, that the amendment should be:

“the Authority may, subject to the affirmative resolution of Parliament, determine changes in the categories of telecommunication services for which concessions are necessary.”

Sen. Mansoor: Yes, that would do it.

Sen. Tiwary: It has been pointed out that procedurally for that resolution to be brought to the Parliament, somebody has to bring it and it has to be brought either by notice or order. If it is by the Minister, it must be by order, so we may have to revise that one.

Sen. Broomes: Mr. Chairman, it is through the order which was subject to the affirmative resolution of Parliament, so if we merely put in the words “by order”, after “may”, I think that should take care of it.

Mr. Chairman: Let me try a wording here that the Clerk has just pointed out to me and see if this will cover all aspects of your concerns. It reads as follows:

"The Authority may, by Order of the Minister, subject to the affirmative resolution of Parliament, determine changes in the categories of telecommunication services for which concessions are necessary"

Sen. Broomes: Mr. Chairman, the “order” merely relates to the statutory instrument that is going to be before Parliament, and it is an order made by Parliament, and “subject to”, tells you what kind of order, how this order is going to be made. I do not think "of the Minister", would be appropriate. I think it simply has to be "by order subject to".

Mr. Chairman: "The Authority may, by Order, subject to the affirmative resolution of Parliament, determine changes in the categories of telecommunications services for which concessions are necessary".

May I put it to the vote?

Sen. Broomes: One last point, Mr. Chairman. In the interest of consistency when we look at clause 40(4), I suggest that we say, increase or reduce the number.

Sen. Tiwary: I think Sen. Mansoor has no problem.

Chairman: I hope I can read this at this stage:

"The Authority may, by Order, subject to affirmative resolution of Parliament, increase or reduce the number of categories of telecommunications services for which concessions are necessary."

Question, on amendment, put and agreed to.

6.55 p.m.

Mr. Chairman: Let us take a good look at Sen Spence's proposal. Sen Spence, the Government's side wants to accept your proposal in principle but they want to look at the language.

Sen. Broomes: Mr. Chairman, the draft reads as follows:

"20(4) The Authority shall, not later than 30th June and 31st December in each year, publish in the *Gazette*, a true and correct list of the names of all persons to whom concessions have been granted."

Mr. Chairman: Does that meet your approval Sen. Spence?

Sen. Broomes: Mr. Chairman, I shall read that again:

"The Authority shall, not later than 30th June and 31st December in each year, publish in the *Gazette*, a true and correct list of the names and addresses of all persons to whom concessions have been granted."

Sen. Spence: Mr. Chairman, I have two questions: The first one is, would "persons" include companies in this context?

Sen. Tiwary: Yes.

Sen. Spence: The second question is—and it has only just occurred to me, it was not in my original formulation—should we not in those lists, since they are going to be published, include those licences which may have been withdrawn?

Sen. Broomes: Mr. Chairman, we are dealing with concessions here and there is a clause later on where we shall be dealing with licences.

Sen. Spence: That was my mistake. I meant concessions. All I am asking is should we, at the same time as the publication, list those which may have been withdrawn, terminated or expired?

Sen. Broomes: Mr. Chairman, we accept in principle, the suggestion of the hon. Senator and propose that after the word "granted", we add "and details of all concessions that have been terminated."

Mr. Chairman, I hope this is the final offering I propose.

After the word "granted", we propose a comma, and the addition of the following words:

"expired, terminated and suspended". So that the entire subclause will now read:

"20(4) The Authority shall, not later than 30th June and 31st December of each year, publish in the *Gazette* a true and correct list of the names and addresses of all persons to whom concessions have been granted, and of whose concessions have expired, terminated or have been suspended."

7.05 p.m.

Sen. R. Khan: How does this sound then? "...to whom concessions have been granted as well as those whose concessions have been terminated or expired".

Sen. Broomes: If you would listen to mine it is more or less the same as yours: "and of all persons whose concessions have expired or terminated or been suspended".

Mr. Chairman: Let us go on. There is no possibility of making it more correct. Can we get a complete reading of the subclause? Would Senators please listen carefully because I would put the vote on the Minister's reading of the subclause.

Sen. Broomes:

"(4) The Authority shall, not later than June 30 and December 31 in each year, publish in the *Gazette* a true and correct list of the names and addresses of all persons to whom concessions have been granted, and of all persons whose concessions have expired or terminated or been suspended."

Question, on amendment, put and agreed to.

New subclause (4) of clause 20 added to the bill.

Clause 20, as amended, ordered to stand part of the bill.

Sen. Lequay: Mr. Chairman, I beg to move that the committee report progress to the full Senate.

Senate resumed.

Sen. Broomes: Mr. Vice-President, I beg to report that at the committee stage, there has been progress.

I beg to move that the sitting of the committee continue at the next sitting of the Senate.

Question put and agreed to.

ADJOURNMENT

Sen. Alloy Lequay: Mr. Vice-President, in moving the adjournment, let me again indicate the anticipated programme. I had indicated that very likely the Dangerous Drugs Bill debate would have started tomorrow; this is not now possible. But I want to indicate that there is likely to be a late sitting tomorrow until we complete the third reading of the Telecommunications Authority Bill that is before us. As a consequence of which, the Drug Bill will come before us on the 20th, therefore, it is possible that we will be sitting on the 20th and the 21st, to deal with the Dangerous Drug Bill, so that we do not encroach on Private Members Day on the 27th.

With those indications, I beg to move that the Senate do now adjourn to Tuesday, August 13, 1991 at 1.30 p.m.

Mr. Vice-President: Before we take the adjournment, I would just like to make one announcement. I have appointed Sen. Salisha Baksh in place of Sen. Wade Mark on the following Special Select Committees:

- (1) a Special Select Committee of the Senate appointed to consider and report on a bill entitled "An Act for the incorporation of the Lions Club of Valsayn";
- (2) a Special Select Committee of the Senate appointed to consider and report on a bill entitled "An Act for the incorporation of the Lions Club of Diego Martin West and for matters incidental thereto".

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.10 p.m.