SENATE

Tuesday, August 20, 1991

The Senate met at 10.00 a.m.

PRAYERS

[MR. PRESIDENT *in the Chair*]

LEAVE OF ABSENCE

Mr. President: Honourable Senators, I have granted leave of absence to Sen. Amrika Tiwary for the period August 16 to September 22, 1991.

I have been advised by his Excellency the President, that he has appointed Mr. Roland David Crawford to be a temporary Senator with effect from August 19, 1991 during the absence, from the country of Sen. Allan Alexander.

I have also been advised that his Excellency the President has appointed Mr. Abdul Wahab to be a temporary Senator during the absence, from the country of Sen. Dr. Sahadeo Basdeo.

OATH OF ALLEGIANCE

The following Senators took and subscribed the Oath of Allegiance as required by law.

Mr. Roland David Crawford and Mr. Abdul Wahab.

RENT RESTRICTION (RE-ENACTMENT AND VALIDATION) BILL

A bill to re-enact the Rent Restriction Act, Chap. 59:50 and to validate things done thereunder *[the Attorney General];* read the first time.

PAPERS LAID

1. The report of the Auditor General on the accounts of Trinidad and Tobago Nitrogen Company Limited for the year ended December 31, 1990. *[Sen. A. Lequay]*

2. Report of the Auditor General on the accounts of Trinidad and Tobago Mortgage Finance Company Limited for the year ended December 31, 1990. *[Sen. A. Lequay]*

Lions Club of Valsayn (Inc'n) Bill

Sen. Felix Rampersad: Mr. President, I have the honour to lay on the Table, the report of the Special Select Committee of the Senate, appointed to consider and report on a private bill for the incorporation of the Lions Club of Valsayn and for matters incidental thereto.

ORAL ANSWERS TO QUESTIONS

Medical Students (Tuition Fees)

47. Sen. Wade Mark asked the Minister of Education:

(a) Is the Minister aware of the serious crisis facing fee-paying nationals arising out of the exorbitant annual tuition fees at the Faculty of Medical Sciences at the University of the West Indies?

(b) If the answer is in the affirmative, could the Minister state what urgent measures are being taken to facilitate nationals who face the possibility of being debarred from classes and even preventing them from taking examinations?

Faculty of Medicine (Fee Structure)

48 Could the Minister state the basis for the vast difference in the fee structure at the Faculty of Medical Sciences at the University of the West Indies as compared to the fee structure at the Faculty of Medicine at Mona Jamaica?

The Minister of Education (Hon. Gloria Henry): Mr. President, may I be allowed to answer questions 47 and 48 together? They seem compatible. The questions arise out of a number of assumptions as follows:

(i) that the medical fees at Mt. Hope Medical Sciences Complex are exorbitant and significantly in excess of the fees of Mona;

(ii) that the fee-paying nationals of Mt. Hope are not only in crisis but in serious jeopardy;

(iii) that it is the responsibility of the Government to provide financial support to all students who elect to study medicine.

These assumptions are not necessarily correct. With respect to the fees and the difference between the fee structure at Mt. Hope Medical Sciences Complex and

that at the faculty of Medicine at Mona, Jamaica, the disparity in cost reflects the age of the facility at Mona and the trend of the Jamaican dollar within the last few years.

The fees at Mt. Hope Medical Sciences Complex also cannot be described as exorbitant. Compared with the fees charged by universities in the United States of America, Canada and the United Kingdom, the fees at Mt. Hope Medical Sciences Complex are reasonable, even moderate. A few examples will suffice**:** University of Nottingham, the fees are £10,000 per year; University of Leeds, £11,150 per year, that is in excess of TT $70,000; in universities of the United States of America, the fees vary from US $15,000 to US $20,000 per year which is between TT $65,000 and TT $85,000. When one adds the cost of accommodation, meals, travel and books to the above, it can be readily appreciated that the cost of medical training at Mt. Hope Medical Sciences Complex is reasonable.

All over the world medical facilities are both difficult to gain entry into and costly. The demand for places in schools of medicine far exceeds the capacity of these institutions, and the reason is simple. Students recognize the medical degree is a passport to a better than average income which quickly compensates for their expenses invested during the period of training. At this point, I wish to dispose of the idea that this Government is placing an undue burden on the shoulders of the parents of the fee-paying students at Mt. Hope Medical Sciences Complex.

10.10 a.m.

The fees at Mt. Hope are lower than those at any other medical school to which our students might be able to gain entry. In addition, it must be noted that in many of those foreign universities, entry into the medical faculties is restricted to students who have obtained good first degrees. Admission to the Mt. Hope Medical Sciences Complex on the basis of A' Level passes, therefore, represents a saving equivalent to the cost of acquiring a first degree at UWI or at a foreign university.

Further, we have to face the fact that the Government of Trinidad and Tobago cannot afford to pay the cost of educating every student who elects to study medicine. There is a limit both to the number of doctors and other medical personnel, who can be employed by the state and the number of students the Treasury can afford to maintain. Both of these considerations have influenced the Government's decision to set its quota of sponsored students at 45 per annum; 35 in medicine; 5 in dentistry and 5 in veterinary sciences.

Sponsorships are based solely on merit. It should be emphasized that Government introduced the sponsorship programme because of its philosophy that access to higher education, including training in this area, should be open to the most intellectually capable students irrespective of their financial circumstances or socio-economic status.

Students who fail to obtain sponsorship, but who nevertheless wish to pursue a career in medicine are free to do so provided they attain the admission standard set by the faculty, and are prepared to pay the prescribed fees. This situation has always been public knowledge. The awareness is further reinforced by the brochures of the faculty on the programmes which spell out the fee requirement of the institution. Students therefore, who found themselves in financial difficulties after freely electing to enroll as fee-paying students cannot now claim to have been discriminated against by the Government or the Ministry of Education.

The question of a loan facility to medical students is a difficult and complex one which is rendered the more difficult, by virtue of the size of the loan which will be required and the demands for repayment. The Government must also assess the risk of default by students and their parents and determine whether it can bear the costs involved in a guarantee by the state. Discussions, however, are still continuing between officials of the Government, that is the Ministry of Finance; the Ministry of Health and the Ministry of Education and the banking sector with a view to formalizing proposals for loans, with Government guarantee to the fee-paying students at the Mt. Hope faculty.

Sen. Mark: Based on what the Minister said I would like to have some clarification. Is the Minister stating to this Senate that the entry qualifications to enter the Mt. Hope Medical Faculty is inferior to internationally acceptable standards?

Mrs. Henry: I said that the entry requirements are A' level. I did not say that they are inferior.

Sen. Mark: Is the Minister aware that all medical science students have been verbally advised by the Bursary at UWI, that upon registration for 1991—1992, if outstanding payments are not met as well as the fact that if payments for the coming term are not paid in advance, they would be debarred from taking examinations and, in fact, being registered for the 1991—1992 term?

Mrs. Henry: That rule has always applied at the University of the West Indies. I do not know that it would have been changed recently.

Sen. Mark: Could the Minister indicate what is the precise fee structure at Mona, Jamaica as compared to the Medical Faculty, Mt. Hope?

Mrs. Henry: That is published. I do not think I need to answer that if it is already .published.

Sen. Mark: Having regard to what the Minister said, could the Minister indicate whether the Government of Trinidad and Tobago is prepared to make any sort of concessions to assist our fee-paying nationals who find themselves in a very precarious situation at this point in time?

Mrs. Henry: I think I indicated towards the end of my reply that we were discussing with the banks what kind of loan arrangements could be made.

Sen. Persad: Is the Minister aware that it has been the normal practice of the university, that students should register and results are given to them when they have paid their money? In other words, a student can register without paying his full fee and upon paying his full fee his results are granted.

Mrs. Henry: I think that the university sets its rules for fee-paying students and students who pay cess. The university makes those decisions.

Sen. Mark: One final question. Is the Minister aware that there is every likelihood that the Faculty at the Medical Complex could experience a large dropout in terms of fee-paying nationals and that could have an irrevocable cost to anticipated revenue of the faculty?

Mrs. Henry: The ministry is well aware of the position of the faculty and they are following events.

MT. HOPE MEDICAL FACULTY

49. Sen. Wade Mark asked the Minister of Education:

(a) Could the Minister state whether the Mt. Hope Medical Faculty forms an integral part of the St. Augustine Campus?

(b) If the answer is in the affirmative, could the Minister indicate why medical students are forced to pay the full economic cost of $55,000.00 per year, whilst nationals at the other various faculties at the St. Augustine Campus are called upon to pay a cess at a maximum of which is $3,000.00?

The Minister of Education (Hon. Gloria Henry): First, I must state that there is no Mount Hope Medical Faculty. All the property at the Mt. Medical Sciences Complex is owned by the Government of Trinidad and Tobago.

However, the teaching programmes are administered by UWI, Faculty of Medicine. This arrangement with UWI does not make the Mt. Hope Medical Science Complex an integral part of the St. Augustine Campus. The situations are not parallel. Mount Hope is a newer, more expensive facility which commenced on a self-financing basis. The students cannot be treated in identical fashion as those at St. Augustine with respect to fees.

Sen. Mark: Is the Minister aware that 92 per cent of the working people in Trinidad and Tobago would not be able—given the present fee structure at the faculty—to access that particular facility?

Mrs. Henry: Am I supposed to answer that question? That question is really a rhetorical question. nine-two per cent of the people of Trinidad and Tobago do not want to go to medical school.

Sen. Mark: Is the Minister aware that many of our fee-paying nationals at the faculty have now been transformed into virtual vagrants and they have been clamouring and seeking financial assistance from all and sundry merely in an effort to continue their education? Is she aware of this reality?

Mrs. Henry: We have a programme for vagrants but not on that. I think that is quite unfair of Sen. Mark to impose on what I have already said. I indicated quite clearly that people who entered as fee-paying students understood, at least they were told quite clearly, that they were to be fee-paying students. If they now find that they are unable to pay, they cannot blame the Government or the ministry for that.

Sen. Mark: Could the Minister say, whether the Government, in the face of all the realities that have been defined, is prepared to make some effort to assist those second and third-year students who find themselves in a very, very difficult situation, and who face the possibility of dropping out? What is the Government prepared to do to assist those students at this time, if anything at all?

Mrs. Henry: We have looked at the position of fee-paying students at Mt. Hope. I do not have the figures with me. If my memory serves me right, the cost of supporting those students at the end of their training could be somewhere in excess of $46 million. The price of one secondary school is approximately $35 million; the

price of one primary school is approximately $2 million. We have shortages in both primary and secondary school buildings. We also have to face the whole question of reviewing the pre-school structure and so on. The number of people who are likely to benefit from pre-school, primary and secondary are more than the 46 students for whom we must spend that amount of money. I am not sure $46 million is the price; I really cannot remember the exact figure. We have to weigh the benefits to a few compared to the benefits that might accrue to a larger number if we spend that kind of money on pre-school, primary and secondary education. We are weighing the possibilities. We have not made a final decision but we are looking at all the elements in that kind of issue.

10.20 a.m.

Sen. Mark: Is the Minister aware of a Cabinet Note dated November 29, in which the Government of Trinidad and Tobago made a commitment to assist these fee-paying nationals, particularly through the form of loans and having some bankable collateral to back it up? What has happened precisely to that particular decision?

Mr. President: What is the date of that Cabinet Minute?

Sen. Mark: November 29.

Mr. President: I would imagine that as a member of the Cabinet, the Minister would be aware. What I am worried about is how you are aware of it.

Sen. Mark: Things float about all over the place, Mr. President, and you have these things floating about. I am just trying to get from the Minister whether she is aware of this reality and what precise steps have been taken since 1990 to facilitate this particular package that had been agreed upon by her Cabinet.

Mrs. Henry: I am not prepared to divulge either the contents of the Cabinet Note or the follow-up information, at this point.

Sen. Spence: Mr. President, in view of the fact that there is still a great deal of misconception—it is clearly evident from the questions which are asked, and this sort of question and answer is unlikely to clear it up fully; I sympathize with the Minister in this difficulty—would the Minister agree to once again explain fully, in the press, the position with respect to the medical students at Mt. Hope, to counteract the misconceptions that are evident?

Mrs. Henry: Absolutely. I certainly will explain in detail once more, precisely what is the position with the fee-paying students at Mt. Hope.

NEWSPAPER REPORT

Sen. Alloy Lequay: Mr. President, with your kind leave and the indulgence of hon. Senators, I wish to make a short statement under the item "Personal Explanations" on the Order Paper.

In the *Trinidad Guardian* of Wednesday, August 14 on page 1, under the heading "In Parliament", it was stated *inter alia* and I quote:

"Lequay hits Public Servants"

The article went on to state that I read a statement related to the Auditor General's report of 1990.in the Upper House.

Hon. Senators are aware that I made no such statement in the Senate on Tuesday, August 13, or at any other time. The facts are as follows. During the sitting of Tuesday, August 13, I issued a written statement to two journalists**:** Miss Debra John of the *Express* and Mr. John Babb of the *Trinidad Guardian.*

To put the matter in its proper perspective, permit me to quote briefly from that statement. I quote:

> "It has been a long time since the Auditor General's report on the accounts of the Republic of Trinidad and Tobago has been given such prominence in the media. Unfortunately, the sub-headline in the *Trinidad Guardian* of Tuesday August 6, 'Government Printing Cash, says Auditor General' had an aura of sensationalism not in keeping with the seriousness of the issue while the response of the Auditor General denying the statement was not given the prominence it deserves."

I then quoted from the Auditor General's report as follows:

> "The Auditor General shall examine, enquire into, and audit the accounts of all accounting officers and receivers of revenue."

The statement continued:

> "This section of the Act clearly places the responsibility for the accounts with all accounting officers."

I quoted further from the Auditor General's report as follows:

> "An accounting officer is personally responsible for the proper conduct of the financial business or his/her ministry or department as outlined in his/her letter of appointment."

I then made two recommendations which were reported, in part, but which were substantially correct. My statement concluded by again quoting from the Auditor General's report as follows:

> "Some improvement in the accounting and reporting systems have been observed in recent times and it is hoped that the deficiencies, including those highlighted above, will be addressed in the ensuing years to enhance this statement and make it a more realistic document."

The point I wish to emphasize, Mr. President, is that nothing in the statement can be construed to be an attack on public servants, a recommendation to fire anyone or indeed articulating Government's policy. The statement was intended to be a brief analysis of the Auditor General's comments and to make some recommendations to bring some order to the serious matter of financial accountability which I am sure merits the attention of all parliamentarians.

It is unfortunate that limitation of space in the media did not permit the complete reproduction of my statement. The partial reproduction allowed for misinterpretation of the contents.

Thank you, Mr. President.

ORDER OF BUSINESS

Sen. Alloy Lequay: Mr. President, I beg to move that we defer consideration of all items on the Order Paper, other than the committee stage of the Telecommunications Authority Bill, until a later stage of the proceedings.

Question put and agreed to.

TELECOMMUNICATIONS AUTHORITY BILL

[SIXTH DAY]

The committee of the whole Senate resumed its deliberations on the bill.

[Chairman**:** Mr. Emmanuel Carter]

Mr. Chairman: Members of the committee, we will begin with consideration of clause 70. I am advised that every clause, except clause 41 to 69 has been completed. The deferred clauses are clause 2; clauses 4 , 6 and 7, which are new

subclauses proposed by Sen. Furness-Smith; clause 13 (1); clause 18; and there are two new clauses—clause 22 and 23—proposed by Sen. Spence. These will have to be taken after all other clauses have been disposed of. So, we proceed with clause 70.

10.30 a.m.

Clause 70.

Question proposed, That clause 70 stand part of the bill.

Mr. Chairman: Sen. Furness-Smith, do you have some amendments proposed to clause 70?

Sen. Furness-Smith: No, Mr. Chairman.

Sen. Mark: I have some. Mr. President, I would like to preface my contribution to this particular amendment by indicating that the hon. Minister would certainly want to protect and safeguard the job security as well as to insulate the authority as far as is practicably possible, from open political interference.

What I would like to say here, Mr. Chairman, is that clause 70(1) gives the authority blanket authority to employ persons, to fix qualifications, terms and conditions, also to exercise disciplinary control over those said persons under its employ. These persons are coming from a division called the Telecommunications Division of the Prime Minister's office. The Communications Division of the Prime Minister's office currently falls under the Central Government Service of Trinidad and Tobago and persons who are employed there, are employed in accordance with the Constitution of Trinidad and Tobago as it relates to the public service Commission. I think that, for instance, it has to be an oversight on the part of the Government or the drafters of this bill, simply to ignore that particular reality. Because what we are talking about here is that persons who have been employed in the Public Service for 20 and 15 years, are now going to be employed in a new authority where their terms and conditions are no longer going to be determined by the public service Commission, but by an authority. I feel that the framers of our Constitution were very, very careful in ensuring that they are independent commissions established to protect the rights of workers in the public service as far as is practicable and there are sufficient case studies. There is sufficient evidence to support the need for insulating the public service or quasi-statutory agencies from, what can be described as, possible open political interference. It is in this context,

Mr. Chairman, I am suggesting that the hon. Minister—I do not believe that he has any intentions of taking away the rights of workers who have been employed in the Telecommunications Division under this new authority and, as such, we have made an amendment to clause 70(1) to read that:

> "Subject to subsection (2) and (3), the Authority, in accordance with the Public Service Commission Regulations, Ch. 1:1..."

and you have the following provisions being maintained. They could employ persons; they can fix their qualifications; they can also exercise disciplinary proceedings, but it must within the purview of the Public Service Regulations and not in a manner or a style that could prejudice the rights of persons as they relate to security of tenure of office, as well as to avoid any kind of possible intervention in the political process, particularly where terms and conditions of employment are concerned, as far as that authority is concerned.

So I would like to suggest, very humbly, to the Minister that cognizance should be paid to this particular oversight and that we should do everything in our power to ensure that people who are employed in the public service today, their rights are not violated as a result of the introduction of this new authority that we have before us.

I would like the hon. Minister to give careful consideration to the suggestion and the amendment that is being proposed by me at this time.

Sen. Broomes: Mr. Chairman, a public servant is a very well-defined person—a public officer. The whole purport of this bill is to create an authority with the capacity to respond in an area in which speed of response, because of the nature of the field, is very important**:** flexibility in hiring staff; flexibility in moving out staff; flexibility in responding to levels of remuneration and that sort of thing, in order to attract the best staff. All of these things are important and it is the clear intention of this bill not to hamstring the authority in this way. Neither is it the intention not to have some political control over salaries at the a higher level, because provision is also made somewhere in the bill so that the authority cannot go through the roof at the higher levels. But the authority must have the flexibility and we cannot, in this legislation, in my view, impose conditions on the staff of the authority which are really applicable to public officers who, as I said, are very special people.

So that I am not sure what it would mean to put it "in accordance with Public Service Commission Regulations". I just know it is totally inappropriate in the context of this bill, for persons who are going to be employed by the authority.

Further, Mr. Chairman, I might add that it is a well-established area of industrial law in the UK that a concern must be able to reorganize, and reorganization may involve some change in conditions and so on, for staff. As long as they are offered a reasonable alternative—that is the basis of industrial law—they are compelled to accept it. But if the alternative is unreasonable, obviously they have to be compensated properly. Now, in this case, these people have an option. They are public servants and they have an option under clause 70 to remain in the wider public service and, in fact, they have up to two years in which to exercise that option. If I recall correctly, in the meantime they are protected. They also have the option of retiring.

Remember also, a public service, to take a wider authority or a wider capacity, has the capacity to abolish posts even while holders are in it. But this is not abolition at all. This is giving them the option to go over and to leave after two years or to retire, as the case may be. In my respectful view, the provisions here amply take care of the people currently in the Telecommunications Division of the Prime Minister office. As for those who will be employed in the future, well we have to leave it up to the authority. I think it will be to mix flour and cement to put this part here about "in accordance with the Public Service Commission Regulations". Because those only apply to public officers. They will continue to apply to people who are public officers, but other people will find that they are inapplicable to them. So I would respectfully suggest to the hon. Senator that this proposed amendment is not appropriate in those circumstances.

Sen. Mark: Mr. Chairman, I would like to indicate to the hon. Minister that those who forget the past are condemned to repeat it. We had a situation recently where workers were protesting outside the Central Statistical Office over the fact that because of the nature of that organization, you had a director who was doing her own thing, hiring people because she had the authority to do it, and in doing so, she hired who she wanted to hire.

Now, what I am saying is that you have somebody who is working in a public service according to the Constitution, for 20 years—I have been working in the Telecommunications Division for 20 years; I have a letter appointing me from the Public Service Commission; the Government takes a decision to abolish that division and create an independent authority. Where is my tenure of security? This is a violation of my constitutional rights as a citizen of this country, and you are telling me, hon. Minister, that I should withdraw this particular amendment, because it is inappropriate. We have to be very clear what we are doing. It is either

the Government has a clear policy to cut down the public service and to undermine trade unions of this country and they must say so. But do not come in this surreptitious way and cut down the public service, violate people's right and say, for instance, this is appropriate. I am saying it is in appropriate and it is going to cause a lot of trouble.

This approach that the Government is taking in seeking to have people who have been employed in the public service for all these years just give up their rights and go and work in a semi-autonomous body where they have no rights' is wrong. You talk about disciplining people. What are the criteria for disciplining people in this new authority? So this management board is going to have the right to fix qualifications; they are going to have the right to determine who they are going to hire and when they are going to fire; they are going to determine, for instance, what is discipline and what is not discipline. In the public service these things are clearly outlined and I am saying that is an unfair kind of development to those workers who have been labouring in the Telecommunications Division for all these years. It is not fair.

Mr. Chairman, I believe that the hon. Minister probably has not given this thing sufficient thought, but this is an infringement of people's rights and they will take the Government to the court. This matter is a violation of people's rights.

I have a letter; it is a contract of employment from the Public Service Commission and by some legislation and so on, you simply violate the Constitution and take away my rights as a worker, working there for 20 years, and tell me I am now subject to the whims and fancy of some management board, where for instance no clearly defined criteria have been agreed upon by this Parliament as to how people are going to be disciplined, how people are going to be hired, how people are going to be fired. I cannot support that Mr. Chairman, and the hon. Minister may be well advised that this is a dangerous course that the Government is treading on. I really would like the hon Minister to give this thing the kind of serious consideration it deserves. Because it has been going on and we need to put a stop to this kind of thing. It is not fair and I would argue down the road on this point, Mr. Chairman.

Sen. Rampersad: I need to ask the hon. Senator a question. If for instance, Sen. Mark, you have an establishment which sells from"A" to "B" are you saying that "B" who is the new owner has no rights at all to determine how his new establishment will go?

Sen. Mark: This is not an ordinary case, Sen. Rampersad. This is a case involving the Constitution of this country. There is an institution under this Constitution called the Public Service Commission. This is what I am talking about. What is happening is that when I was employed in the public service, I got a letter of appointment from the Public Service Commission which is an independent institution under the Constitution of this country. What is happening is that the Government, by the stroke of a pen, is abolishing this division that I used to work in, creating a new authority and telling me that I have options. Listen to what my options are. I could stay if I want; I could accept VTEPP and go, or they could abolish my office. I am saying, Mr. Chairman, that is an unfair kind of arrangement that is taking place.

Sen. Rampersad: Are you saying, therefore, Sen. Mark, that under the Public Service Commission Act, an establishment cannot change hands from one to the other?

Sen. Mark: Under the Public Service Commission Regulations there are clear stipulated procedures as to how you discipline people how you employ people, how you actually remove people from office. These things are established in law. But what is happening is arbitrary and whimsical rule that is taking over established procedures and laws in the country.

Sen. Rampersad: That is an opinion.

Sen. Mark: That is not an opinion, that is a fact. But if the hon. Minister wishes to proceed down that particular path, he can do that at the detriment of this—and they established an independent authority called the Tourist Board and then subsequently the Tourism Development Authority.

Mr. Chairman, that has been in existence for close to about three to four years now and there are workers who were given the same option in that same piece of legislation when they were bringing the Tourism Development Authority into being. To date, those workers are still waiting for a transfer to the public service and there is confusion in the transference. The Public Service Commission is claiming, on the one hand, that these workers were employed with the statutory authority and, therefore, they cannot be entertained in the public service. You have workers right now at the Tourism Development Authority in “no man's land”. Maybe the Minister in charge of Tourism might be aware of this reality. People are in “no man's land”. So it is not a simple situation where you say that people have

the right to be transferred to the public service. Suppose I want to go to the public service, but because of these obstacles I remain in “no mans' land” in the Tourism Development Authority or I remain in “no man's land” in the new Telecommunications Authority arrangement?

So it is not as simple as you see it, hon Minister. It is a whole struggle that people are going through merely to be transferred and they are coming up against huge obstacles. I know of instances where people have been waiting to be transferred to the public service for three years. The time has lapsed where they were given two years to make up their minds. Two years have gone and they are going into their fourth year and they cannot get transferred to the public service.

I am saying, hon. Minister, that it is not as simple as we might see it here. We are just crossing the "Ts" and dotting the "Is" as legislators, but outside there are people who are in the kitchen. They are really feeling the heat and I believe, Mr. Chairman, that these are factors that we need to take into account when we are seeking to have these bills passed. I did not raise them idly, I did my research; I did my investigations and this is why I have come to the conclusion that what we are proceeding with here, is dangerous. I think that, for instance, the mechanisms are not in place to facilitate this smooth landing or this soft landing that you believe would take place.

10.50 a.m.

As I said, if you insist that you want to proceed the way that it is stated here—I know the intentions are good—I am simply dealing with the consequences and the reality of this action. I would insist that the honourable Minister take serious note of what is being said here and to do whatever he can to ensure that even if he goes ahead with this particular proposal as it is, that you put in train the necessary mechanisms to give that public servant the right to be transferred into the public service speedily, and not in the frustrating manner that many people are now going through.

Sen. Furness-Smith: Mr. Chairman, I have listened with interest to Sen. Mark. On this point, I agree with the position of the honourable Minister, which is consistent. He has set up an independent body and he has given options to the public servants to either go back to the public service or to get out of the public service. That is all completely consistent. If the hon. Senator representing the party for the labour movement, feels that there is something wrong with the arrangements made by the Public Service Commission, then that is the place where

he must start his actions, but he cannot blame the honourable Minister for that. We all know that everything is wrong with the Public Service Commission and, indeed, with the public service, but there is no use coming here and abusing the Minister—not abusing, but roaring at the Minister for that.

What I find rather strange is that here, at this stage of the bill, when it comes to public servants and their positions, we have these arguments which go back to the debate we had earlier on my amendment. Nothing was heard then from the hon. Senator, concerning the public interest of establishing an entirely independent body, but only when it comes to the interest of what is conceived to be the labour movement.

Now, really, I think we all must look at these bills from the point of view of the people of Trinidad and Tobago and not from the labour movement or the capitalist movement or whatever other movements we conceive are in existence. Because if this is to be an independent body, then the points made are well taken. Who is going to be responsible when this body fires people? As I said then, it could be only the President of our Republic to blame. That is the only person really. They cannot complain to the hon. Minister. He is totally not responsible for this body. But Sen. Mark voted down that amendment. He cannot have it both ways. Either we are to have an independent body established by the President, in his discretion, after certain consultations or we are to have a ministerial body, the responsibility of our elected government.

That is the point, but I am disappointed to have these arguments raised for one section of the community and then when the public interest was at stake on the other amendment, silence. No support here at all. That is the point.

If I can turn to my amendment now, Sir, unless you would want to put this one to the vote first.

Mr. Chairman: This is separate, but let me hear Sen. Spence.

Sen. Spence: Mr. Chairman, just one point of clarification, then I would like to make a comment.

With 4(b), is it possible for someone to be paid by the Government through the public service, but to hold down a job in the authority? It would seem to be that this could be useful to overcome the difficulty that Sen. Mark has been raising that there would be no place for them in the public service, if they were to be transferred back. So, it would seem to me to be a useful mechanism if some people

choose to stay under these regulations and so on that they have been under all the time; if they could continue to work in the authority but paid directly from the Government. If that is so, then I would like to make a further comment.

Sen. Broomes: Mr. Chairman, the mechanism of secondment is the one I think the hon. Senator described and I have no doubt that this would be available to these people.

Sen. Spence: Sen. Mark has raised the point that there would be no place for them if they were to transfer back to the public service. It would seem to be useful, if the system allows them to continue to work in a job they have with the authority, but because they say they do not want to leave the conditions of service of the public service that they are allowed to keep those conditions but work in the authority. Let me just make a further comment I think would be useful.

I am in complete disagreement with the position that Sen. Mark has taken because if we took that view, we would be severely limiting the progress we can make in a number of areas. This may have come up now with the authority but if we are setting up a community college it is going to come up with all the staff in John Donaldson Technical Institute, San Fernando Technical Institute and what have you. Similarly, I am a strong believer that the Research Division of the Ministry of Agriculture cannot operate, and we are wasting money by having it in the Civil Service; it should come out into an independent authority.

If we are going to say none of that can happen because the very generous terms that are set out under 4, cannot be implemented, we are not just going to affect this authority, we are going to affect progress in a number of areas which I think are absolutely vital for progress in this country. So I cannot agree with the position that he has taken at all. I, myself, believe that the terms are very generous. A person has the opportunity to stay under the Public Service Commission. Why he should want to do so, heaven alone knows, but he can do that if he/she wants.

My only point, at the beginning, was to address Sen. Mark's problem that in some instances there are not the vacancies in the Civil Service, so the person is in limbo. Now, it seems to me he needs not be in limbo, provided we can arrange that he can continue to do his job in the authority but his salary and terms and conditions come from the Civil Service. Now, I do not feel there will be many in that position because the likelihood is that the terms and conditions with the authority are going to be slightly better than the Civil Service in a short time, not only the salaries but the flexibility in his manner of employment. So I think he would want to transfer. Those are the points I would like to make.

Sen. Furness-Smith: Mr. President, could I ask, following up from Sen. Spence, what about the disciplinary conditions? If they are continuing in the public service, seconded to this body, will they be answerable for the disciplinary provisions, if any, made by this body, or will they be answerable for the non-existent disciplinary provisions of the public service? That is something which certainly needs to be answered and I have the question here.

Sen. Spence: Now, I do not think, in fact, that is going to be a problem because most people would not opt to stay in that situation, I believe. If the new organization is really vibrant and working well, they will want to be fully a part of it. You will get the odd person who, no doubt, will create difficulties but by and large, I think the thing would work even though you would get a few people who are under different terms and conditions of service than the majority in this new outfit.

11.00 a.m.

Sen. Mark: For the records, I would like to indicate that if the goodly Sen. Furness-Smith believed that I was roaring at the Minister, I want to indicate to him there was no such intention. I want to disabuse completely from his mind any such thinking.

I also want to indicate that the amendment which is being proposed is not so much sectarian as it is public, because I do not see it merely as Sen. Mark peddling or promoting public servants' cause in this Parliament. I was trying to look at it from a broad perspective in terms of how this thing could impact on an institution, that is established under the Constitution called the Public Service Commission.

I think it is very unfair on the part of the Senator to comment in those narrow terms, given the thrust of my contribution this morning. I cannot help at times when I am speaking, to speak in a particular style. That is my style. Sen. Furness-Smith has his. I am not responsible for that.

I just want to indicate finally, that I believe the arguments I have proposed to deal with this particular matter are logical and they are in the interest of the entire country. As I said also, if the Minister insists that this is the way the Government wants to go, well then they go that way.

Mr. Chairman: Before I put the question, does the Minister want to say anything further?

Sen. Broomes: No. I think the matter has been dealt with sufficiently. I would only like to point out one small thing to Sen. Mark. When he talks about statutory authorities, people from the Tourist Board having difficulty going into the public service they would belong to a statutory authority and not the public service, unlike these people who are already public servants.

Mr. Chairman: The amendment proposed by Sen. Mark to clause 70(1) says:

Insert after the word "may" in line 2, the words "in accordance with the Public Service Commission Regulation Chap. 1:01."

Question, on amendment, put and negatived.

Mr. Chairman: Sen. Furness-Smith has an amendment.

Sen. Furness-Smith: The crux of this amendment, which Members have no doubt read, is that I am proposing that that authority may exercise its powers under this clause, with the approval of the Minister, the Minister responsible for Finance and a resolution of power. That seems to be quite a mouthful but in line with my previous submissions on this bill, I can understand the hon. Minister wanting the authority to have the flexibility to fix the salaries and to create whatever conditions it thinks fit, in order to fulfil the duties which we are imposing on it. That is not quite good enough because it is the people of this country who are going to have to pay the bill and I am entirely opposed to having commitments thrown on the public purse without proper parliamentary control.

With due respect to the hon. Minister, he mentioned in his remarks just now that there is some control, but I do not see it on these questions. It seems to me that this independent body, which as we have already discussed is totally independent, is not subject to any ministerial or any other control that I can see. We are asked to give them the opportunity to employ all kinds of people and staff at whatever salaries they find it necessary. That must be subject first of all to the control of the Minister of Finance who has to raise the taxes to pay for all these things and, secondly, to Parliament. There must be some control and that is the purpose of my amendment.

If that amendment is accepted then the other ones, I think, are consequential. I wanted to separate (c) because there did not appear to be any necessity for the disciplinary control or the termination to be subject to the advice of the Minister of Finance or parliamentary resolution. I am proposing to make that provision into a

separate subclause and then of course what is presently (2), (3), (4), (5), and (6) will become (3), (4), (5), (6), (7) and so forth and the references have to be changed accordingly.

In subclause (8) which presently reads:

> "Where a person who opted to transfer to the Authority under subsection 4(a) retires or is removed from employment with the Authority in consequence of the abolition of his office, he shall be paid compensation for loss of office or employment in accordance with the Pensions Act."

I am proposing that after the words “abolition of his office” that we add in “or of an office equivalent thereto”. It seemed to me, and I am sure Sen. Mark would assist in this, because if somebody has opted to transfer to the authority on terms and conditions that are no less favourable, it does not follow that his office in the authority will be equal or the same as his office in the public service. It seems to me one needs to make it clear in consequence of the abolition of his office, or of an office equivalent thereto.

Maybe I have misunderstood something, but it seems to me there is a lacuna in that provision. My main amendment is on the question of getting the approval of the Minister of Finance and the resolution of Parliament really for the establishment that this body will be permitted to employ.

Sen. Mark: I think we would like to lend support to this particular amendment. This is all in keeping with the need for control and to ensure there is no arbitrary and whimsical rule on the part of this management board of this new Telecommunications Authority.

I believe that even though the proposed amendments as suggested by Sen. Furness-Smith probably would go some way in seeking to exercise some degree of control, I think it is important in the context of what we are discussing.

11.10 a.m.

Mr. Chairman, I think quite importantly, the issue of disciplining people where, for instance, the authority, in clause 70(c), has the right to exercise disciplinary control over, or to terminate the appointment of persons employed under this clause, I think there has to be some degree of control here; there has to be some kind of criteria established. We are taxpayers in this country and we will be funding this authority. Yet, these people who are going to constitute this management

board, do not appear to be accountable to anyone. They will be a law unto themselves; people operating their own castles; doing their own thing. This is where I feel that we have to provide some degree of protection, some degree of security, and some degree of temperament in this particular matter. I think that we would go along with the amendment as proposed by Sen. Furness-Smith in an effort to ensure that there is some element of control and that there will not be arbitrary rule taking place in that new authority.

Sen. Spence: Mr. Chairman, I cannot agree with this proposed amendment. It seems to me that Sen. Furness-Smith has not accepted that a separate body is being set up. Having set up the body you then want to hamstring it in such a way that probably it is now illogical to set it up. All independent bodies of this nature that get subventions from Government are controlled by the fact that they have to come annually to present their budget to the Minister of Finance, and this is where you exercise your control. If you do not allow them some flexibility in the way they arrange their affairs within that budget, then quite frankly, nobody of any consequence will sit on any of those boards. Why should they want to, when every change that they want to make they have to come to Parliament for it. It seems to me quite ridiculous.

In addition to that, if you include subclause (b)—Sen. Furness-Smith has excluded (c) but he has left in (b)—do you mean that Parliament will fix qualifications, terms and conditions of service for the officers and employees of the authority? Is that what we are going to do? I do not agree with this amendment at all. I think having set up the body you have to assume that you put responsible people in charge, who have the control that every cent that goes to them, goes to the Minister of Finance, and they have to present him with a budget which will include the salaries. Bodies of that nature even have to do their negotiations through the CPO. I have sat as Chairman of CARIRI for five years and that is the procedure. The budget does not come to Parliament. That will be impossible. It is difficult enough as it is. You negotiate with the union and having come to an agreement with them, you then have to go to the CPO; then he tells you something different and you then have to go back to the union. As it is, it is an impossible situation, but to go to Parliament, as well, forget it. Let us keep it in the civil service.

Sen. Mahabir-Wyatt: Mr. Chairman, I would like to support Sen. Spence on this. I think that if you look at clause 70(1)(a), it is almost impossible to run any organization where you have got to refer to Parliament, the employment of

administrative staff, technical staff, professional staff. If somebody in a key position leaves and has to be replaced, it is not easy to get matters to Parliament, and it would mean tying people's hands and feet; you would not be able to have staff when you need them, and the functions of the authority will just not be able to proceed.

Likewise, in subclause (b) I hardly think that Parliament is the correct place for fixing qualifications for officers and employees of the authority. It would mean that the authority will simply not be able to operate administratively in terms of the staff that it has to have in order to continue to operate.

I am totally against this amendment. I do, however, agree with Sen. Furness-Smith's second amendment in relation to the disciplinary control and to making them apply to persons employed under this section.

Dr. Deosaran: Mr. Chairman, my conception of this bill presented by the Minister rested on a fundamental premise of a viable measure of independence. Given the nature of the task ahead of it, a task in which the Government itself is a key player, negotiating for time and space, opportunities for broadcast and so forth, I believe the Government's premise was quite welcomed, in my view, and I myself withdrew many amendments I had in mind, including those that I had put on paper, to subscribe to that important premise.

In many instances, this bill is similar to what you provide for the Ombudsman, because in many of its specific objectives it has an ombudsman's role to play in the whole country. It has a mediating role to play among many competing interests. To me, and over the series of amendments we have had, there have been enough whittling down of the prerogative, if not power, given to this authority. I, like many other people, share Sen. Furness-Smith's view about accountability but, in fact, we must not throw out the baby with the bath water; and this is exactly what is happening because a few of us are not well attuned to the role of this authority in the nation as a whole.

Apart from the budgetary debate, you have enough checks and balances in appointing staff and in many of the instances under ministerial control. Certainly, given the nature of the appointment of this authority, given the nature of the task ahead of it, given the challenge to get qualified staff, to have these people perform in confidence and to establish some kind of prestige and efficiency in its function, I am not convinced that hamstringing the authority in the ways that this amendment presumes to do, would be in the best interest of the authority itself. It would

bother me if the Minister waffles on this one because he himself would be violating one of the major premise upon which he has brought this bill to the Senate, and to which I earlier subscribed.

Dr. Persad: Mr. Chairman, we are going to implement a new statutory body. We have had problems in the past—and I do not want to call names—in setting up new bodies especially when we have need for new technology or technology new to Trinidad and Tobago, of importing people and hiring them at exorbitant salaries. This is a problem we have faced in the past. If they are serious about starting a new trend, then I think that there is some need for control. I agree with Sen. Furness-Smith's amendment, in principle. I take the point that maybe coming to Parliament is throwing out the baby with the bath water, but nevertheless, I think that there should be some control in setting up the initial salary scales, because right now we complain of persons in statutory bodies, and state enterprises, who have salaries two, three times in excess of other people. Now we have the chance to do something about it and I hope that the Minister will do something about it. There must be some control; there must be some limit set. If it is not to Parliament, then there should be some sort of amendment to Sen. Furness-Smith's amendment to set such control. I urge the Minister to do so.

11.20 a.m.

Sen. Furness-Smith: Mr. Chairman, having listened to my brother Senators, clearly they have got a strong point. I certainly did not intend that every time an appointment is made one has to go to Parliament. That was not my intention but I do not think I expressed my amendment very well and I would like to suggest that what I intended would read as follows:

"Subject to the subsection (2) or (3), the Authority may, in accordance with the staff structure and salaries approved by the Minister responsible for Finance and a resolution of Parliament..."

Now that takes out any question of too much restriction, but what it does provide is that this body must go to the Ministry of Finance and say, "Look, in order to do this, we are proposing that we will have a staff structure consisting of this, and salary scales of this, and the whole thing, when we are finished employing our people, is going to cost, say, $10 million" and the Ministry of Finance says, "Well, if it is $10 million, I have no money for that. All I can find you is $8 million". Now I take Sen. Spence's point that in practice it may work that this

authority will sort of take in front and do something like that depending on the budget process, but once they have employed the people, they are responsible for the salaries. The salaries are not supposed to come from public funds. The authority is going to collect funds from the taxpayer. They could easily make a big mistake and establish an enormous staff structure with fancy salaries and then find, at the end of the year when it comes to budget time, that the Minister was not giving them the money, then half of the people would have to be fired. Endless confusion! So that, although I take the point, if we are establishing this body, we must have some control, I think, in the limited way that I have now suggested, and I ask for that amendment to my amendment.

Sen. Spence: May I ask Sen Persad if he would agree for that principle to apply to the university as well? It is exactly the same situation. The university gets a subvention from Government. Should the salaries of the university staff come to Parliament? I think that what we are setting up is a monster, because it applies to many other bodies which are already in existence and which we hope to set up in the future. I am sure he would not support it in the case of the University staff. I certainly would not.

Dr. Persad: Mr. Chairman, if I am to answer, may I point out to Sen. Spence that he is fully aware that the university is a regional body and, as such, this does not apply.

Sen. Spence: Certainly, if you are to negotiate as a regional body then your Parliament has to give the money as well because Parliament has to vote that money for the universities. It applies to a number of bodies, and again I say we are setting up a monster and I would certainly oppose that amendment.

Dr. Persad: Mr. Chairman, may I ask Sen. Spence a question? For instance, in one of our state corporations before, the enormous salaries paid to foreign consultants who left, and foreign people who came and left—enormous salaries—is he prepared to allow that to happen again?

Sen. Broomes: Mr. Chairman, I have no doubt that as we grow up as a people and develop self-respect, many of these concerns will not take up so much parliamentary time. I think that we have set up a body. We intend to put people there to run the body and, hopefully, people whom we assume we respect. Some of our nationals whom we respect, we give them authority. You know, in Britain they set up these things and they expect you to operate in a certain way. In the

United States they set them up, if you do not operate properly, whoever you are, they lock you up and so forth.

Now, I think that we have to try and grow up a little faster and try to respect one another. Respect the people we are going to put to run things so that we can get on with what, to my mind, are more serious matters, with very great respect to my friend opposite. We cannot, in my respectful view, ask Parliament to determine salaries. That is for trade unions, the CPO and so forth. I would not wish to sit in a Parliament where we are sitting to determine salaries.

I have put forward two amendments to clause 70 and this was after reading the amendments proposed by Sen. Furness-Smith. I suspect that some of the hon. Senators opposite have not even bothered to look at some of the amendments I have put forward. I feel, for example, almost certain Sen. Persad has not looked at the amendment I put forward in respect of clause 70.

The first one is to deal with the matter that Sen. Furness-Smith deals with in (a) of his amendment which was a typographical error, “to substitute (3) and (4) for the figures (2) and (3) in line 1”. So in that sense, I totally accept the hon. Senator's proposed amendment. Subclause (b) of the amendment I proposed on page 9 of the list circulated, also attempts in the best way, I think, to institute some measure of control while allowing the authority the autonomy that is intended. What I have proposed here is for the words in subsection (2) "of any appointment" substitute "the remuneration for any appointment". What this means is that anytime you are going to pay somebody a salary above that which is applicable to the post of Administrative Officer V in the public service—and for those hon. Senators who do not know, that is the post just below the level of Permanent Secretary—you must obtain the prior approval in writing of the Minister. I think that, in keeping with our self-respect, our respect for one another and so on, this is a sufficient safeguard and I seriously commend it to the hon. Senators and I ask, Mr. Chairman, that this be put.

Dr. Persad: Mr. Chairman, just a brief word with respect to the Minister's concern for self-respect. I would hope that he practises such concerns. Also, his comment that I did not read the amendment was most unfortunate.

Mr. Chairman: The amendment proposed by the Minister to clause 70 reads:

> In subclause (1), substitute for the words "(2)" and "(3)" occuring in line one, the words "(3)" and "(4)".

It is the same as the amendment proposed by Sen. Furness-Smith.

Question, on amendment, put and agreed to.

Mr. Chairman: The next amendment proposed by the Minister reads:

In "subclause (2), substitute for the words, “any appointment at a level” occurring in line 2, the words, “the remuneration for any appointment".

Question, on amendment, put and agreed to.

Mr. Chairman: We go back to Sen. Furness-Smith's second amendment (b) on page 5 on his list of amendments:

"Add after the word “may” in the second line, the words “with the approval of the Minister—"

Sen. Furness-Smith: I substituted, instead of "with the approval of", "in accordance with the staff structure and salaries approved by...".

11.30 a.m.

Mr. Chairman: "Add after the word “may” in the second line, the words “in accordance with the staff structure and salaries approved by the Minister, the Minister responsible for Finance and the resolution of Parliament.”

Question, on amendment, put and negatived.

Mr. Chairman: Sen. Furness-Smith are you proceeding with (c)?

Sen. Furness-Smith: No, Sir, that follows on (b).

Mr. Chairman: So you are withdrawing the proposed amendment, for (c).

Sen. Furness-Smith: Yes. There has not really been any comment on (c). If the hon. Minister does not think it is necessary, I would not press him.

Mr. Chairman: Then we come back to the amendments by Sen. Mark. He has some other amendments to the same clause, 70. The first one is to delete subclause (4) (c).

Sen. Mark: Mr. Chairman, this was pending. I was hopeful I would have had the agreement of the Minister as it relates to clause 71 dealing with the Public Service Commission Regulations. The Voluntary Termination of Employment Act 1989, comes to an end in June, 1992. This clause is therefore irrelevant, because what (4) is saying, is that:

"A person to whom subsection (3) refers shall, within two years after the commencement of this Act..."

So that the person has an option of exercising these three areas that have been identified. But the Voluntary Termination of Employment Act comes to an end in June, 1992, so this is irrelevant. So I urge the hon. Minister to delete that from the provision here. It makes no sense, absolutely none. Mr. Minister, the VTEPP Act comes to an end in June, 1992 and what this clause is saying is that the persons who are desirous of exercising some options, you give them two years to make up their minds upon the commencement of the Act itself. In other words, when it is assented to by the President, and it becomes law. You do not know how long that is going to take. But in any event, it would not come before the expiration of the Act itself in 1992. So I am suggesting that this subclause (c) is irrelevant and it should be deleted. Maybe the hon. Minister could respond accordingly.

Sen. Bradshaw: Would you want to completely remove the option of voluntary retirement, or would you want to consider that option for voluntary retirement might be offered on other terms?

Sen. Mark: My argument is that you are giving me an option of two years. I have a period of two years to make up my mind. Now, I am not going to make up my mind having regard—VTEPP is a trap and people are not running for that at all. The Government will tell you that. They are not taking it. So what is happening is that people are not going the road of VTEPP, clearly. Therefore, what I am suggesting is that in light of the fact that it expires in June, 1992, I am querying, in my own mind, the relevance of this clause. If the Minister wants to keep it, he can do so, but I am just informing him that this particular Act comes to an end in June, 1992.

Sen. Bradshaw: I am not on the question of time, I am on the question of the voluntary retirement option. How do you feel about that?

Sen. Mark: We were never in support of that.

Sen. Bradshaw: Are you not in favour of voluntary retirement at all?

Sen. Mark: Not under the present arrangement.

Sen. Bradshaw: Would you accept it under any other arrangement?

Sen. Mark: Well, it all depends on the terms and conditions. The terms and conditions are critical.

Sen. Bradshaw: In principle, you have nothing against it.

Mr. Chairman: Are you withdrawing your amendment?

Sen. Mark: I wanted to get the Minister's response first before I rest my amendment.

Sen. Broomes: Mr. Chairman, I am going to seek leave to charge the hon. Member fees at some stage. I am advised that there is no provision in the VTEPP Act for the Act to come to an end. I am advised it appears to be current Government policy that they will stop inviting people to retire under the Act by some time in 1992, but the Act itself contains no provision for its own self-destruction. It does not come to an end, I am told. That is the first point.

Secondly, the fact is that the Act is in existence today and all this provision says, is "Gentlemen, look around to the Second Schedule to that Act and people who wish to retire voluntarily under this bill that we are trying to pass here, the terms and conditions set out in the schedule to that VTEPP Act, those are the ones we are saying they will retire under". That is all we are saying. So in the face of those two points, I am saying really, I am unable to support the amendment and I am sure my good friend, upon reflection, especially if he checks and finds that it is correct that the Act will not come to an end, will agree to withdraw

Sen. Mark: I have been so advised, but it seems that I am getting counter-advice here from the hon. Minister that the Act itself does not come to an end in June 1992. I will have to seek some additional advice on the matter. But my understanding is that it does come to an end. If the Minister is so advising at this time, then certainly, I will have to check my records again on that matter. But as I said, I would not be hard and fast on the issue here. I just pointed out to the Minister that it comes to an end, but if he is insisting that it does not come to an end, he can proceed with it as it is. I will withdraw my amendment on that question.

Well, again given my thinking on (c), it was logical that this subclause be deleted as well, but again, in light of what the Minister has said—and I am going to clarify it further—I would withdraw that amendment.

11.40 a.m.

Mr. Chairman: Do you withdraw your amendment to delete subclause (6)? You have two other amendments—

"insert after the word 'Act' in line 6 in subclause (7) the following:-

shall also be compensated in damages for loss of office and/or employment."

Are you pursuing that amendment?

Sen. Mark: Yes, Sir. Now, the Government is seeking to abolish an office for whatever reason as it is stated here:

"Where a person opts not to be seconded to the Authority..."

So you say you do not want to work with the authority, or the person opts to remain in the public service, so he stays in the public service under section 4(b), and retires, or is removed from the public service in consequence of the abolition of his office. In other words, I have the option to be seconded, I have the option to go in the public service and then now you exercise your right—the employer, the Government—to abolish my office. You abolish my office.

Now, I am saying that if you abolish a person's office, it means to say that when you have looked around in the public service, or maybe within the new Authority, the functions that I used to carry out, there is no particular comparable position within the public service or within the authority for me to perform that function, and on that basis you decide to abolish my post because it becomes irrelevant at that time. Now, if you abolish my post, I am charging you with damages. The Government has the responsibility of compensating that particular employee for loss of earnings in the event that his/her office is abolished.

My argument here is that damages must be paid to the worker in question. I am stating here that there is, in fact, sufficient precedent for such an argument and I believe that the hon. Minister would be in a position to accept my arguments. Now, in the case of the Government Wireless Department—you know we had the Government Wireless Department before Textel came into being—when that department was closed down, the Government at the time took the necessary steps to bring what is called "subsidiary legislation" to the Parliament to ensure that those workers in question were properly compensated for loss of earnings during that period.

Similarly, special legislation was brought as it relates to the Trinidad Government Railways. When that company was closed down and PTSC was brought into being, the Government did, in fact, bring the necessary legislation. This is the legislation here. It is called "Subsidiary Legislation, Public Transport

Service, Compensation for Loss of Office Regulations". This was brought to the Parliament. Do you know why? Because the people who were operating the railways in the 1960s had no comparable positions within the PTSC to absorb those persons. Those persons had a lot of life in their system to continue working for 10, 15 or maybe 20 years, and the Government had to compensate them for loss of earnings because the Government abolished their offices. I am saying that there is legislation to support this.

Similarly, when we became a Republic, the Governor General's staff was removed and was also compensated, from my understanding. If you abolish—and I am going to give a concrete example of what I am talking about here. Suppose I am working in the Telecommunications Division and I am 35 years of age. I am not interested in being seconded to the authority, I want to go to the public service but I have difficulties in getting across there. So the management of this new authority, decides to abolish my office. I am 35 years and because you cannot find an equivalent position within the public service to place me and you abolish my post, what is going to happen between 35 and 65? I have a lifetime still before me.

You, as the Government or the authority, abolished my post. The argument here is that if you abolish my post, you must compensate me. That is called damages for loss of office and loss of earnings for the period. I am saying to the hon. Minister that there is, in fact, precedent for that and I do not think, for instance—

Sen. Lequay: I wonder if the Senator would allow me to interrupt him for a minute. He is only repeating himself. The clause states—

"...he shall be paid compensation for loss of office or employment..."

What is the argument which he is advancing, that is different to that?

Sen. Mark: You see, Sen. Lequay, you must exercise some patience; that is why you get in trouble. You talk too fast.

Sen. Lequay: I do not get into trouble. Do not believe I get into trouble. You are merely repeating yourself with the same argument all the time.

Sen. Mark: Exercise some patience**.** What happen, is it age that is causing that?

Mr. Chairman: Let us get back to the matter.

Sen. Lequay: What is the difference between the bill and what he is saying?

Sen. Mark: Well, give me an opportunity to speak. I am speaking and you are interrupting me and telling me I am repeating myself.

Sen. Lequay: Because I am trying to follow your argument.

Sen. Mark: Are you the Chairman? The Chairman is here, let him guide me.

Mr. Chairman, for the enlightenment of our good colleague, Sen. Lequay, what is being advanced here is that "he shall be paid compensation for loss of office or employment in accordance with the Pensions Act". Now, you see, the argument I am raising here is that I will have to wait until I reach age 60 to enjoy my rights as a retired person under the Pensions Act.

Mr. Chairman: Under the Pensions Act people can leave at age 50, with permission; they can leave before age 55; they can leave before age 50 on medical grounds.

Sen. Mark: But you have to qualify, Mr. Chairman, in terms of 33 1/3 years.

11.50 p.m.

Mr. Chairman: It is not 33 1/3. That is something else. They are varied. You do not have to wait until age 60.

Sen. Mark: My argument is that under this particular provision, you can have a situation developing where a person's post is abolished and the person is not properly compensated as a result of that.

I am arguing that there is no provision in the present bill that would safeguard the rights of that individual or individuals, whose posts have been abolished. Therefore, I am proposing in the circumstances, that we seek to have some provision in the present clause as a safeguard in the event of this particular eventuality. I made a specific recommendation. I indicated too, that this be inserted: "shall also be compensated in damages for loss of office and/or employment." That is an adequate safeguard in the event of a person's post being abolished, you have some provision in the legislation to safeguard the person's interest.

I think it is a reasonable proposal and that you ought to give it favourable consideration in the context of our discussions today.

Mr. Chairman: I am now putting the amendment proposed by Sen. Mark to insert after the word "Act" in line 6 of subclause (7) the following:

"and shall also be compensated in damages for loss of office and or employment."

Sen. Mark: I think it is only fair for the Minister to give me a response.

Sen. Broomes: I am unable to assist the hon. Senator because the clause clearly has provision for compensation according to law. I think that is sufficient. I am entirely unable to assist him further.

Sen. Mark: I was hoping that the hon. Minister would have at least gone into some detail in terms of my response, but that is the approach again. It is a very unfortunate one but that is the approach that he is taking. I am very conscious of what he has said.

I have brought some arguments into the picture and I thought he would have responded to those arguments, but he resorted to the normal style; it is there and the law provides for it and so forth. That is the approach. We have a very frightening development in our country. I can tell you that for one.

Sen. Broomes: The hon. Member knows well that whenever there is a hint of substance in his argument, I bend over backwards to assist. If I do not perceive any, rightly or wrongly, I really cannot assist.

Mr. Chairman: What he is saying is that provision is there for compensation to be paid for loss of office or employment in accordance with the Pensions Act. Sen. Mark is saying that there is no such provision in the Pensions Act, but he has not really brought anything to substantiate what he is claiming.

Sen. Mark: I did not say there is no such provision. I am simply arguing that in addition to what the person is entitled to under the Pensions Act, the person ought to be compensated for damages, for loss of earnings, for the period he has been out of employment. That is a normal practice. I am saying there is legislation in Parliament to support it. It is not only pensions we are talking about, which is a normal procedure, but I am talking about damages for loss of office as a result of that post being abolished. I am talking about two things here. I am talking about pensions and I am also talking about damages. Compensate the person for damages.

It is in this light I thought the Minister would have been able to see the argument being advanced. He seems to have a difficulty in absorbing substance at

times. You can proceed. I am supporting this amendment and the Minister would do otherwise. The records would reveal at the appropriate time.

Question, on amendment, put and negatived.

Mr. Chairman: There is another amendment by Sen. Mark to subclause (8). Are you proceeding with that?

Sen. Mark: Yes. It would follow logically from what has been discussed. It is a pity the way in which the Government is attempting to treat with a very important matter, which involves the lives of people who have given their service to their country for so many years. By the stroke of a pen you could abolish somebody's post and not take into consideration the years of service that person has given to this country and what the person's potential service would have been.

This cavalier fashion in which—*[Interruption]* You always want to disturb my equilibrium. I would not respond to that. I am insisting that in subclause (8) the same argument should obtain.

Mr. Chairman: The proposed amendment by Sen. Mark to subclause (8) that is in line 6 after the word “Act” add the following:

“and shall also be compensated in damages for loss of office and/or employment.”

Question, on amendment, put and negatived.

Clause 70, as amended, ordered to stand part of the bill.

Clauses 71 and 72 ordered to stand part of the bill.

Clause 73.

Question proposed, That clause 73 stand part of the bill.

12.00 noon

Sen. Mark: I believe that the anti-working class trend that is developing here will continue. Therefore, I will advance my arguments, conscious that the other side seems to be very deaf this morning, on this issue.

Mr. Chairman, on the issue of clause 73(1)—and I just want to read so that at least you will appreciate what is involved here:

> "The pension rights which would have accrued to the officers and members of staff of the Telecommunications Division to whom section 70(4)(a) applies shall be preserved to them unbroken and continue to so accrue until the establishment of the scheme referred to in subsection (2)."

As you know, the scheme that is referred to deals with the establishment of some superannuation arrangement for the employees of this new Telecommunications Authority.

Mr. Chairman, I do not know if the hon. Minister has any experience in this particular matter but I would like to draw it to his attention. You have a situation where someone has been employed with the Telecommunications Division of the Prime Minister's office for, let us say, 20 years and that person is entitled to a certain pension as defined under the Pensions Ordinance. With the abolition, or with the repeal of the legislation governing the Telecommunications Division and the coming into being of this new authority, what you would have taking place is a break in the person's service as far as pensions are concerned. What will happen is that I have been working for 20 years with the Telecommunications Division and with the authority coming into effect I would like to continue working with this new authority, but there will not be any continuity as far as my pension is concerned—there will be a break. So that at the end of my service within the authority, at the age of 60 or 65, you will calculate from year 1 to year 20—that is the period I worked with the Telecommunications Division—and what would happen is that they would subsequently calculate my pension rights from year 21 up to year 60, as the case may be. Upon a simple calculation, if I have worked for 30 years—20 years with the Division and 10 years with this new authority; you combine them, unbroken—I would have been entitled, at the end of my career in the service, to a gratuity of about $135,000 and a pension of about $2,687 per month. Because of the fact it is not linked, it is broken, what I will enjoy at the end of the day, is $105,000 and a pension of $2,100.

The point I am simply making is that if I am moving from X, which is the Telecommunications Division, to Y, which is the Telecommunications Authority, I am advancing that my service ought not to be broken; it should continue. If it continues I would gain; if it is broken I would lose. It is a very technical point but it is a very important point because the worker in question ends up losing. I do not think it is the intention of this bill to bring about that kind of loss.

There is need for the Minister to look at clause 73(1) very carefully to ensure that if I decide to exercise my option to work with the authority then my pension rights ought not to be broken. When you bring this new scheme into being there must be continuity. That is my argument. I hope you will be able to understand the point I am making because many public servants have ended up losing a lot of

money because of this same kind of—you know, you have this chopping, and cutting, and stopping, and that has resulted in losses both in terms of pension and in terms of gratuity. I am suggesting that we need to look at it carefully to ensure that persons who commit themselves to serve their country, at the end of the day, their rights are not infringed as a result of this particular clause.

This clause says that I am going to preserve my unbroken service until—hear the word—the establishment of the scheme, which is the new scheme. That is the trap here, and we need to look at that.

Sen. Lequay: Mr. Chairman, may I ask the hon. Senator for a clarification without incurring his wrath? Assuming that the new pension scheme is superior in terms and conditions to the existing pension scheme which the worker enjoys, how does he calculate that the worker is going to lose by getting the first pension scheme at 20 years, as he says, and then the second pension scheme, the terms and conditions of which are superior to the previous pension scheme? How does he calculate that the worker will have a loss?

Sen. Mark: What I am saying, Sen. Lequay, is that under the new arrangement that is being proposed in the bill, it will be contributory, in the first instance; whereas under the public service a public servant does not contribute to pensions. In other words, the state takes care of that. Under this bill the authority will establish a superannuation scheme which will be contributory.

Hon. Senator: How do you know that?

Sen. Mark: It is here. Have you not read the bill? The argument I am advancing here is that once it is contributory, obviously the authority must devise some scheme to, at least, ensure that the workers do not suffer disadvantageously in this whole arrangement. They will have to design a device to ensure that workers who are there do not suffer adversely because it is now contributory. Therefore, I am arguing that if the matter is looked at objectively, there is evidence to show that people have suffered adversely as a result of this jumping from here and going into some new arrangement and their pensions, both in terms of gratuity and their pensions on a monthly basis, are affected.

This is all I am advancing to the Minister and I ask him to look at it carefully because I do not believe it is the intention of the Government to simply deny people their correct pensions, as well as their gratuities. That is the point I would like to make to the hon. Minister.

12.10 p.m.

Sen. Spence: I think that Sen. Mark has a point and we must find a form of words that will address the point. I do not think his change does because it seems to me that his change implies getting two pensions. But I think there is a valid point here because it may be that two pensions for short periods are not as good as one pension for the full period.

Indeed, recently we passed an Act in Parliament to address a similar issue for a policeman who had gone to the magistracy, a very similar situation, where, if it were calculated on the police's salary, he would have got a better pension than that he would have received having been transferred to the magistracy. So we had to pass a special Act of Parliament to allow him to count the time in the magistracy as part of the police service for pension purposes. So it would seem to me to be an issue to be addressed, with some form of words that says that the pension will not be less than it would have been had the person been in the civil service for a long time. In other words, we make a calculation which gives you what it would have been had you been in the civil service and getting that salary to the end, which is an important point.

Equally important is something on which I just consulted, which Sen. Furness-Smith tells me that we cannot address there, but I assure you it is equally important. When this Division closes down, if its records are not kept, all those people are going to have difficulty getting their pensions, and I speak from personal experience because I cannot get my pension now because there are no records of two years' service when I was in the Government service even though I have a letter saying my pension rights were preserved. Now, how you address that, I do not know, but that is more serious a problem, or as serious a problem, as anything we are discussing here. A number of individual civil servants wait for years because of the way the records are kept and often we have to pass special Acts of Parliament to give them their pensions.

Sen. Rampersad: I just want to ask the hon. Senator one question and it is fundamental. If we start a business enterprise today, are we under contract to continue that business in perpetuity, even though the business fails, stops making money and all of that? That is the question I want to ask the hon. Senator because he seems to be saying, regardless of what happens to that firm, you must continue paying pensions. That is the argument.

Sen. Mark: You see, I tell you, you have a difficulty. You really have a difficulty.

Sen. Rampersad: I do not have a difficulty; you have a difficulty because all you are looking at is union dollars and cents.

Sen. Mark: We are not talking about a private enterprise here, Sir. Mr. Chairman, we are not talking about a private enterprise, we are talking about a semi-autonomous statutory agency that is funded by taxpayers in Trinidad and Tobago. We are saying that those people who are providing service to the country, under that arrangement must be properly and must be adequately and must be fairly compensated. We are not talking about bankruptcy; we are not talking about liquidation. In the instances where those things develop, well you know there are courts to deal with those matters.

Sen. Furness-Smith: Mr. Chairman, my position on this is that the public interest must be preserved. I could see that there could be problems. When I hear Sen. Spence, I sympathize with him, but we all know that the Public Service Regulations, they do not want just amending, they want tearing up and starting again. I would not say the same of the public service itself. All that needs to be looked at and it is not something that could be put into this bill. I can understand when Sen. Mark says that these people could be at a disadvantage because under the public service pensions, they would get a pension for 10 years and then under this Authority, they would get a new pension and the two things might not add up. But surely, they have got an option. If they do not like it, they can elect to stay in the public service and then get whatever it gives.

Now, if this authority is faced with that, then the authority has to decide whether it is going to keep these experienced people, which presumably it would need to do if they are any good. I do not know if they are, but I assume they are. If it does not keep them, then it will be in trouble, so it has an interest in seeing that its pension scheme will provide those people with a proper and equivalent pension, at least as good as they would have got if they had stayed in the public service. That is the way the world operates; that is the way the private sector operates. The way the public service operates, I do not understand. All I know is that it has got its hand round the throat of the people of Trinidad and Tobago. The people of this country are being throttled by the public service.

Sen. Crawford: Mr. Chairman, I agree with Sen. Mark's amendment because I know from experience. It has happened in the magistracy and the police service as well where a policeman, was appointed as a magistrate, and there was this difference in the pension rights of the police service and the magistracy and we had to make some provision whereby he could be adequately compensated. So I would like to support Sen. Mark's contention on that point.

Sen. Rampersad: I would like to submit that is a totally different kettle of fish.

Sen. Mahabir-Wyatt: I think that Sen. Mark does have a point but I also think that the way he has put his amendment implies that somebody is going to get two pensions, which I do not think is right. I wonder if I can possibly suggest a form of wording that might take care of the problem. When the National Insurance Board was established, one of the big questions that came up in relation to private pension schemes and public pension schemes had to do with harmonization. I think basically what we are looking at here is just the simple matter of harmonization and I suggest that at the end of the words "subsection (2)", we add "with which the existing pension rights will be harmonized", which means that there will only be one in the end but that your existing rights will be harmonized with the new ones. It is a very simple practical formula.

Sen. Broomes: Mr. Chairman, I am afraid I did not hear the last part of the hon. Senator's statement.

Sen. Mahabir-Wyatt: The suggestion is that we just follow the normal practice as happens where public schemes and private schemes have to be harmonized, which is quite a common thing, and just put at the end of the words "subsection (2)", the words "with which the existing pension rights will be harmonized". It means that there will only be one scheme and that you will not lose your past benefits. It is quite a simple, well-established procedure.

Sen. Rampersad: May I ask the hon. Senator a question? Harmonized with what, the old pension or the new scheme that is supposed to come into effect?

Sen. Mahabir-Wyatt: What it means is that the existing pension rights that will have to be harmonized with the new scheme that will come into effect, so that they still get the benefit of what they have put into the old one but they would not get two schemes. They would only have one scheme, so it is harmonized. Perhaps the Senator would remember when the National Insurance Scheme came

into operation we had to do this in relation to the National Insurance Scheme and many private pension schemes and there was a movement there for harmonization of the benefits that you can get under the two schemes; so that you did not end up getting two pensions, you only got one but your past benefits would be harmonized with the new ones. It is quite a normal pedestrian formula that is followed.

Sen. Furness-Smith: Is there any provision under the Pensions Act for the Government to pay over benefits to another pension scheme so that they can—that is what I understand, in a normal two-private sector pension scheme, the moneys which are accruing there, they take certain of those moneys which are the entitlement of the particular employee and they pass them over to the new trustees. But I do not think the Government can do that. That is why the whole of this Government thing should be examined afresh and an entirely new system introduced.

12.20 p.m

Sen. Mahabir-Wyatt: Maybe you can pass over the promise to pay, can you not? Has this not been done, for example, in the case of ISCOTT and ISPATT, where you pass over the obligation to pay.

Sen. Furness-Smith: Yes. Between two private companies because they have trustees. My problem is that the Government pension funds are not funded. They are part of the expense on the public purse and I do not think there is any provision, but I am not an expert on it.

Sen. Spence: Mr. Chairman, it seems to me what we want to arrive at is this. The pension rights should be preserved in the Government, therefore, the Government is committed to pay a certain pension. Now what the authority will have to do for those people—not new people it employs—it will have to pay a compensation. That is where the harmonization comes in. It will have to make up the final pension so that the person does not lose by this breaking of his pension into two halves. So the authority has to pay the extra money. The Government pays whatever it is committed to pay by the preservation of pension rights, and then the authority pays the rest if it is necessary to be topped up. It may not be necessary. It may work out that it is okay.

Sen. Furness-Smith: Following Sen. Mahabir-Wyatt's suggestion, would the addition of the language, “which will be harmonized with such pension rights”

cover it? I think it would. I think that would throw an obligation on the authority to harmonize their scheme with the pension rights.

Mr. Chairman: Sen. Mahabir-Wyatt, if you want to propose an amendment just write it out and send it to me.

Mrs. Mahabir-Wyatt: Yes, Mr. Chairman.

Mr. Chairman: Where do you want these words inserted and at what point?

Sen. Mahabir-Wyatt: At the end, after sub-section (2), full-stop.

Mr. Chairman: The proposed amendment by Sen. Mahabir-Wyatt, is that the following words should be added at the end of subclause (1) of clause 73**:**

"which will be harmonized with such pension rights."

So it would read:

"The pension rights which would have accured to the officers and members of staff of the Telecommunications Division to whom section 70(4)(a) applies shall be preserved to them unbroken, and continue to so accure until the establishment of the scheme referred to in subsection (2) which will be harmonized with such pension rights"

Sen. Broomes: Mr. Chairman, we on this side will support that proposed amendment.

Question put and agreed to.

Clause 73, as amended, ordered to stand part of the bill.

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

Senate resumed.

SITTING OF THE SENATE

The Minister in the Office of the Prime Minister (Sen. The Hon. Horrace Broomes): I beg to report that the Committee of this honourable Senate considering the bill clause by clause has made progress. I move that the Committee continue sitting after the luncheon break.

Question put and agreed to.

Mr. President: The sitting is now suspended until 2.00 p.m

12.20 p.m.: *Sitting suspended.*

2.00 p.m.: *Sitting resumed.*

Senate in Committee.

Clause 74.

Question proposed, That clause 74 stand part of the bill.

Sen. Broomes: Mr. Chairman, I have circulated some proposed amendments which are shown at the bottom of page 9 of the circulated list. The purpose of this amendment is not so much to change what we have here, as to make it more specific. It is the proposal list to substitute for subclause (1) of clause 74, the text beginning on page 9 and going on to page 10 where, for the three lines of subclause (1) of clause 74, we have substituted certain words which state more clearly what the monitoring function is about.

This was always the intention but from remarks made during the course of the debate, it appeared that hon. Senators would be happier if they saw in more specific terms, what the monitoring function was and I commend it to the honourable Senate.

Substitute for subclause (1) the following:

(1) The Authority may operate frequency monitoring stations for—

(a) ascertaining whether radiocommunication and broadcasting services are operated in accordance with the Act;

(b) planning, supervision and regulating the use of the frequency spectrum;

(c) carrying out any technical function necessary for fulfilling the requirements of Article 20 or any similar Article of the Radio Regulations of the International Telecommunications Union for the time being in force.

Sen. Mark: Mr. Chairman, we had proposed the complete deletion of that particular clause but in light of some clarification provided, we would still like to have further clarification. What is Article 20? In (c) on page 10—

"carrying out any technical function necessary for fulfilling the requirement of Article 20..."

I believe that the hon. Minister is referring to the ITU regulations. But what is this Article 20 about? We do not have copies of those regulations here and we do not have the privilege of knowing what this Article 20 is all about. So, I do not know if the honourable Minister could clear the air on this matter for us.

Sen. Broomes: Mr. Chairman, Article 20 imposes certain obligations on states to forward information to the International Telecommunications Union from time to time to indicate that the airwaves and various channels in general are being used in accordance with the obligations of countries under the International Telecommunications Convention. It is merely to put states in a position to advise the ITU that the airwaves are in fact being used according to international agreements and arrangements.

Dr. Persad: Mr. Chairman, if that is the case, then what is the rationale for 74(2)? Because you want to enforce ITU regulations and it would probably be inconsistent with other aspects of the bill where you must enforce ITU regulations. What is the rationale for this?

Sen. Broomes: Mr. Chairman, I do not know whether the hon. Member has observed that 74(2) relates to the monitoring stations? It merely seeks to exempt the monitoring station which would be owned by the Authority. It empowers the President to exempt the monitoring stations from the provisions of this bill.

Dr. Persad: Mr. Chairman, I have become even more confused now, in that I would think that one of the reasons for having you have monitoring stations is to ensure that the regulations of the Act are enforced to provide information to ensure this. Now, you are saying that they may be exempt from all provisions of this Act. What would be the purpose of such a monitoring station?

Sen. Broomes: Mr. Chairman, the function of the monitoring station is as just outlined. It is set out clearly in the new subclause (1). It sets out very clearly the function of the monitoring station. Subclause (2) merely empowers the President to exempt the monitoring station from certain provisions of this Act. For example, the President may decide to exempt it from getting a licence from the Authority to function; the President may exempt it from being monitored itself. This empowers the President, for the purpose of all sorts of practical and other consideration, to exempt monitoring stations which technically, would be subject to all the provisions of this Act as anything else. It empowers him to exempt from it certain provisions of this Act.

I think the reason for that should be clear. I hope that the hon. Member will now allow us to proceed.

2.10 p.m.

Dr. Persad: Mr. Chairman, I am afraid not. I am still not hearing any reason. Actually, I am hearing more reasons why clause 74(2) should be deleted. Why would you have a monitoring station? Are you saying that you are going to monitor, the monitoring stations? Then, who is going to monitor the monitoring stations? What is happening? That does not make sense.

You have monitoring stations to ensure that the regulations of the ITU are carried out. One does not expect monitoring stations to be monitored. Where does it end? I am afraid that I cannot agree with this. I have not heard any logical or reasonable statement why this should stay in. Unless I hear so, we cannot agree with this clause. I have heard no rational reason at all.

Sen. Broomes: I have to confess that I am unable to assist the hon. Senator further. I have tried my best and I have failed. I confess my failure.

Mr. Chairman: Does anybody else want to make a comment on this proposed amendment by the Minister?

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

Are there any further amendments? Sen. Mark are you pursuing your amendment?

Sen. Mark: Clause 74(1) could remain but we have some difficulty with 74(2).

Mr. Chairman: Would you like to move that subclause (2) be deleted?

Sen. Mark: Yes. We have not been convinced by the Minister's argument.

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

The Committee divided: Ayes 2 Noes 17

AYES

Persad, Dr. P.

Mark, W.

NOES

Charles, Hon. H.

Weekes, Hon. G.

Broomes, Hon. H.

Lequay, A.

Charles, Mrs. U.

Rampersad, F.

Sampath, Dr. M.

Warner, C.

Wahab, A.

Horne, Miss L.

Furness-Smith, G.

Deosaran, Dr. R.

Joseph, Fr. W.

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

Paul, W.

Crawford, R.

*The following Senators abstained***:** R. Amar, R. Khan, M. Moonan.

Amendment negatived.

Clause 74, as amended, ordered to stand part of the bill.

Clause 75.

Question proposed, That clause 75 stand part of the bill.

Sen. Broomes*:* I have a minor amendment. The amendment circulated in the list of amendments at the bottom of page 10, relates to line 4 of clause 75(1). The proposal is that the words "and that" appearing in the middle of that line be substituted by the words "whether or not". This amendment appearing in my list appears there as a result of a proposal from Sen. Furness-Smith, which I was extremely happy to accept as it is in keeping with the purpose of clause 75 which is merely to give notice and impose limits and not exact any penalty.

We found it eminently acceptable and as always looking for consensus and as I said before, I feared at one stage that the hon. Senator might not be here at this time and I put it in my amendments. I commend it to this honourable Senate.

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

Clause 75, as amended, ordered to stand part of the bill.

Clause 76.

Question proposed, That clause 76 stand part of the bill.

Sen. Broomes: I have a tidying up amendment which appears at the top of page 11 of the list of amendments. It is an amendment designed to have us say instead of "obligations of any telecommunication service" "obligation of any concessionaire providing a telecommunication service". It is just a tidying up amendment to make the language more precise. It is to insert between the words "any" appearing at the end of line 1 and "telecommunication" appearing at the beginning of the next line, the following words, "concessionaire providing "a."

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

Clause 76, as amended, ordered to stand part of the bill.

Clause 77.

Question proposed, That clause 77 stand part of the bill.

Sen. Broomes: As in clause 79, when we come to it, all those matters which in the original draft were subject to negative resolution of Parliament are now to be, according to my proposed amendment, subject to affirmative resolutions of Parliament.

This was to meet the very severe criticisms of the intention to make them subject to negative resolution of Parliament which came from hon. Senators opposite. It is part of the process of seeking consensus in order that this important bill for our country should pass. Considering that these amendments are designed to meet those objections, I trust that we would have no difficulty getting hon. Senators opposite, particularly Sen. Mark, to vote for them.

I may point out at this stage, that both clauses 77 and 79 are concerned with this procedure.

Mr. Chairman: Do you have a comment to make?

Sen. Mark: Of course, Sir.

Mr. Chairman: Please proceed.

Sen. Mark: Some of my colleagues believe that we are filibustering, but we are carrying out our responsibility as a responsible Opposition.

2.20 p.m.

Mr. Chairman, we had proposed that in light of the regulations that will come before Parliament—we are happy to know that the Minister has changed from the negative to the affirmative, but we would have liked him to consider the possibility of a three-fifths majority, having regard to the fact that you are talking about laws that will be promulgated by the Parliament to deal with the telecommunications industry. Because of the sensitivity of that industry, and because of the sensitivity of the very act in which we are engaged right now, we believe that a three-fifths majority will qualify it even further in order to ensure that the rights and freedoms of people are not unnecessarily infringed.

As we know, this bill requires a three-fifths majority to get passage and we believe the regulations as well as the code, but in this instance the regulations, along with the affirmative, we should have in-built, entrenched, a three-fifths majority. I do not think that the Minister will object severely to this particular proposal that is being made here. Hon. Minister, I think that is a reasonable proposal in light of—you are not in support of it. Well, Mr. Chairman, that is our proposal.

Sen. Furness-Smith: Mr. Chairman, under clause 79, I am introducing an amendment on the lines of Sen. Mark's proposal. At this stage, I would just like to say that my agreement with the Minister's amendment is without prejudice to that amendment to clause 79. It could, of course, come under clause 77 or 79, but I chose to put it under clause 79.

Clause 77, as amended, ordered to stand part of the bill.

Clause 78 ordered to stand part of the bill.

Clause 79.

Question proposed, That clause 79 stand part of the bill.

Sen. Broomes: Mr. Chairman, I have already referred to the amendments circulated in respect of clause 79 which also appear on page 11 of the list of amendments circulated, and I commend them to the Senate. The amendments read as follows:

A. In subclause (1) substitute for the word "negative" occurring in line 2, the word "affirmative".

B. In subclause (2) substitute for the word "negative" occuring in line 2, the word "affirmative".

Sen. Mark: Mr. Chairman, this is a very fundamental issue that we are dealing with now—the broadcasting code. In fact, the regulations were equally serious, but this one is even more serious. I would like the Minister to consider favourably, in light of the fact that we are talking about content here. We do not know what this code is about, what recommendations have been advanced.

We believe that in the interest of our country and in the maintenance of our Constitution that there is need for, not only a mere affirmative resolution of the Parliament, but it must be supported by votes of not less than three-fifths of this honourable Senate. I do not want to rehash some of the arguments that we went into when the actual debate was taking place but a broadcasting code is a very serious matter. In fact, we have argued strongly that it should not even have been in this bill. It should be excised completely. But in light of the fact that the Minister has insisted that it be part of the bill, we have gone along.

What we are saying is that a broadcasting code is a very serious matter and in this particular light we would like the Minister to look very seriously at the possibility, of ensuring that people's rights under the Constitution are not infringed. One of the ways of safeguarding that, is to ensure that there is a special majority vote to have this broadcasting code come into force in Trinidad and Tobago.

It is against this particular background that we have advanced that special qualification, apart from the affirmative resolution, that we have a three-fifths majority when this particular code is being debated at this level in the Senate.

Sen. Lequay: Mr. Chairman, obviously we have had legislation passed in this Senate previously where we required a special majority and within that legislation there were provisions for making regulations. I merely want to know if anyone has been able to determine whether there is a precedent for having regulations passed by a special majority. In my experience in the Parliament, I have never come across that type of regulation. I do not know if there is any precedent for it.

Sen. Mark: Mr. Chairman, I am not as old as Sen. Lequay and my experience here is limited. I cannot recall having seen such legislation come before the Parliament where you are seeking to have a special in-built majority. I cannot recall

that. But this is a special situation where we are talking about the flow of information, in an information age, that could control knowledge and power.

It is in this context, and given the sensitivity of the matter, that we are dealing with, that we are suggesting to the hon. Minister that account be taken of this special situation and that there is this special in-built majority in an effort to ensure that people's rights are not violated or infringed, either by this Government or another Government.

Sen. Furness-Smith: Mr. Chairman, I have an amendment in similar terms to Sen. Mark's. My amendment is limited to the extent to which the regulations or the code infringes the human rights under sections 4 or 5. To the extent that any such regulations or code do not so infringe, I will not ask for any special majority. So, that is perhaps a minor drafting matter.

The main argument against this amendment has been framed by the hon. Leader and he says that this is without precedent. That is very true. There were many occasions in the last Parliament where bills which contravened sections 4 or 5, were proposed by the former Government and, as was the custom in those days, they made provision for elaborate regulations. Having got a majority on the substance of the Act, they were free to put in the small print in the regulations which could, of course, further restrict the rights of the citizens.

Even though we sometimes succeeded in persuading the Senate to make it subject to affirmative resolution, after a lot of knocking—one always had to knock hard in that Parliament on those questions—the party in power, being so much concerned with people's rights, was particularly difficult to persuade on this kind of issue because although they were in favour of people's rights they preferred to keep the power to themselves. But one did succeed sometimes, after a lot of noise, in making it an affirmative resolution.

2.30 p.m.

I would have liked to have proposed a similar proposal that is made now, as I felt it was right. It was not right to leave the Minister to be able to pass all sorts of subsidiary legislation contravening human rights and not have to come back to Parliament to get the same resolution which he had to get for his bill. But in that Parliament there was no question of succeeding in any such argument. I felt I had done my best when I got them to change it from negative to affirmative.

In this Parliament, of course, things have been very different in that kind of way. The Government has always been very prepared to listen when arguments are raised dealing with constitutional rights or the rights of the citizen. In this case, I think that such an amendment is particularly justified, because, you know, as we have already discussed in this bill, we are here establishing a unique body that is not really answerable through the normal constitutional processes. Now, if it had been so answerable and the normal provision of the Minister making the regulations had been adopted, in the normal constitutional processes we would have our rights every five years and the Minister would be subject to the normal political restraints if he passed regulations which imposed restrictions on our human rights, contrary to what the people thought their Parliament had given him power to do; if he had extended his powers in some way. In this case, we are giving these powers to a body which is answerable only modestly, to the President. The President, I presume, would be able to remove those people. If he does so, it is going to be very difficult for him because it could become a political issue.

So we are giving these powers which are enshrined in the Constitution, not to a minister of Government who is answerable in the political process, but to a number of ladies and gentlemen who are not really answerable to anybody. Now in those circumstances, it seems quite intolerable that they should be able to—maybe they will go one way; maybe they will go the other; maybe they will support the Government ideas, maybe they will be quite contrary to the ideas of the Government's of the day. But it seems quite wrong that their ideas should go through on a straight majority. Their ideas may be very exceptional and they may interfere with our human rights, our constitutional rights, and it seems to me, in such case, it requires the three-fifths majority. I do not see that there can be any argument about it. If it were just the Minister to be answerable in the political process, then I agree the precedents are all one way, but where we are putting an entirely new body and what is really an unconstitutional body and giving it these specific powers, we must preserve a three-fifths majority here in both Houses.

Now, my amendment deals with the two points. Now the broadcasting code, I think, these arguments, particularly, apply to them. I am not sure myself what it is going to contain, but I gather that it is going to contain rules relating to broadcasting and television. It will be a restriction on the right of the free press, free broadcasting, free television, to express ideas on the public media. Now that, as has been debated here, is a very serious matter. It goes to the root of at least

one of our constitutional rights and such resctrictions by a Constitution should be subject to a three-fifths majority in both Houses.

As regards the regulations, of course most of them will deal with technical matters and I would not argue strongly on those grounds. But some of them may well raise important constitutional issues. If they do, then it seems to me the same principles apply. My suggested amendment takes account of those two possibilities and I strongly urge that although we are establishing new ground, it is the right time and the right occasion to establish that new ground. I hope it will be a good precedent for the future when we may have a government which is not so amenable to the feelings of the populace on this kind of issue.

Dr. Deosaran: My distinguished colleague, Sen. Furness-Smith, I admire him for his persistence on this particular point. By now I know almost by heart the arguments that have been brought forward. I really admire his persistence because I think, to him, it is a very cherished principle at stake, except on this occasion, as I have indicated to him privately, I tend to disagree and take some of the Minister's arguments instead, about developing a new way of doing things at this particular level in this country. I am responding as well on this issue, because the broadcast code would really have implications for matters, possibly of censorship, and the content of what the public hears, and being a working-class man myself, I perhaps could respond to Sen. Mark's own concern but in a different way.

First of all, I think Sen. Hosein made the point about the Constitution and this bill, as a matter of principle, and why we required a three-fifths majority. So it means that anybody now in this House who disagrees with the absence of a broadcast code here and now, or remain fearful of the consequences of such a code could vote any way that they choose at this point. But that is halfway meeting the problem. The other half along the way is contained in Sen. Lequay’s query as to whether there is any precedent, notwithstanding what Sen. Furness-Smith said, and I am prepared to go along with the implication by Sen Lequay's question, that is, there is enough in the way of precedent, and having had a three-fifths majority on this bill. However, my main point rests in this particular argument about the composition of the Authority. This is another instance where you invoke the mechanism used to appoint the Authority, that is by presidential authority—impartial and drawn from the best available talent in the country, where you would expect that the people so put on this Authority would be capable of resisting political influences; would take into account the constitutional rights of people in

formulating a broadcast code. Now, having gone all these ways, setting up the Authority in the way we are seeking to do it and having passed the bill by a three-fifths majority and, more specifically, when I look at the broadcast code as contained in a White Paper on the task force on telecommunications, if it comes anything close to this and, for my own part, if there are departures, I do not think it will look very much different from this.

2.40 p.m

Some of the contents have things like, good taste in advertising, truthfulness in advertising, not using any technical device which will mislead people. So all in all, Mr. Chairman, I would like to go along with the provision as stated. I do not know if the Minister might waffle again and seek a compromise along Sen. Furness-Smith's way, but at this stage it is enough that we put confidence in the Authority. It is not a kind of confidence that could be arbitrarily exercised. There are enough checks and balances in terms of recourse to the High Court and the Court of Appeal in many places in the bill. So all in all, I think in this instance, the fear is a bit exaggerated.

Sen. Spence: In a way, I am sorry that Sen. Furness-Smith has put his arguments so strongly on the basis of the way the Authority is being set up and the lack of its responsibility, because my position is that in any case, it is extremely important that we have this provision for a three-fifths majority. I like the way that Sen Furness-Smith has worded this amendment because it means that many parts of the regulations which really are technical, need not be brought for that majority.

Time and time again this Government has bent over backwards to be sure that bills that it is bringing which, perhaps, might not have required a three-fifths majority, it has put that in, in order to be absolutely careful that we get the bills through in that way. I am not persuaded that in a sense we should frustrate a part of what we have done by allowing the regulations to be passed without the three-fifths majority. I would argue that whether the Minister is making them or whether the Authority is making them, or whoever is making them. Because after all even though you say the Authority has made them, it is the Minister who brings them to Parliament and if the Government does not support what the Authority has told it, they will not go through.

So in any case, I think it is extremely important that we have that provision in those regulations which may affect sections 4 and 5 of the Constitution, that we have the three-fifths majority. I think we must be absolutely clear that this bill that

we are passing will affect so many people in the country, the media, especially the television. I do not think that we have begun to understand the effects of the television. I hope we will discuss it again this afternoon when we discuss the other bill. I certainly think that it is extremely important and we should have the three-fifths majority.

Sen. Mansoor: Mr. Chairman, I want to support the view expressed by Sen. Spence and Sen. Furness-Smith because in addition to all that has been said, it has to be remembered that part of the licence agreement—I come back to the licence agreement—which will be promulgated, says very clearly that broadcast stations, television stations, have to abide by this broadcast code and the penalty for not abiding by that broadcast code is to be taken off the air. So that it is most important that the broadcast code be consonant with all the rights and freedoms which we cherish so dearly. I think this is an additional argument for insisting that this broadcast code be subject to a three-fifths majority

Dr. Persad: Mr. Chairman, I would go along with Sen. Furness-Smith's amendment also. It is inconceivable that the very bill that we need to have three-fifths majority to pass, you are saying that you are giving this Authority power and then they can act contrary to the very spirit of the bill. What I feel is, we need to have this amendment also, and we are going to support it.

Sen. F. Hosein: Mr. Chairman, I want to put into the pot a number of matters which I feel that the Senate should have consideration of, before a final decision is made on that particular issue. First of all, it is a sensitive issue and it needs to be properly aired before a decision is made on it. I think we need to look at the following things. First of all, there appears, as Sen. Lequay says, to be no precedent for regulations to be entrenched in the Constitution at all. There is provision in respect of legislation. There is no provision in respect of regulations. That is the first thing.

The second thing is that I am attracted to Sen. Deosaran's view that the Parliament is constituting as an independent Authority and by the very make-up of that Authority, that is the method of appointment in the way it is constituted, it is an Authority shorn out of partisan interest and, therefore, it is an Authority that ought to be independent and to exercise independent thought and judgment, in respect of all the matters that it is involved with, including the making of regulations.

The third issue, Mr. Chairman, is that the Parliament is giving the Authority certain powers, including the powers to make regulations. Now, let us look at all the consequences that can flow from that if the Authority makes regulations. In the first place, if the Authority makes regulations which did not appear on the surface to infringe any rights under sections 3 and 4 of the fundamental rights, it poses no difficulty at all. The second situation is, if the Authority exercises a power to make regulations in respect of matters or in respect of powers given to the Authority, therein lies the problem, in the sense that, suppose the Authority is given powers under the Act to make regulations in respect of a matter, and that authority is given by virtue of the two-thirds majority here, and now you require a two-thirds in respect of regulations concerning the exercise of that very same power, what are you doing? You are saying to the Parliament, look here, the Parliament is giving the power to the Authority to make the regulations by virtue of a two-thirds majority and you are asking the Parliament again, on a subsequent occasion to pass those regulations by a two-thirds majority. It is the very power and authority which was given to them in the first instance by a two-thirds majority. I am not so sure whether the point is being made clearly, but the point is that Parliament is given the power on two occasions to entrench first of all, legislation, and secondly, regulations, by special majority.

The other situation is that in any event if regulations are made under a particular Act of Parliament, and the regulations, even in the absence of any entrenched provision of two-thirds majority, those regulations run foul of the Act.

Let us say, for example, the Authority makes regulations and those regulations are in violation of the Act, whether those regulations are entrenched or not, they are going to be subject to scrutiny of the courts. Let me develop the point, Mr. Chairman. For example, if there is a special majority in respect of legislation and regulations are made and the regulations go with a two-thirds majority, the courts can still come and say, "look here, these are regulations not reasonably justifiable in a society which has the proper respect for the rights and freedom of the individual," and can strike it down. That is point number one.

Point number two, the courts can also say that there are, regulations made and even in the absence of any provision to entrench those regulations, the Minister, in any event, has no power under the substantive piece of legislation to make those regulations, and strike it down. So the bill, when it becomes law, is really the outer parameters within which the Minister or the Authority in this case, may exercise its

power. His power is not exercised in a vacuum, his power is not exercised from any authority drawn from the wind. They are powers that are circumscribed and curtailed by the enabling Act that gives the Authority the power in the first place to pass those regulations. I am sorry to get technical and complicated, but I thought, perhaps, the Senate would want the benefit of this bit of information.

So, therefore, the Authority only has the power to make regulations in respect of issues, in respect of matters, and in respect of things given to it under the substantive piece of legislation.and no more power than that. That is the consideration we should have. So all of these things have to be put into the pot: the question of whether you are going to duplicate it down the line. The other thing is that—and I know this is a very ticklish kind of point and I want to be very careful how it is put.across—if for some reason or the other, there is a Government in power and the Government does not command a two-thirds majority in the House of Representatives, for some reason or the other, and people are engaged in filibustering, now on the basis of the amendment made, do you go to every single clause in those regulations as it is presently framed—that is the amendment—and say "Look here, you require a two-thirds majority in respect of (a) (b) (c) (d)? Or do you do it as you do it now that is, you take a vote at the very end? That is a technical problem, because the amendment as presently framed, appears to require a two-thirds majority only in respect of instances where there is a prospective infringement. Or do you vote at the end of the bill and, therefore, include all of it, that is the substantive section and the other section?

There are other problems, Mr. Chairman, and the other problems are as follows—and they have just occurred to me. If you pass regulations by virtue of a two-thirds majority and there is some other piece of legislation, down the line in some other bill that is passed by simple majority by a Parliament, and that piece of legislation down the line conflicts with regulations which are entrenched with a two-thirds majority, now normally in law, what you have is something called “implied repeal”, that is the legislation that comes afterwards, repeals the one before. But the one before in this case, has a two-thirds majority, although they are regulations, and there are going to be problems in respect of that as well. So I think it is a matter entirely for the consideration of this Parliament and we should deal with this in the following way. First of all, we should adopt a formula which is not complicated and is not liable to raise disputes and to cause conflicts down the line in terms of interpretation. It should be simple and effective.

2.50 p.m.

Secondly, some consideration should be given to the check and balance that is inherent in the bill itself and that is the balance of having these regulations made by the Authority, appointed independently and constituted as it is proposed to be constituted, rather than have it done by the Minister. That in itself is a major check and balance, and that should be put into it. The third thing is a question of precedent, what has been done in the past. The fourth thing is that we should be careful, when all is said and done, that we do not raise a hornet's nest in terms of technical problems that are going to arise down the line.

I say what I have said merely to put that into the pot and those factors to be taken into consideration in determining eventually, what the Senate will decide on this issue.

Sen. Lequay: Mr. Chairman, when I asked whether there was precedent, I never indicated that I was for or against. I merely wanted to get information that will inform my own opinion. I want to put a little different slant to the discussion raised by Sen. Hosein. We have in the Standing Orders, a Statutory Instruments Committee—true it does not function—but it has a special role. That role is to do exactly that; to examine regulations which come before Parliament.

Now, if that Statutory Instruments Committee is performing its functions, then it will tell this Parliament, through its report, that those regulations either infringe the enabling legislation or they are *ultra vires* the Constitution. It is the Parliament then to decide what aspect of those regulations needs to be passed by a simple majority or what aspect needs to be passed by a two-thirds majority. I do not think that we should entrench it into the present bill. I feel that if we make the Statutory Instruments Committee functional, it will perform the very function that we are attempting to put into the bill.

Mr. Chairman: I just want to point out to the Senator the amendment on page 30 on the Statutory Instruments Committee. Paragraph 2 states—

> "The Statutory Instruments Committee shall not consider or report on the merits or policy of any regulation."

Sen. Lequay: I am not saying that it is reporting on the merits of the regulations, I am saying that it has to report on whether those regulations are in conformity with the Act or whether those regulations are in any way *ultra vires* the Constitution. When we have that report before us, then we, as a Parliament, must

decide whether those regulations must be passed by a simple majority or whether any or all of it need a special majority.

Sen. Spence: We would not be able to do that unless we put it into the bill the way Sen. Furness-Smith has done, that those regulations which infringe should be passed in that way. Now I think that Sen. Lequay's point is extremely important and valid because it answers Sen. Hosein's point as to how we would treat with the regulations. If they go to this committee and this committee says, these are okay and these are not, those that are not will come under the provisions that we have enshrined in the bill and allow us to use the three-fifths majority.

I want to just answer some of the previous points made. I think to argue that we should not make good legislation because it has not been made previously because we are creating a precedent, I do not think we could treat that argument seriously. What we are here for is to make good legislation. If we create good precedent, fair enough, we have to start some time. So that argument, I think, we can now dispense with.

With respect to the argument that we may be creating complications in the law, well, surely again, the law should take care of that. So if it is the case that by passing regulations under a three-fifths majority we create a complication with those that are passed under a simple majority, subsequently, then the law has to take care of that as well. We must address that as a Parliament, if that is a problem—if it is a good thing for us to do. But we cannot allow that argument to prevent us from doing it.

I think that we will be well-advised; it is an extremely important issue and I find it very difficult to understand why there is an argument for not having the three-fifths majority. The arguments that are being put forward involve difficulties and mechanisms, but I cannot see why there should be any resistance at all, to having the three-fifths majority. I cannot see the force of the reasoning which says that we should not go in that direction. Because all it is doing is giving us an additional safeguard which we may never have to use. I cannot see the reason for not having it.

Sen. Mark: Mr. Chairman, I recalled some time ago—I think it was the Domestic Violence Bill—Sen Deosaran, in fact, was the lone person who voted against that bill. The basis he had used at the time, if I am correct—and he can probably correct me on this point—is that he felt that this bill violated certain

entrenched provisions of the Constitution of Trinidad and Tobago, and he could not go along with that. What I would like to say—

Dr. Deosaran: I think I had better make the correction now. I objected to that bill, not because of the constitutional issues, which I have already argued, but I felt—and this is just as a matter of correction—that the bill would not go far enough in tackling the issue at hand. It was a different reason, related but very fundamentally different.

Dr. Sampath: Mr. Chairman, may I give another correction? Sen. Deosaran did not vote against the bill, he abstained.

Sen. Mark: Mr. Chairman, sections 4 and 5 of the Constitution deal with entrenched rights and freedoms of the citizens of Trinidad and Tobago. These sections are dear to all of us. We cannot predict the future. What we can do, certainly, is to prepare for it, as far as possible. We do not know what will take place tomorrow, essentially. Therefore, I believe that in an effort to ensure that you do not have either organizations, authorities, bodies or agencies, utilizing powers that are given to them within an Act, to infringe the rights of people in this country, that you have to put into place certain mechanisms and safeguards to ensure same.

I want to quote a statement from the hon. Prime Minister of Trinidad and Tobago's book entitled the *Caribbean Man*, to emphasize the importance of safeguarding our fundamental rights and freedoms. The Prime Minister—well at that time it was in 1970—said in that period that:

> "no government, black, blue, brown, yellow or red must, in the future, tamper with the entrenched provisions of our Constitution without the clearly expressed wishes of the population to that effect. This is perhaps the most important lesson of all and the most cherished gain that we have, that we must now consolidate and defend.
>
> Shout it in the streets, shout it from the roofs and from the hilltops, do not touch..."

Sen. Hosein: Mr. Chairman, on a point of order.

Sen. Mark: Allow me, this is not on a point of order. I am just reading something for the records:

> "Shout it in the streets, shout it from the rooftops and from the hilltops, do not touch the entrenched provisions of the Constitution until you have

permission to do so, obtained by endorsement in an election manifesto, at a general election or by referendum. Should we give up on this issue our fundamental human rights and freedoms, will as surely as night follows day, be taken away altogether or one by one".

3.00 p.m.

The point I am making is that in 1970 even our Prime Minister recognized that those entrenched provisions 4 and 5 were being tampered with by the previous regime, and he echoed his warning then that we must not treat our fundamental rights and freedoms lightly. This is the essence of the point.

Sen. Hosein: Could I rise on a point of order? In this committee stage we have had a very dispassionate and objective discussion so far but are we going to be engaged once more in the propaganda from the other side, in respect of all kinds of matters that are really extraneous to the very technical and objective issues which should be dealt with in that kind of way. What my learned friend is doing is making about 10 political speeches during the course of this debate. Let us corral the discussion and have an objective and proper discussion rather than be allowed to meander aimlessly all over the world in respect of matters that should not concern us at committee stage.

Sen. Mark: Mr. Chairman, I am really astonished at his behaviour.

Sen. Hosein: In my respectful view, the practice in committee stage is to deal with matters in an objective and technical way, rather than to engage in long-winded political speeches. You have an inherent power to rule a Member out of order, if that Member is engaged in a discussion which really amounts to a political speech, rather than a contribution in respect of a particular clause.

Mr. Chairman: The Senator was using arguments to support the proposal before the committee right now, about putting a three-fifths majority for a resolution. That is what he did. He has cited an authority that, in his opinion, should be quoted in support of putting the three-fifths majority. That is all he did.

Sen. Mark: Thank you very much. I am sorry that the quote I read offended my colleague, but to address the particular matter, I was simply attempting to address the issue of ensuring that our rights and freedoms which are entrenched in sections 4 and 5 of the Constitution of our country are indeed protected jealously.

I made reference to our Prime Minister indicating in 1970 that we have to be very careful because when you come to this Parliament and you violate entrenched

provisions, what we can end up with at the end of the day is rights being taken away one by one by one, until we have no more rights. I see nothing objectionable about that. *[Interruption]* I am sorry.

Mr. Chairman: We have had a lot of discussion on this point. I think the long and short of it is to know whether or not a three-fifths or a special majority can be put in the case of a resolution, as it is put in the case of an Act of Parliament. My understanding is that it can be.

Sen. Lequay: Before you put the question, let me just get a view on behalf of the hon. Minister who has just gone to the washroom. Do you feel strongly on having clause 77 also referred to in your amendment, or could we leave the special majority only to the broadcasting code and not to the regulations?

Sen. Furness-Smith: On that point, I recognize the rather technical arguments of Sen. Hosein, namely the question of how it would work in practice in case the issue—which is one of great importance in principle and on which I am very grateful for the support and the fervour of Sen. Mark—should be clouded by that kind of technical question.

I was going to split my amendment in two, one dealing with clause 77 and the other with clause 79 which would enable us to clear our minds on that. I wonder if I could have the opportunity in a moment to reply to the points raised. I have not heard any answer to the point as regards the code.

I am really rather disappointed with the contributions of Sen. Deosaran and Sen. Hosein, because I have the greatest regard for the acumen and intelligence of both of them. When we vote for this bill, if we do, we are not voting on a broadcasting code. We are to give power to an Authority which is an entirely new kind of body to create a broadcasting code. We are voting cat in bag. I think that is all that needs to be said about that.

What is in some white paper has absolutely nothing to do with the case, because this Authority will stand alone. It does not have to refer to any white paper. It scarcely has to refer to the Minister. People can get a rush of blood to their heads. They can be extraordinarily authoritarian, once you give them the power. If they know they are going to make fools of themselves because it is going to be subject to a special vote in Parliament, they would be very careful that their regulations or their code will not attract that kind of publicity.

Politicians are normally very sensitive to that kind of issue, but these people will not be politicians. They will be immune to the political process. I admire the ingenuity of Sen. Hosein's submissions. He raised just about everything, including this point about the Constitution provision, that is, not reasonably justifiable. That never washes; that is the most extreme position. If we are going to give up our rights and rely on that provision, we would not know again what we were letting ourselves open to. I do not think that anybody has successfully run that one yet anywhere and certainly not in Trinidad and Tobago.

This business about legislation conflicting and implied repeal, all that vote will do is to vote down the regulations. The law will take effect. If there is a subsequent Act of Parliament it will repeal the previous Act. Whether the resolution was passed or failed by three-fifths will have absolutely nothing to do with the case.

I would just like to say a few words on the issue which I was not quite so sure about on the question of regulations. Let us look at clause 77 to see what kind of regulations were giving these ladies and gentlemen power to make over us. Let us look at (a) which states:

> “prescribe conditions relating to the operation or use of any station, service or apparatus.”

Sen. Mansoor told us about the licences which have been now put out which sounded terrible to me. All sorts of bureaucratic stupidness are put in there, with the greatest respect to the office. That is with a politically sensitive Minister in charge. What it would be with politically insensitive ladies and gentlemen, I do not know.

Subclause (c) states:

> "(c) prescribe conditions for the operation of amateur radiocommunication services, personal radiocommunication services..."

They can dream up anything. Finally, and I quote:

> "(j) prescribe penalties not exceeding a fine of ten thousand dollars for offences against the regulations."

3.10 p.m.

These people can get so full of their own authority that they may create penalties all over the place with fines of $10,000.00 for failing to pay proper respect to their forms, or something like that. All those things—how we can

operate a private amateur radio communication service—they are all inherent in our constitutional rights. Although the Senate may, or may not, give you the three-fifths vote to pass this, it does not follow that we are giving this body, whom we do not know, authority to put any nonsense they like in their regulations. That is what you are asking us to do. It has got to come back to Parliament.

Mr. Chairman: The clause under consideration is clause 79. The amendments proposed by Sen. Mark, Sen. Furness-Smith, and Government are consistent. That is, to change “negative” to “affirmative”. I think the committee generally agrees with that.

The other question was to put in a stipulated majority for the resolution to be passed. Sen. Furness-Smith in his amendment has proposed a subclause (3) which reads as follows:

> "To the extent that any regulations made under section 77 or a broadcasting code made under this section, is inconsistent with sections 4 or 5 of the Constitution, it shall not take effect unless approved by resolution of Parliament passed with the special majority required by section 13(2) of the Constitution.

Now, Sen. Furness-Smith is seeking to break down this provision into two clauses. One, for any regulations made under clause 77, and a subclause (4) for a broadcasting code made under this clause. Subclauses (3) and (4) will be similar. I believe the Minister is proposing that one should go in clause 77 and the other remains here.

Members of the committee, as far as clause 79 is concerned, the proposal is that we substitute the word "affirmative" for the word "negative" in subclauses (1) and (2). Then, subclause (3) will be added as follows:

> "To the extent that a broadcasting code made under this section is inconsistent with sections 4 or 5 of the Constitution it shall not take effect unless approved by resolution of Parliament passed with the special majority required by section 13 (2) of the Constitution."

Question put and agreed to.

Clause 79, as amended, ordered to stand part of the bill.

3.20 p.m.

Clause 77 recommitted.

Mr. Chairman: The proposal is to go back to clause 77 and also add a similar subclause (3) after subclause (2) in clause 77, which will read:

> "To the extent that any regulation made under this section is inconsistent with section 4 or 5 of the Constitution, it shall not take effect unless approved by resolution of Parliament passed with the special majority required by section 13(2) of the Constitution."

Question, on amendment, put and agreed to.

Clause 77, as amended, ordered to stand part of the bill.

Clause 80.

Question proposed, That clause 80 stand part of the bill.

Sen. Broomes: Mr. Chairman, this amendment which is just to correct an error has not been circulated. It is to substitute in the first line of subclause (3) for the words “(3)” and “(4)” the words, “(4)” and “(5)”, which is what is actually meant.

Mr. Chairman: We are dealing with Clause 80(3). The proposal is to substitute the words “(4)” and “(5)” for the words, “(3)” and “(4)” in line one.

Question put and agreed to.

Clause 80, as amended, ordered to stand part of the bill.

Schedule.

Question proposed, That the schedule stand part of the bill.

Sen. Broomes*:* Mr. Chairman, I have circulated an amendment to the Schedule. It is only a tidying-up amendment. The text of it begins on page 11 and goes over to page 12. It is merely an amendment to define more specifically what the assets are that we are talking about in this bill.

It reads as follows:

"SCHEDULE

(Section 19)

ASSETS VESTED IN THE AUTHORITY

All the—

(a) vehicles;

(b) furniture;

(c) equipment, including office equipment, testing equipment and computers and their peripheral equipment and manuals;

(d) mobile monitoring and direction-finding facilities including maintenance equipment and spare parts; and

(e) miscellaneous items of nominal value;

operated or used by the Telecommunications Divison of the Office of the Prime Minister."

Mr. Chairman, I do not think there will be any objection to this amendment.

Question put and agreed to.

Schedule, as amended, ordered to stand part of the bill.

Clause 49.

Question proposed, That clause 49 stand part of the bill.

Sen. Broomes: One final matter, Mr. Chairman. On the second list of amendments circulated, there is a reference—in the list as circulated it relates to clause 46, but it is on page 2 of the list, (b). It in fact relates to clause 49 of the bill. The matter of the continuing fine was discussed. Clause 49 provides for a fine of $100 per day in the case of a continuing offence. Hon. Senators were unanimous in the view that a fine of $100 per day was far from sufficient and it is proposed to change "hundred" to "thousand" in this line.

Question, on amendment, put and agreed to.

Mr. Chairman: We now have to revert to some clauses that were deferred as well as to consider two new clauses by Sen. Spence. But we will deal with this amendment to clause 49 on page 25 of the printed bill, Part VI. To substitute the word "thousand" for the word "hundred" in the penultimate line of clause 49.

Dr. Persad: Mr. Chairman, if you are granting licences and you are setting conditions for small operators, I am wondering, for the small person who runs an experimental station, a thousand dollars per day is a rather massive fine. Why the sudden change? We agreed to this clause and I find $100 per day quite acceptable.

Sen. Mark: What is the justification for this jump, hon. Minister?

Sen. Broomes: The justification is that hon. Senators largely, most of us found that $100 per day was insufficient. I would once again draw the attention of hon. Senators to the fact that fines expressed like this are maximum. In other words, before what we were doing is that they could be fined only a maximum of $100 per day. What we have done is to increase the maximum to $1,000, so that your small fellow might get only a $50.00 fine.

Question put and agreed to.

Clause 49, as amended, ordered to stand part of the bill.

Clause 2 recommitted.

Sen. Furness-Smith: I withdraw my amendment to Clause 2.

Mr. Chairman: Sen. Furness-Smith has withdrawn his amendment to clause 2.

Mr. Chairman: Do we still have anything outstanding on clause 2. I was not here for the clauses that have been deferred so I would depend on Senators to raise any matter that is still outstanding. We are dealing with the deferred clauses now.

Sen. Broomes: Mr. Chairman, I believe a proposed amendment which appears on a list circulated by me was also deferred. That proposed amendment appears on the first page of the original list of amendments. It deals with the definition of "station" which appears at the bottom of page 8 of the bill. The proposal is that in the definition of "station", we should delete the words, "the" and "necessary" occurring in the third and fourth lines respectively. I recommend this proposed amendment, Mr. Chairman.

3.30 p.m.

Mr. Chairman: The proposed amendment to clause 2 is that in subclause (1) the definition of “station” should be amended by deleting the word “the” in line 3 and the word “necessary” in line 4. This is contained in the original list of amendments circulated by the Minister.

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the bill.

Clause 4.

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

Mr. Chairman: Sen. Furness-Smith has a proposal to include subclauses (6) and (7)

Sen. Furness-Smith: My proposal was really an amendment to Sen. Mark's. I do not know whether Sen. Mark is convinced by those suggestions.

Sen. Mark: Mr. Chairman, I was very grateful for the assistance provided by Sen Furness-Smith to the initial suggestions on amendments that I had proposed. With his little change here and there, it does not make a fundamental difference to the essence of what has been advanced here. What I am saying is that the insertion of the new clause still stands with whatever amendments Sen. Furness-Smith has proposed.

Sen. Furness-Smith: I would just like to raise with Sen. Mark and with the Minister, whether this is correct here, or whether it is sufficient. What we are saying is that "the President, acting on the advice of the Minister, may, terminate the appointment of any member of the board who"—and then the five things are somewhat restrictive to actual misconduct, for instance. It provides no discretion for the President. I am thinking of the recent debates we have had.

On other points, it provides no discretion for the President, who perhaps changes his mind about the suitability of a particular member, who he may hear is being rather troublesome or, maybe arrogant in his attitude to his work, but which it would be almost impossible to prove was guilty of misconduct. I have a doubt, about it. We are saying, "on the advice of the Minister, which may terminate". We are saying that he shall terminate, or, acting in his discretion. My amendment was based on my view of the appointment of the Authority. That has been voted against, so I think this should now read "the President acting in his discretion." I do not think anybody would want it to be "after consultation". I think that would be impractical.

Mr. Chairman: You have four clauses in the original bill and a fifth subclause is put in. I have a note here for a sixth and seventh. I would like to know what these are.

Sen. Mark: I am proposing a new subclause (5) in clause 4.

Mr. Chairman: So what you are proposing as (5) will have to become (6), on the front page of your amendment.

Sen. Mark: No problem.

Mr. Chairman: So you want to add a new subclause (5).

Sen. Mark: Which reads as follows:

"The President, acting in his discretion may terminate the appointment of any member of the board who..."

Then you have the five possible grounds for terminating the person's appointment by the President.

Mr. Chairman: Coming back to clause 4, we have a proposal by Sen Mark to include a new subclause (6) immediately after subclause (5) which will read as follows:

"The President, acting in his discretion may terminate the appointment of any member of the board who".

3.40 p.m.

Dr. Sampath: Mr. Chairman, I do not think we should lay down any conditions. I think we should say: "the President should, in his discretion, terminate the appointment of any member..." I do not think we need any guidance for the President at all. It is not fair to him.

Sen. Spence: I support that point. That seems to make more sense.

Dr. Sampath: I think he is competent enough to think about all the grounds himself.

Sen. Mark: Okay, I would not object to that proposal that you leave the President with the discretion to determine on what grounds he is going to terminate people and so on. I can go along with that.

Sen. Broomes: Mr. Chairman, it appears that we have finally reached a formulation.

Mr. Chairman: The amendment proposed by Sen. Furness-Smith is similar to the one proposed by Sen. Mark and it will now be subclause (6) and they are using the five—

Sen. Lequay: No, we are now having a new suggestion submitted by Sen. Sampath and agreed to by Senators Mark and Spence, that we omit all the reasons and merely say "acting in his discretion, may terminate the appointment of any member of the board."

Mr. Chairman: The final amendment is that a new subclause (6) to clause 4 be added which will read as follows—

"The President, acting in his discretion, may terminate the appointment of any member of the board."

Question, on amendment, put and agreed to.

Sen. Furness-Smith: There is one more amendment. In my final amendments, I proposed a final subclause reading—

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

That was reserved. The hon. Minister was going to have a look at that.

Mr. Chairman: There is an additional amendment proposed by Sen. Furness-Smith, to clause 4, which seeks to add a new subclause (7) as follows:

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

Sen. Lequay: Can you give us one minute please? We are looking at the draft. We agree with it in principle but we are looking at the draft.

Question, on amendment, [Sen. G. Furness-Smith] put and agreed to.

Clause 4, as amended, ordered to stand part of the bill.

Clause 13 recommitted.

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

Sen. Furness-Smith: This was one in which I was proposing that:

"A member of the board, whose interest is likely to be affected in any way whether directly or indirectly by a decision of the board on any matter whatsoever (but not in a way merely common to the general public)."

Because it seems to me that otherwise it would be very, very wide and that every member of the board would almost certainly be affected in some way, directly or indirectly.

Sen. Broomes: Mr. Chairman, we had accepted this proposed amendment in principle. We got some clarification as to what the expression "but not in a way merely" meant, and we undertook to try to come up with a formulation which might attract the support of the hon. Senators opposite.

We have now, through amendment, a subclause (4) of clause 13 which relates to an annual declaration that members of the board would be required to make. That subclause specifies the matters in respect of which the declaration would have to be made. So what we have done in our formulation proposed for subclause (1) is to relate it forward to those very matters specified in subclause (4). On that basis, the following amendment to clause 13 (1) is proposed—

> "A member of the board whose interest is likely to be affected in any way, whether directly or indirectly, by a decision of the board on any matter specified in subsection 4(a) and (b) shall disclose the nature of his interest at the start of the first meeting of the board he attends at which it is practicable for him to so disclose."

I commend this proposal for the agreement of Members.

3.50 p.m.

Sen. Furness-Smith: If I am a member of the board and I own a radio and a television set, I would have to make a general declaration about them; and my car radio if it had not been stolen.

Sen. Broomes: I am not sure that the hon. Senator has read the new clause 4 (a) and (b). In fact, I am bordering on certainty that he has not done that, because had he done so, he would not have made the last remark.

Mr. Chairman: The amendment proposed by the Minister to replace the amendment proposed by Sen. Furness-Smith to clause 13(1) is that the following should be substituted for clause 13(1):

> "A member of the board whose interest is likely to be affected in any way, whether directly or indirectly, by a decision of the board on any matter specified in subsections 4(a) and (b) shall disclose the nature of his interest at the start of the first meeting of the board he attends at which it is practicable for him to so disclose."

Do you withdraw your amendment?

Sen. Furness-Smith: Yes, I will withdraw my amendment.

Mr. Chairman: Sen. Furness-Smith has withdrawn his amendment and the amendment proposed by the Minister is before the committee.

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

Clause 13, as amended, ordered to stand part of the bill.

Clause 18 recommitted.

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

Sen. Furness-Smith: We were suggesting that these things would be proceeded with the approval of Parliament, or the Minister or whoever. We reserved it because we were not sure how we were going to deal with the regulations. I have a feeling that we could probably, subject to Sen. Mark, leave it as it is.

Sen. Broomes: We on this side, see no need to interfere with clause 18 as it is. It is a statement of the functions of the Authority. We have gone around to clauses 77 and 79 and we have circumscribed the Authority in a certain kind of way. Clause 18 is merely a statement of its functions and they will have to carry out the functions according to what we have done in clauses 77 and 79. I wish to propose no amendment to it. I merely wish to have it passed.

Mr. Chairman: Sen. Mark, clause 18 was deferred for your amendment proposed at the top of page 2 of your list of amendments. Are you still pursuing?

Sen. Mark: Yes. I had an initial reservation about the kind of authority and power that was being vested into the hands of the management board. Outside of (a) where the formulation of policies is going to be subject to the approval of the Minister right down to (s), these people seem to be operating on their own.

I was hoping that the Minister would have been able to put some qualifier to indicate, for instance, that these things are going to be subject to either the approval—we are talking about taxation as well, where they are going to determine rates. I am still not convinced. Of course the Minister made reference to clauses 77 and 79 but at this point and time, what sort of control is the Minister or Parliament going to have over these functions in real terms? This is worrying and disturbing to me. I have not really been able to get anything to convince me. I have some problems with this. I am not too happy with this.

Mr. Chairman: Members of the committee, clause 18 was deferred and I understand that the amendment that was deferred was that proposed by Sen. Mark as circulated in his list of proposed amendments, page 2.

Sen. Mansoor, you have an amendment as well to clause 18.

Sen. Mansoor: My amendment had to do with clause 18(p) and (q). Basically, what I was trying to do with my amendment was to have a situation where the Authority would have to report to Parliament in its annual report that is already provided for in section 66(3), the disposition of the complaints received. This Authority will act in the role of somewhat of an ombudsman, where there will be a variety of complaints received from the public. I think it is important that the public knows, through the reporting mechanism, how those complaints were dealt with.

4.00 p.m.

Sen. Furness-Smith: I can see the Minister's point. These are just functions If we are forming a company, they would be called objects. One is trying to fix the sphere in which the Authority is to function. The trouble is that some of us feel that if they are to do that, they ought to do it subject to this, that, or the other, and I agree with Sen. Mansoor. It is not really the right place, in defining the functions, to say that they have this function but subject to certain controls. That should be done when we are dealing with how they will execute their functions.

Sen. Mansoor: Except that I am saying that they are not performing this particular function subject to any controls. I am just saying that the function should be performed, but, like the ombudsman, it should be reported on, and clause 66(3) provides for a report. I am just saying that they will investigate those complaints and report thereon.

Sen. Furness-Smith: Normally on that kind of thing we could raise a question to the Minister in Parliament but we cannot question these people in Parliament, or at all. I agree with Sen. Mansoor's amendment.

Sen Mansoor: Mr. Chairman, let me point out that 8 is correct but in 9, it should be 18(q), not (g).

Mr. Chairman: The amendment proposed by Sen. Mansoor is that clause 18 (p) and (q) be amended by adding the words, "and report receipt of complaints and resolution of same pursuant to 66(3)."

Dr. Deosaran: One of the major reasons, as I understand them, that the public seems so receptive to this particular bill, is its conviction that the process of complaints and hearings would be accommodated. That being so, I think Sen. Mansoor's amendment about report—I believe it should be a public report—fits the bill quite neatly. I want to encourage the Minister to accept that amendment.

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

Sen. Mark: Mr. Chairman, in 18(g) an amendment was advanced to read, after "matters", "through the establishment of some independent tribunal". You have a situation in which the Authority will be issuing licences and granting concessions and yet it will have the authority to also settle disputes among entities. I have found that to be judge, jury and executioner at the same time.

It is in this context that we propose this amendment whereby issues involving settlement of disputes should be done through the Authority but via this independent tribunal, so that people will not feel discriminated against by this particular Authority. If they are issuing licences and granting concessions, when disputes arise, they, too, will be adjudicating over these disputes. I believe that there is always this fear that the Authority could go overboard. In an effort to establish some degree of independence within the Authority, what is being advanced here is that we establish some independent tribunal that will deal with those matters that will arise between entities. This is an amendment that I am proposing to subclause (g), and I am hopeful that the Minister will be in favour of it.

Sen. Broomes: Mr. Chairman, I am sorry to disappoint the hon. Senator. We do not want to multiply bodies. He now wants to give the Authority the power to set up some court of some sort. I do not see that any fear of victimization, such as the hon. Senator constantly has, can be allayed by letting the same people appoint another body themselves—no doubt a smaller one—and he might think of their friends, judging from the trend of his thought, upon whom they can impose their will. I do not see that this will go any way at all to making the Authority and its functioning more efficient.

I really look for opportunities to agree with this particular hon. Senator because he works so hard and talks so much, but I am afraid that on this occasion he has presented me with no opportunity to support him. I do sincerely regret it.

Sen. Mark: Mr. Chairman, it is an amendment, in spite of what the Minister has said, that can go a long way. You see, it is said that justice must not only be done but it must be seen to be done. I believe that entities involved in the telecommunications industry will feel, to my mind, more relieved—even though it is a question of going to the Authority, but through the Authority you have an independent tribunal established to listen to disputes and to settle those disputes, as opposed to coming directly to the Authority itself. From your viewpoint, it does not appear that it will make a difference. You are of that view.

Sen. Broomes: Mr. Chairman, when the hon. Senator continues to address me directly, I get worried.

Mr. Chairman: Is this the only amendment that you are pursuing? You have a whole list on page 2 of your amendments.

Sen. Mark: I am still not convinced that this Authority should be saddled with all these powers, and the Minister is there to really provide me with any kind of strong arguments to relieve me on this particular matter. We know for a fact that the Government is trying to establish this semi-autonomous body to have some independence in carrying out its responsibilities, but it leaves me a bit disturbed at the amount of power that these people will have, and somehow the Minister, even though he will be the person ultimately responsible, the reality remains that people will be doing their own thing. I am still not convinced, in my heart and mind, that this is the path to take. It does not appear that I am getting much support from either side: from my colleagues at the side of me or from the independent Senators.

Mr. Chairman: In that case, you usually bow out gracefully.

Sen. Mark: It still disturbs me in a serious way in terms of the kind—

Mr. Chairman: What is disturbing us is that we have been on this bill a few days and we would like to move on. Do you withdraw?

4.10 p.m.

Sen. Mark: As I said, even if I am going to do so, I do it with a very heavy heart because I am not convinced of this particular thing. I am not convinced, but in the interest of pursuing the matter, I would really reluctantly withdraw.

Mr. Chairman: I would not reluctantly, but I thank you for your co-operation.

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the bill.

Clause 31 recommitted.

Question proposed, That clause 31 stand part of the bill.

Sen. Broomes: Mr. Chairman, if I may, after considerable further research on the matter and an examination of practice elsewhere, a great deal of the world has come to the conclusion that, in light of the way telecommunications have developed and will continue to develop, most of these provisions may serve no useful purpose, having become totally anachronistic. However, we find that we have an obligation to allow certain persons, in particular, the representatives of foreign governments, to use secret language. I make this last statement to justify my proposal but we retain the first two lines of clause 31. I say that to make it quite clear that people, in particular ambassadors and so forth, are authorized by law to use secret language. Therefore, the proposal is that the following be deleted from clause 31 as it now stands, that is to say, the word "(l)" appearing at the beginning and all the rest of the clause starting from the word "(2)". So that subclauses (2), (3) and (4) be deleted, and also the word "(1)" at the beginning of the clause.

Sen. Mark: You are deleting subclauses (2), (3), and (4) and you are deleting "(1)".

Sen. Broomes: Yes.

Mr. Chairman: The amendment proposed to clause 31 by the Minister is that subclauses (2), (3) and (4) be deleted entirely and, therefore, there is no more subclause (1); it is just clause 31.

Sen. Mansoor: What is the significance of the word "service" there? What is a service telegram?

Sen. Broomes: I am not 100 per cent certain but I am told that telegrams emanating from foreign embassies, for example, may not be regarded strictly as government but they will be service. That is what I am told.

Question put and agreed to.

Clause 31, as amended, ordered to stand part of the bill.

Mr. Chairman: We now have a proposal by Sen. Spence to amend clauses 22 and 23.

Sen. Spence: I think the Minister indicated earlier that he did not have any objection to these clauses. I do not know whether I should make a long argument for them. The only thing I would say is that recently in the newspapers there was reported to be a dispute about the ownership of a company that has been given a licence to operate a cable television, and this just emphasizes the need to proceed along the lines that I suggested in clauses 22 and 23. I think it is extremely important.

Sen. Broomes: Are you pursuing it?

Sen. Spence: I am pursuing it, yes, unless the Minister has an alternative suggestion. I think he indicated earlier that he was in agreement with them but that he had some changes.

Sen. Furness-Smith: I wonder if the hon. Senator could consider the point that although I for one entirely agree with the proposal, it seems to me that we are getting into the details of what a licence ought or ought not to contain. Now, if the regulations which would presumably contain all these conditions, are to be brought to Parliament, we would then have an opportunity of reviewing this kind of point at that stage. I do not know whether the Minister can give us this kind of assurance, but I think that may be correct.

Sen. Spence: That may be, but I think these two points are too important to leave them only to the regulations. I think from the beginning we should decide that when concessions are given, they should not be transferred. I think that should be a basic premise on which the whole operation of the Act would stand. Clause 23 then follows, because if we are saying that we are giving to a certain entity the concession which we are not allowing to be transferred, then clearly, change in ownership of that entity is tantamount to a transfer. So it really is a basic point that we should ensure when the concession is given there is no means whereby it may be transferred. It is really one basic point, but it has to be—

S**en. Furness-Smith:** The trouble is to make the second one effective, I think you would need some rather more technical drafting than what you have got. Not that I disagree with what you are saying but it is quite a technical question.

Sen. Spence: It was my understanding that the Minister had accepted the principles but had some changes which might have taken into account the point that you are making about the drafting.

Sen. Broomes: Mr. Chairman, I have here a formulation which I think will meet the point raised by the Hon. Senator. The proposal here is to make provision for the concerns of the Hon. Senator in the present clause 21, by amending it accordingly. The proposal is to renumber the present 21, as 21(1) and to add a 21(2), reading as follows:

"(2) It is a condition of each concession that a concessionaire shall not increase or transfer his interest in a concession without

(a) his prior notification in writing to the Authority;

(b) the prior approval in writing of the Minister.

That is the proposal, Mr. Chairman.

4.20 p.m.

Sen. Spence: Could I ask whether the Authority has the right to then review the concession? It was not quite clear to me from what he read out that this would allow the Authority to intervene, so to speak

Sen. Furness-Smith: If my opinion is requested on the customary, somewhat ungenerous terms—I have a little difficulty in the hon. Minister's language because the concessionaire shall not increase his interest in the concession. Now, if it is a company, it is the company who is the concessionaire. So the fact that some member of the company increases his interest, or reduces it, is not a matter which is affected by that language. I am not at all sure that is the way to express it. It is something one would have to think carefully about.

Sen. Spence Would it not be best to keep them separate? The first point is clear, I think there is agreement that the concession should not be transferred.

Sen. Furness-Smith: You cannot really control; if you are going to give a company a concession you cannot say that every time there is a change of a substantial shareholding, the concession could be removed. Because, for instance if you die, there would be a breach of the condition.

Sen. Spence: What you do is to report it**.**

Sen. Furness-Smith: Well you report it, but then you are saying that the Authority may review it, which means that it may, in effect, cancel it and that is not business. No company could make an investment on that basis. I take your point that if, for instance, a company is a wholly-owned company or a majority-owned

by a certain person, then I would agree with you that the Authority ought to say we are relying on that person's input into this company, and if he sells his interest, then we want to review it. But then you still have the problem, suppose he dies, he does not get any bank finance.

Sen. Spence: But suppose one entity wanted to have a monopoly of all the concessions**,** the thing would be to just get a number of small companies to apply for the concession that had nothing to do with the original company, but the company that wants the service, and then just buy them out, by arrangements. That is what one wants to avoid. So it seems to me that one must have some mechanism for avoiding that. As I say, the thing is happening now, that there is a company which has got a concession and one does not know who owns it. Because if you read what is reported in the press, there is a tremendous dispute as to who owns it. So the Authority would not know what sort of entity it is dealing with until that is resolved.

Sen. Furness-Smith: The Authority ought to make regulations and the application form ought to have particulars of who are the underlying shareholders. But to pass the bill with that kind of detail in it, I find it is difficult. I am not necessarily disagreeing with the idea.

Sen. Broomes: As we indicated on the last occasion I am wholly in sympathy with the concerns of Sen. Spence and I think all we need to do is to find the right language to express it. I am entirely in agreement with his concerns and I am trying to find better language to express it so I will just ask for a few minutes.

Sen. Furness-Smith: Could I suggest to the Minister that possibly something on lines of a general principle without being too specific: that in granting concessions, the Authority shall take care that conditions are imposed, restricting the transfer of such concessions, and major changes in the underlying shareholders in the case of a company; something to that effect. So that you have a general principle that it is the duty of the Authority to attack the points with which the Minister and Sen. Spence are concerned with, and then leave it to the regulations.`

Sen. Broomes: Mr. Chairman, I am familiar with the particular case that Sen. Spence has in mind, and I am also familiar with the dexterity with which the operation was carried out, and I share Sen. Spence's viewpoint that it will be better to tie it down in the manner he suggests. Pursuant to that, I have a new formulation, an amendment to the one I had before. Renumbering as before 21 to 21(1) and a new 21(2), reading:

"It is a condition of each concession that neither the concessionaire nor any shareholder in the concession shall increase or transfer his interest in the concession without—

(a) his prior notification in writing to the Authority;

(b) the prior approval in writing of the Minister."

The expectation is that the Minister's approval in writing would not be forthcoming if something is about to happen such as Sen. Spence has in mind.

Mr. Chairman: The final proposal by the Minister in response to Sen. Spence's proposed amendment is that clause 21 be renumbered as 21(1), and immediately after the renumbered subclause (1) the following new subclause should be added:

"(2) It is the condition of each concession that no concessionaire or shareholder in a concession shall increase or transfer his interest in a concession without—

(a) giving prior notification in writing to the Authority;

(b) the prior approval in writing of the Minister."

4.30 p.m.

Sen. Furness-Smith: No, not "in a concession", "in a concessionaire company", I would have thought.

Sen. Spence: Why is the Minister asking the Minister to intervene at that point rather than the Authority? In other words, why not the Authority's approval, conveyed by the Minister? If one wants to pin it down to a specific thing in writing, then the letter can come from the Minister. Why are we not asking the Authority to also give that approval?

Sen. Broomes: Mr. Chairman, it is because it appears to me that questions relating to conglomeration of businesses and so on are matters of policy of the Government and properly belong to the realm of the Minister and not the Authority.

Mr. Chairman: The new subclause (2) should read—

"It is a condition of each concession that no concessionaire or shareholder in a concessionaire company shall increase or transfer his interest in a concession without—

(a) his prior notification in writing to the Authority;

(b) the prior approval in writing of the Minister."

Sen. Furness-Smith: May I make one suggestion there? I do not think it would be commercially practical for a company to restrict itself and to throw its continued entitlement of the concession, on a transfer of a small number of its shares into the hands of the Minister. I think you are in danger of killing the whole commercial purpose of these concessions. I entirely accept the thinking behind it but there is a great danger that—

Sen. Amar: Mr. Chairman, there is only one other thing. If that is a favourable thing relative to, when you are looking at privately owned companies like those on the public stock exchange, what takes place with the changing of shares of that company that trades every day, like the *Express* company now that is trading its shares—CCN; every time he has to trade his shares, he has to get approval.

Sen. Crawford: I drafted it in this form:

"It is a condition of each concession that a concessionaire should not transfer his interest without the consent of the Authority and the prior approval of the Minister."

I thought probably that would have captured it.

Sen. Broomes: Mr. Chairman, that does not appear to me, to take care of the changes within the concessionaire itself. Perhaps, if the hon. Senator would do something to take care of that, we would be able to support it. But if each concessionaire is a company, then the formulation that the hon. Senator has offered, does not take care of changes within the company itself.

Sen. Furness-Smith: You know our proposal as framed there, with or without the suggestion made by me, would not really take care of it because all you would need to do in each case of a concessionaire company would be to have a holding company, with a subsidiary, and another subsidiary which would hold the concession. And by means of changing the shareholding in the main holding company the whole thing would turn "ole mas". These things have got to be very carefully drafted, if they are to bite. I will say again, that sort of question is not suitable for an Act of Parliament.

Sen. Broomes: I have not been trying to follow the point just made by the hon. Senator, because if there is a holding company, which is the owner of the

concession then that company is the concessionaire. So I do not see how the problem that he apprehends would arise.

Sen. Spence: What he is saying is if there is a series of companies; company "A" shares are owned by company "B" shares of which are owned by company "C" and the one that is really in power is company "C" which is the holding company. So you do not recognize what is happening in "C" along the chain.

I would accept the position that the regulations may need to tie this down even further, but I certainly will accept the Minister's proposal which would at least give us some control here and give some direction to the Authority along the lines to which they should go, and in the regulations or in the contract, the more difficult issues may be taken care of. The only question I would raise is whether "company" covers partnership as well, or should we not say "company and/or partnership". Because it seems to me that the way it is worded, in the Minister's version, it is an individual or a company and there may be a partnership which is different.

Dr. Sampath. Mr. Chairman, I have been trying to make this point now for about half-an-hour. The reason we are having so much difficulty in trying to legislate this particular clause is because it simply cannot be done. We cannot interfere with the rights of these companies to sell their shares or buy their shares. Sen. Amar is perfectly right. We cannot do it. Sen. Spence is trying to do something which is quite impossible in practical life. That is why we are having this difficulties. I feel we should leave that clause just as it is. There is a Monopolies Commission, I believe—correct me if I am wrong—and if something is veering towards a monopoly, or appears to be a monopoly, let that commission handle it.

Let us leave this clause exactly as it is. We are trying to do the impossible, by trying to legislate this clause.

Sen. Spence: That is precisely why we have stayed with this document for so long, because of people who are afraid of what could happen and what will happen. Therefore, we must find a way of doing it because if we do not, it will happen. I have absolutely no doubt about it. It will happen, and we would regret it.

Sen. Amar: I have an idea. One of the main things we want to prevent is the monopolization of the telecommunications or the broadcasting system by getting people to come and sell the stations and exploit the advertising market. My suggestion is let the Telecommunications Authority play a role. People who have gotten into this business must have done their economics, five-year, three-year,

two-year one-year feasibility study. It is not children getting into this business. They are either going to make money or they are not going to make money and they know that there is a limited market.

The Telecommunications Authority gives the licence; we now have these authorities that have gone on the air and they are starting, but poor fellows, they find out that the competition is too stiff, they have to sell. Now, my view is that telecommunications, now with some international or domestic people who can analyze the cost of this equipment by a depreciated value, must be the first people who would have the right of option to purchase and it must be sold to them at the price negotiated, because it is a business deal and the Telecommunications Authority could sell it to whomever they want after.

That way, you now put the onus on the businessman to become efficient, because I do not think you can continue to pay for the inefficiency of the businessman. Quite honestly, it is a suggestion I would like to have considered because I want to make the point that the people who go into this kind of business must know whether it is feasible or not. It is not a guessing game. They know the industry and if they went in with their eyes open, they should have known what would happen five years down the road.

So, if the Telecommunications Authority could now issue into this that the rights of repurchase of the equipment, the first option must be given to the Telecommunications Authority, who would pay a just price—just like land, how they have a system in this country where there is a justified price to pay for land; there must be a justified price to pay for equipment. Therefore, the Telecommunications Authority then buys the equipment and and sells it to whomever they want.

It solves all the legal ramifications and the problems of worrying about whether Harry will sell it to Paul and monopolize the market.

Sen. Spence: Mr. Chairman, with respect to the hon. Senator, the one television station that is about to come on stream, when the announcement was being made a couple of weeks ago, one of the things that was said by the chief spokesman, was that one did not know how the market would go, with respect to the advertisement. It was not possible to forecast, said this goodly gentleman, how the fallout would come. So I do not think it is true to say that they went in knowing for certain that they would make a profit, but there are other reasons for going into it. If you own a newspaper there may be very good reasons for having a

television station as well, which has nothing to do with the profitability of either, but possibly the profitability of both.

Sen. Furness-Smith: Having listened to the arguments promoted, I would like to suggest to the honourable Minister that really, this requires a little more thought. I believe myself, personally, that the most we could do would be to state the principle which the Authority should try and maintain in this respect, and leave it to the regulations, or otherwise, to work out the small print. I feel quite sure that it would be wrong for us to proceed this afternoon, to try and draft language. There is a lot in what Dr. Sampath and Sen. Amar said.

Dr. Sampath: I think we should do that, seriously. I feel quite sure that it would be wrong for us to proceed this afternoon to try to draft language. There is a lot in what Sen. Sampath said.

4.40 p.m.

Sen. Broomes: It appears that the best course for us to adopt is to have this matter dealt with in the regulations, because all our attempts which have been going on for some time have come to nought, perhaps for the reason given by Sen. Sampath. I do not know if Sen. Spence will be able to agree with this. It seems as though the proper place for it is in the regulations. I am wholly in sympathy with Sen. Spence's concern. I wish that we had reached a formulation which could take care of it. Our efforts have not been fruitful at all and it does seem as though the regulations is the place for that.

Sen. Spence: I thought we had reached to a formulation, because certainly I had accepted the Minister's formulation, except I was suggesting we should include “partnership” to cover the whole field. If you are going to make a change and not put it in here but put it in the regulations, then I would suggest that the Minister's formulation still go into regulation 21 but as (e), (f), (g) in clause 21 so that it reads:

“shall contain conditions with respect to”

We may have to word it slightly differently, but then we specify the issues to do with change of ownership and concession. That is the minimum. I certainly would prefer to accept the Minister's formulation as a separate subclause.

Sen. Moonan: If you change those clauses you are interfering with the people's Constitution where, if you take it to court it could reach Privy Council.

The right as a private company, a man is losing money; he cannot run it; and he wants to sell his shares; when he goes to the Minister and the Minister withholds the right because he did not like the person to whom they were selling the shares, this person gets into trouble and he loses his money.

It is a free enterprise system, so I am of the opinion that the Constitution overrides this. He could buy and sell. We cannot put clauses here to prevent this because we live within the Constitution; then you will have to change the companies law and private enterprise. You will have to change many laws when you go into all this nitty-gritty. I think it should be open. If I have a concession and I want to sell it, I must be able to sell it at a reasonable price. If I cannot run it and I do not have the ability; something goes wrong with me and I am losing money and another man comes with a better management advice and he could do it, I should have the right to sell. You send it to the Minister, he may take three months to reply or he has to get advice and the company will close down. This person wants to make a decision overnight. Somebody might be interested overnight and he does not want to wait until next week.

In my opinion, I think we are going a little too far. We want to run the people's business. When you give them a concession they must be able to work within their rights. The Attorney General should be able to advise us rightly. He is a very brilliant gentleman.

Sen. Spence: We are not dealing with ordinary issues here. Every country in the world is concerned about its media. They are concerned whether Murdock owns all the newspapers, whether Thompson owns all the newspapers. Every country in the world is concerned about the issue of ownership of the media. It is nothing peculiar to Trinidad and Tobago. In fact, we would be out of step with all the democratic countries if we were not concerned about controlling the media.

Mr. Chairman: Is there a proposal for (g)?

Sen. Spence: I was trying to accept the Minister's formulation and put it in, but I will try to do it with mine. We are saying that they shall contain conditions with respect to—instead of saying it is a condition that meets concession, we will say that the Authority should contain conditions with respect to increase or transfer. Perhaps it will be easier for me to use my original motion and put them in 21.

I would say that we should have (g) which says**:** "with respect to transfer of a concession to any party other than the original concessionaire" or just "with

respect to transfer of the concession". The concession should contain conditions with respect to transfer of the ownership of the concession.

Mr. Chairman: The new paragraph (g) to clause 21 reads as follows**:**

"transfer of the concession or change of ownership."

Question, on amendment, put and agreed to.

Clause 21, as amended, ordered to stand part of the bill.

There is one final proposal at the end of the original list of amendments circulated by the Minister. That is to transfer the amended clauses 26, 27 and 28 to Part IX immediately before clause 74 and renumber as clauses 71—73 and also to renumber clauses 29—73 as clauses 26—70.

Question, on amendment, put and agreed to.

Before putting the question that the bill be reported, there are a number of consequential amendments with references by that change, and a list has been given. If any Member wants to get a copy, he would be able to get one. We would make copies of the consequential amendments and circulate them to Members so that all the references would be corrected.

Question put and agreed to, That the bill, as amended, be reported to the Senate.

4.50 p.m.

Question put, That the bill be now read the third time.

Mr. Chairman: I think this bill requires a special majority so for the purposes of the record the Clerk will take a count of those present and voting in favour of the bill.

The Senate voted: Ayes 28

AYES

Lequay, A.

Atwell, Hon. H.

Rambachan, Hon. S.

Charles, Hon. H.

Weekes, Hon. G.

Broomes, Hon. H.

Bradshaw, L.

Hosein, F.

Charles, Mrs. U.

Bhagan, N.

Rampersad, F.

Sampath, Dr. M.

Warner, C.

Wahab, A.

Persad, Dr. P.

Mark, W.

Baksh, Miss S.

Amar, R.

Khan, R.

Moonan, M.

Horne, Miss L.

Deosaran, Dr. R.

Joseph, Fr. W.

Mansoor, M.

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

Paul, W.

Crawford, R.

Sen. G. Furness-Smith abstained.

Question agreed to.

Bill accordingly read the third time and passed.

Mr. Chairman: The sitting is suspended for half an hour. The Senate will resume at 5.25 p.m.

4.55 p.m.: *Sitting suspended.*

5.25 p.m.: *Sitting resumed.*

BUSINESS OF THE SENATE

Sen. Alloy Lequay: Earlier I had moved that the bill be adjourned to a later stage of the proceedings and I want respectfully to get the agreement of the House to defer "Motions" and bill No. 1 under "Bills Second Reading" so that we could proceed with the Dangerous Drugs Bill.

DANGEROUS DRUGS BILL

Order for second reading read.

The Attorney General (Hon. Anthony Smart): Mr. President, I beg to move that a bill entitled, an Act to provide for the control of narcotic drugs and psychotropic substances and to make provision for the confiscation of the proceeds of drug trafficking and other provisions in connection with drug trafficking and matters connected therewith, be read a second time.

As I begin, Mr. President, I would like to, for the record, give a history of this bill. A bill to deal with this problem was first introduced in the Parliament in the other place on February 24, 1989. It was read a second and third time and passed with amendments in the other place on June 16, 1989. The bill, as amended, was introduced and read for the first time in the Senate here on June 20, 1989 and on August 22, l989 at the conclusion of the debate in the Senate on the second reading, the bill was referred to a select committee of the Senate. In order to comply with the provisions of the Constitution, the Parliament was prorogued on October 20, 1989 before the select committee considering the bill had reported.

With the prorogation of the Parliament, all business before the Parliament lapses and, as a result, the bill and the proceedings before the select committee lapsed. It was somewhat unfortunate that at the prorogation of the Parliament, Sen. Furness-Smith suggested that this Government prorogued the Parliament in order to kill the bill. It was a most unfortunate statement by Sen. Furness-Smith at the time and I trust—

Sen. Furness-Smith: I do not think I ever made that suggestion. I certainly criticized the prorogation as being unnecessary. I could not understand it, but I never imputed motives to the Government, I am sure.

Mr. Smart: Well, it was clear to me. I happened to be in the Senate at the time and I remember getting up and refuting it. I think it was one of the first times, probably the only time in this Senate, that I showed some annoyance. But it was clear to us on this side, clear to me as the Attorney General, that we had to prorogue the Parliament in order to comply with the provisions of the Constitution.

I wish to refer to section 67(2) of the Constitution which says:

> "There shall be a session of each House once at least in every year, so that a period of six months shall not intervene between the last sitting of Parliament in one session and the first sitting thereof in the next session".

The issue, Mr. President, is: What does “session” mean? "Session" is defined in the interpretation section of the Constitution to mean:

> "‘session’ means, in relation to a House, the sittings of that House commencing when it first meets after this Constitution comes into force or after the prorogation or dissolution of Parliament at any time, and terminating when Parliament is prorogued or dissolved without having been prorogued;"

So that a session would be those sittings when Parliament first meets after a prorogation or a dissolution and the last sitting at the time when it is either prorogued or dissolved. Section 67 says**:** "that there must be a session in each year". The Interpretation Act says that a year means a period of 12 months. So that it is absolutely clear that from the first sitting of a session of Parliament, no more than 12 months must elapse before the dissolution or prorogation. So that I advised the Government that we had to prorogue the Parliament in order to comply with the provisions of section 67 of the Constitution.

A previous government, on one occasion, actually had a session go beyond 12 months and I have advised that was an error. But that is beside the point at this stage.

Hon. Senator: Do you have to prorogue once every year?

Mr. Smart: Yes, you must prorogue. You must bring a session to an end every 12 months. The maximum period that a session can be held, must be a year or 12 months. So that is the reason the Parliament was prorogued on October 20, 1989 and, as I said, the effect was to cause the bill and all other business to lapse at that stage. That was in 1989.

In May 1990, the Government decided that it would reintroduce into this Parliament the very bill that had been introduced for the first time in 1989. The intention was that the bill would be introduced as it was and that the very said select committee that had been sitting in the 1989 session, would meet again and continue its work. We, on this side, did not want to lose the work that had been done by the select committee of the Senate in 1989 and that procedure was agreed to and so the bill was reintroduced in the Senate and sent immediately to the select committee.

5.35 p.m.

Unfortunately, while the select committee was doing its work, the unfortunate events of July 27 intervened and forestalled, significantly, further work of the select committee, especially as a result of the unavailability of adequate physical facilities and so forth. Again, it was necessary to prorogue the Parliament and the select committee, having done some more work, had not been able to complete its work. That is where it stood at the end of 1990 when the Parliament was once more prorogued in order to comply with the provisions of section 67 of the Constitution.

The Government then took the work of the select committee which had not report but had done a substantial amount of work, and used that work as the basis for the bill that is now before the Senate. I want, immediately, to pay tribute and congratulate, on behalf of the Government, those Members of the select committee who did substantial work on this bill.

We are now at this stage where we have a bill, in many ways, substantially different from the bill that was introduced in 1989. As you know, Mr. President, there was full and complete debate on that bill throughout 1989. I think everybody who had any desire to comment on that bill, commented in one form or the other, both and in the Senate, in the other place, in the newspapers and on television. Everybody had an opportunity to let their views be heard. We have had the benefit of all these comments and the bill that is now before us takes into consideration the full debate in this country on this matter of this nefarious scourge and curse that afflicts us here in Trinidad and Tobago, and indeed, most countries in the world.

The purport and intent of this bill is, first of all, to consolidate the existing law dealing with dangerous drugs. The existing law is to be found in Act No. 21 of 1961 as amended by Act No. 37 of 1985. So what we have sought to do is to lift those provisions from those two Acts and put them into this bill, with some slight amendments that have been suggested. That is the first purport of the bill.

It also seeks to incorporate into the laws of Trinidad and Tobago, provisions for the recovery of money and property obtained from the proceeds of drug trafficking. That is a most important thrust. The bill is seeking to take the profit out of the drug trade. It is seeking to get, as far as it possibly can, at those persons who control the drug trade from all reports, and to get at their profits so that the trade will be less attractive to those persons who control it.

It seeks also to increase the penalties for drug-related offences. It also seeks to provide for the new offence of, what is in common parlance called, money-laundering. It also seeks to provide for an offence of tipping off a suspected drug trafficker that his affairs are under investigation.

It is important to understand that the whole question of confiscation—and we will come to matters of the confiscation orders that are providing for in the bill—only apply to persons who have been convicted of drug trafficking, and that is a significant departure from the bill that was introduced in 1989. The bill, as I say, provides for confiscation orders, for restraint and freezing orders against the property of persons who are in some cases under investigation for drug trafficking. The bill also seeks to, and in my respectful view, complies with the provisions of the United Nations Convention against illicit trafficking in narcotics drugs and psychotropic substances.

Mr. President, what I would like to do in my presentation is to go into some detail on the provisions of this bill. If I may say so myself, the bill, even for a lawyer, certainly the provisions from clause 30 right up to clause 62, are complicated, and I am sure I sympathize with those of us here who are not trained in the law, who have had to read this bill. So that I will spend my time and I hope that this honourable Senate will give me the opportunity to spend as much time as I would like to go through these clauses because I think at the end of it we will all be the better for it.

I should indicate here that one of the proposals of the select committee—I would not go into all the proposals—and not nearly the most important one, was that the short title of the bill should be changed to the Dangerous Drugs Bill. That has been accepted and that is the proposed short title of the bill.

5.45 p.m.

I should also indicate that there was some lengthy debate and discussion on the 1989 bill on the matter of the joint anti-narcotic committee and the anti-narcotic unit that was proposed in that legislation. We have had a close look at that

proposal and we on this side feel that it is not necessary to introduce such a committee into the legislation. Those committees can be set up administratively. So that proposal has been removed from the bill.

Under clause 5, the Minister is empowered, subject to regulations to be made under clause 58, among other things, to issue licences authorizing the possession, sale, manufacture, import, export, of dangerous drugs. This is a provision that is in the existing law and it naturally must be so because this bill seeks to deal with a series of dangerous drugs that are itemized in the schedule to the bill.

As you know, while some drugs may be dangerous, if they are used for medicinal purposes, they can be beneficial for the sustenance of life. So, there is nothing unusual in this clause 5. In fact, it is the existing law at this stage and it provides for pharmaceutical bodies, companies and persons involved in medicine, to deal in these dangerous drugs, once they have a licence from the Minister and once certain regulations are met.

The penalties for the possession of dangerous drugs are dealt with in clause 6, subclause (1). Those penalties remain unchanged from that which obtains at present, namely, a fine of $25,000 and imprisonment for five years upon summary conviction and a fine of $50,000 and to imprisonment for a term which shall not exceed 10 years but shall not be less than five years upon conviction on indictment. That is the penalty for possession.

For the offence of cultivating, gathering or producing any opium, poppy, marijuana or coca plant, except under licence granted under clause 5, the penalties under the 1989 bill were as follows: For a first offence upon summary conviction to a fine of $100,000 and to imprisonment for five years; upon conviction on indictment, to a fine of $150,000 and to imprisonment for 10 years. For a second offence, upon summary conviction to a fine of $200,000 and to imprisonment for ten years; upon conviction on indictment to a fine of $250,000 and to imprisonment for 12 years. For a third or subsequent offence, upon summary conviction, to a fine of $300,000 and to imprisonment for 15 years; upon conviction on indictment, to a fine of $400,000 and to imprisonment for a term of 20 years. That was the case under the 1989 bill.

I should say here at this stage that we have sought to honour the proposals of the select committee insofar as penalties are concerned but at the same time we feel that the Senate ought to have a look at those proposals, in the committee stage, with a view to increasing those penalties. So, we have put into the bill, the

proposals of the select committee, but we feel in the course of committee, we might want to look at those penalties again, as I say, with a view to increasing them.

Under the present bill, the penalties for the aforementioned offence remain unchanged from those which obtain under the 1985 legislation, which is, upon summary conviction to a fine of $25,000 and imprisonment for five years, or upon conviction on indictment, to a fine of $50,000 and to imprisonment for a term which shall not exceed 10 years, but which shall not be less than five years. So that the proposal is that the penalties remain the same as in the 1985 legislation, but we feel that they should be more, but we would discuss that as we go along.

For the offence of trafficking, which is the serious—well all the offences for drug abuse are serious offences, but this is the one that we are really concerned with, more than anything else. For the offence of trafficking in a dangerous drug or being in possession of a dangerous drug for the purpose of trafficking, the penalties under the 1989 bill were as follows**:** For a first offence upon summary conviction, to a fine of $100,000 and to imprisonment for five years; upon conviction on indictment, to a fine of $150,000 and imprisonment for 10 years. For a second offence upon summary conviction, to a fine of $200,000 and imprisonment for 10 years; upon conviction on indictment, to a fine of $250,000 and to imprisonment for 12 years. For a third or subsequent offence, summary conviction, a fine of $300,000 and to imprisonment for 15 years; upon conviction on indictment to a fine of $400,000 and to imprisonment for 20 years.

In the present bill, the penalties for the aforementioned offence, that is trafficking, are the same as those in the 1985 legislation, namely, upon summary conviction to a fine of $50,000, or where there is evidence of the street value of the dangerous drug, three times the street value of the dangerous drug, whichever is greater, and to imprisonment for a term which shall not exceed 10 years but which shall not be less than five years; or upon conviction on indictment, to imprisonment for life.

The penalties for a person who commits the offence of trafficking in a substance other than a dangerous drug which he represents or holds out to be a dangerous drug, are more stringent than those set out in the 1985 legislation. However, once again, they are less harsh than those set out in the 1989 bill. In the 1989 bill the penalties were: Upon summary conviction to a fine of $100,000 and imprisonment for five years; upon conviction on indictment to a fine of $150,000

and imprisonment for 10 years. In the present bill, the present penalties are**:** Upon summary conviction to a fine of $25,000 and imprisonment for five years or upon conviction on indictment a fine of $25,000 and imprisonment for 10 years. I think that might be an error. It might be a little more; it might be $50,000.

For the offence of being in possession of a dangerous drug or a substance other than a dangerous drug represented or held out to be a dangerous drug on school premises or within 100 metres thereof, the penalties are: Upon summary conviction a fine of $60,000 or to imprisonment for a term which shall not exceed 12 years but which shall not be less than six years, or upon conviction on indictment to imprisonment for life.

The penalties in this bill are the same penalties provided for in the 1989 bill. However, in this present bill there is an added provision in that where there is evidence of the street value of the dangerous drug, the fine is to be three times the street value of the dangerous drug if it is greater than $60,000.

Under clause 7, the court may order any person to be admitted to a psychiatric hospital for examination by a psychiatrist, before conviction. Under clauses 8 and 9, licensed persons and pharmacists, respectively, are prohibited from supplying dangerous drugs to any person except as provided in the Act, and there are provisions that set out who those persons are. In the case of pharmacists and licensed persons it would be like ill persons and prescriptions and so on.

Clause 10 stipulates that a person on termination of the legal authority for possession of dangerous drugs shall return the dangerous drugs in his possession to the Minister.

By clause 11, the contravention of any of the provisions of clauses 8, 9 and 10 is an offence punishable by a fine of $25,000 and to imprisonment for five years and upon conviction on indictment to a fine of $50,000 and imprisonment for seven years. These are the same penalties as provided for in the 1989 bill.

Under clause 12, if a medical practitioner, veterinary surgeon or dentist prescribes, administers, gives or sells any dangerous drug to any person otherwise than in accordance with the provisions of the Act, he is guilty of an offence.

Clause 13 empowers the Minister, and to a point, inspectors, for the purposes of the Act—and these inspectors are to inspect premises where dangerous drugs are being manufactured, for medicinal purposes. In the present bill, the inspector must be accompanied by a police officer, when he is exercising his functions.

Interestingly enough, this provision was not provided for in the 1989 bill, nor is it provided for in the present legislation—that is the 1961 and 1985 Acts. So this is an interesting change from the present law where the inspector now has to go with a police officer when he is doing his work. And these would be inspectors coming out of the Ministry of Health. So again, we might want to look at that. It was a proposal and we thought that we would put it in.

5.55 p.m.

Where a person fails to keep records in accordance with the provisions of the Act—this would be pharmacists, doctors and dentists—that person commits an offence under clause 14, and if a person secures a dangerous drug from a medical practitioner, or a prescription thereof, without disclosing that such drug or prescription had been obtained from another medical practitioner, that person commits an offence under clause 15. It gives the penalties again.

Under clauses 16 and 17, possession of any device or apparatus for the illegal use of dangerous drugs and being on premises without reasonable cause where dangerous drugs are being illegally used are offences under the Act. Interestingly, the fine for unlawfully being on premises is increased from $5,000.00 in the 1985 Act to $10,000.00 in the present bill, but the term of imprisonment is reduced from one year to six months.

Under clause 24, a police officer who reasonably suspects that a dangerous drug is kept or concealed, contrary to the Act, in any store, shop, warehouse, vehicle, garden or other place may enter if necessary by force and search and bring it or any device or apparatus used for the illegal use of dangerous drugs found therein before a magistrate. There is a complementary provision that in the case where there is a suspicion that these drugs are in a dwelling house, the officer must get a warrant. This is the present law as it now stands under the 1961 and 1985 Acts.

Under clause 18, where a person sends by post any dangerous drug, he is guilty of an offence and this is in the law and in compliance with the UN Convention and the penalties are the same as those provided for in the 1985 Act and the 1989 bill.

Under clause 19, where a person defaults in the payment of a fine upon being convicted under the Act that person is liable to imprisonment in addition to the term of the imprisonment imposed on him under the provisions of the Act.

Clause 20 stipulates that the burden of proof in respect of a charge for an offence under clause 6 is on the accused; that is to show that he has a licence from the Minister to deal with a dangerous drug. What that means is that if a doctor or dentist is charged for being in possession of a dangerous drug, the onus of proof is on him to show that he had the licence and the authority to deal with the drug.

Clause 21 provides the burden of proof that the dangerous drug was required for medical treatment is on a physician charged with an offence under clause 12, where he is charged for prescribing or administering or selling a dangerous drug. It is on the medical practitioner to prove that the dangerous drug was required for medical treatment.

Under clause 25, any device, apparatus or article or any dangerous drug seized under the provisions of the Act are forfeited to the state.

Clause 26 provides for punishment of persons summarily convicted of indictable offences under the Act. It excludes the provisions of section 100 (5) of the Summary Courts Act which states that a person summarily convicted of an indictable offence is liable only to a fine of $2,000.00 or imprisonment for two years. The bill excludes that provision from the Act, so that the magistrate would have the power to impose the heavy fines that we are intending to impose.

Clause 27 provides that a person convicted of conspiracy to commit an offence under the Act is liable to the same punishment as if he had committed the offence.

Under clause 28, a person who is an accessory to the crime is guilty of an offence under the Act and is liable to the same punishment as the principal offender.

Clause 29 stipulates that where in the opinion of a magistrate the character of a person over the age of 18 summarily convicted of an offence under the Act triable either summarily or on indictment, is such that he deserves greater punishment than the magistrate can impose on him, the magistrate may commit him to the High Court for sentence. Under the present bill, however, although this was not stipulated in the 1989 bill, nor indeed in the present law, the magistrate must bring to the notice of the accused the aforementioned provision before the accused elects to be tried summarily.

That, in essence deals with the provisions of the 1961 and 1985 Acts which have been brought into this bill and that would take us down to clause 29 of the bill. As we move on, the provisions that we are now going to deal with are those

provisions which I suggest have been difficult to comprehend and those provisions which deal with confiscation, restraint orders and the new offences.

I want to indicate in the preparation of this part of my presentation, I have been generously helped by a document coming out of the Commonwealth Secretariat. I want to acknowledge that I have used and adapted that document in the preparation of my presentation. I think at the end of it even though it may be long and tedious, we would all understand what these new and important clauses of the bill are all about.

Dr. Deosaran: I am sorry to interrupt the Minister. I wonder if he can supply Senators with that document from the Commonwealth Secretariat. That would go a long way in guiding us in the debate, in addition to what he is saying.

Mr. Smart: I have one copy. I suppose I could do that at a later stage. The copy which I have is all marked up but I certainly can do so at a later stage.

6.05 p.m.

We are dealing now, Mr. President, with confiscation orders. The purpose of a confiscation order is to deprive a convicted drug trafficker of the proceeds of his trafficking activities. Where a person is convicted by the magistrate in the Magistrates' Court, or in the Assizes, of a drug trafficking offence, the High Court must, before sentencing him, determine—because there are provisions for the magistrate to send the matter for sentence up to the High Court—whether he ever benefited from drug trafficking. If he has, the court must impose a confiscation order to deprive him of his proceeds. It is not necessary for him to have received any payment or reward for the offence of which he has just been convicted. All past payments or rewards for trafficking of which he may, or may not, have been convicted and which may have taken place before or after the commencement of this bill—if we pass it—are also to be taken into account, as are payments or rewards received in connection with drug trafficking by others. If he has so benefited, a confiscation order must be made.

This confiscation order is to be made before the defendant is sentenced for the offence of which he has been convicted. The court is then to disregard the confiscation order in deciding on the sentence appropriate to the offence. Except that if the court wishes to make any other order involving payment by the defendant, it is to take account of the affect the confiscation order will have on the offender's needs.

Mr. President, the amount of the confiscation order must be equal to what the court assesses to be the defendant's proceeds from drug trafficking, that is, the value of payments or rewards he has received in connection with drug trafficking, not simply his net profit once his outgoings have been deducted. So it is the full value of the proceeds. The court must take as the value of payment or rewards, either their value at the time when they were received, suitably adjusted to take account of subsequent changes in the value of money, or where the assets comprising the reward or property which, directly or indirectly, represents them, are still held, their current value, whichever is the greater. The provisions for that are to be found in clause 35(5) and (6) of the bill before us.

To overcome the difficulties inherent in establishing precisely what part of an offender's wealth represents the proceeds of past drug trafficking, subclause (2) allows, but does not require the court to make certain assumptions, except to the extent that they are shown to be incorrect in the defendant's case.

The court is also allowed to make the assumption that any property which the defendant held at the time of his conviction, or at any time since, was derived from drug trafficking. It is also allowed to make the assumption that any property transferred to him, on or after the date which preceded by six years, the institution of the present proceedings, was similarly derived. In other words, any property a convicted drug trafficker got into his possession up to a period of six years before he was charged with the offence, the court assumes that property was derived from the proceeds of drug trafficking. It will also assume that any expenditure over that period was from the proceeds of drug trafficking.

The court may also assume, unless the contrary is shown, that no other person had any interests in such property, that is, that it belonged wholly to the offender. Where the defendant seeks to disprove these assumptions, the standard of proof is on the balance of probabilities.

In determining the amount of a confiscation order the court will naturally look to the prosecution for guidance. Accordingly, those responsible for investigating the defendant's financial dealings will have to reach a careful decision about the amount of information likely to assist the court, bearing in mind the demand on resources.

The assumptions described above are likely to be called into play mainly where there is evidence of drug trafficking on a substantial scale sustained over a period of years. In these more serious and complexed cases, the court—if this bill is

passed—will require as full a statement as can reasonably be assembled, of the defendant's current wealth and of property which has passed through his hands during the previous six years.

However, it will certainly not be necessary to apply the assumptions and consequently to undertake the exhaustive investigations in every case. Where it is reasonable to assume the defendant has committed only one offence or a small number of known offences and the extent of the proceeds can readily be established, it will be sufficient for the amount of the confiscation order to be settled on that basis without the need for further enquiry.

Mr. President, the procedure for providing information to the court about the defendant's financial dealings is set out in clause 33 of the bill. This information should include, where it is germane, information gathered during the investigation and information obtained by any receiver appointed before the trial to look after assets subject to a restraint order under clause 38. There are provisions in this bill for the appointment of a receiver where the restraint orders are made prior to conviction. We will come to that later on.

The provision for statements under clause 33 would offer, in the more sophisticated cases, a swift and effective means of determining the amount of the confiscation order. The prosecution—that is the DPP—would set out what it believes to be the value of the defendant's proceeds and would establish, in a statement, that he has sufficient assets to enable him to pay that amount.

If the allegations are accepted by the offender, the court may take that acceptance as conclusive. If the defendant challenges any part of the statement, either orally or in writing, he must indicate the matters on which he intends to rely in disputing the statement. Silence may be taken as acceptance of any matter set out in the statement, except for any allegation that he has benefitted from drug trafficking or that particular property was the proceeds of drug trafficking. Thus, if the prosecution statement alleges that the offender owns a particular item; that he received it on a given date and that it was a reward for drug trafficking, silence may be taken as acceptance of his ownership from the alleged date but not as acceptance that the item was the reward for drug trafficking.

Where a matter is disputed, evidence may be adduced, on either side, to resolve the issue to the satisfaction of the court. If the defendant has previously been subject to a confiscation order, the proceeds confiscated under that order are to be left out of account in assessing the proceeds to be confiscated under a new

order. This is clause 32(4) of the bill. The only other circumstance in which the court is to impose a confiscation order for a sum which is less than what it assesses to be the full value of the offender's trafficking proceeds, is where it is satisfied that there is insufficient realizable property available to enable the offender to pay the full amount. In such cases the court will limit the order to the value of the available realizable property. The defendant may, if he wishes, tender a statement to the court under clause 33 to assist the court in determining the amount that might be realized at the time the confiscation is made and if the prosecution accepts any allegation in the statement, the court may treat it as conclusive.

6.15 p.m.

So, there are a number of provisions where the assumption is made out for an opportunity for the convicted drug trafficker to provide information to assist the court in determining what the value of the confiscation would be.

There are provisions for the court assessing what realizable property is available. In considering what property may be available for realization to satisfy a confiscation order, the court is to take account of all property held by the defendant himself, whether legitimately or illegitimately acquired, and any that is in the hands of third parties to whom the defendant has made a gift, caught under the Act. So that the court will not look only at property belonging to the defendant but also to property that has been the subject of a gift to any persons; property that has been caught under the Act. The whole amount that may be realized from these assets is the total amount of any obligations having priority plus the value of any gifts.

The amount that may be realized from any individual third party is limited to the value of the gift he has received. Such value is to be determined by the court on the same basis as the value of payments and rewards for drug trafficking described earlier on.

What are gifts caught by the bill? Under clause 35(9) of the bill, a gift includes any property which has been transferred from the defendant to another, directly or indirectly, for significantly less than its value. Where the recipient has given some consideration in return, even though it might be inadequate, the value of the gift is taken to be the difference between the value of the property transferred and that of the consideration given for it. So that it may have come to the minds of persons that drug traffickers may be able to get rid of property by giving gifts to their families and friends and third parties. This bill would take care of such property so

that it will not be easy for a drug trafficker to give away his property so that they would not be caught by the confiscation order.

There are also provisions for the enforcement of the confiscation order and, by virtue of clause 36 of the bill, the court is empowered to impose periods of imprisonment to be served in default of payment. So that if a confiscation order is made and the defendant, the drug trafficker, refuses to pay the amount required to be paid under the confiscation order within three months or within such further time as the court may allow, then the court will impose a term of imprisonment, depending on the amount of the confiscation order, with the term of imprisonment increasing proportionately with the increase in the amount of the confiscation order.

What is interesting is that the term of imprisonment must not be served at the same time, concurrently, with any term of imprisonment that may be imposed for the offence itself. So that if you get a term of imprisonment for having trafficked in dangerous drugs and you have property and a confiscation order is made and you refuse to pay the confiscation order, after you have served the term of imprisonment for the offence, you then have to serve an additional term of imprisonment for not having paid the amount of the confiscation order. It is pretty tight and I think, from what we have heard so far, that it will be extremely difficult for a convicted drug trafficker to profit from his dealings, once the evidence is available on what is his property. Later on in the bill there are provisions for assisting in the investigations and getting material and information from the various sources.

There are additional enforcement procedures under the bill. Under clause 40, the DPP may apply to the court seeking the court's involvement in the enforcement process. Such an application may be made only where a confiscation order has been imposed and is not subject to appeal or the proceedings have not been concluded. On such an application by the DPP, the court may appoint a receiver and empower him to enforce any charge which has been imposed under clause 89 of the bill. Clause 89(4) contains a provision for a charge to be placed on properties by the court, the receiver being the one to enforce that charge.

There are also provisions under clause 39 for the receiver to take possession of any other realizable property, subject to any exceptions or conditions that the court may specify. The court can order those who hold realizable property to hand it over to the receiver or to make him an equivalent payment to the value. It can

empower the receiver to realize any realizable property subject to the court's direction. Thus the court can direct that particular items should be realized rather than others.

Before any charge is enforced, property realized or equivalent payment ordered, the court must give a reasonable opportunity to those holding any interest in the property to make representations as to their interest. This is under clause 40(3) of the bill. The court may direct the receiver to make certain payments out of the proceeds of realization. For example, where it has been necessary to sell property which an innocent third party holds jointly with the defendant, the court can order the defendant to make payments plus compensation to an innocent third party. Otherwise, the money collected by the receiver is to be paid into the court in satisfaction of the confiscation order. Any surplus cash left in the hands of the receiver, after the confiscation order has been satisfied, is to be distributed among those who held property which has been realized according to the directions of the court and, before giving such directions, the court must give all those a reasonable opportunity to make representation.

There are provisions in clause 32 that give the guiding principles governing action by the court and by the receiver and there are also provisions in clause 43 for the confiscation order to be varied after they have been made. This may happen only where it is clear that the proceeds of the realization of all the offender's property, together with the realization property confiscated from third parties, are or will be insufficient to allow him to satisfy the confiscation order in full.

6.25 p.m.

Where the court feels that the best has been done, an order has been made but on reflection or on application, the property realized from the offender and any third parties is not sufficient to pay the amount, then the court can adjust the confiscation order downwards. There are provisions for restraint and charging orders. I will go into some detail on these so that we could understand clearly what they are all about, because the provisions in the bill are somewhat difficult to understand.

The bill also allows action to be taken—and, this is important—in advance of, or during the trial to ensure that assets remain available to satisfy any confiscation order that may be imposed on the defendant. In other words, where an accused is before the court on a drug trafficking offence and before he is found guilty, or before a determination as to guilt or innocence, there is a provision to ensure that

the assets that he may have, remain available to satisfy any confiscation orders that may be imposed, if he is convicted.

Two avenues are provided for this, and these are restraint and charging orders. Applications for either of these orders may be made by the DPP to a judge in chambers. Clause 37 sets out the circumstances under which restraint or charging orders may be made. In all cases, the court must be satisfied that there is reasonable cause to believe that the defendant has benefited from drug trafficking, whether his own or another's drug trafficking. By virtue of subclause (1) of 37, restraint and charging orders may be made where proceedings have been instituted for a drug trafficking offence and have not been concluded. By virtue of subclause (2), orders may also be made before proceedings have been instituted, where the court is satisfied that a warrant of arrest is to be sought. However, in such cases any order made is to be discharged if, in the event, proceedings are not instituted within a reasonable time.

The court may use its powers under clause 38 to prohibit any person from dealing with any realizable property. Such orders may be specific to order a person, for instance, not to dispose of a particular asset or it may be more generally expressed. Subclause (2) allows the court to restrain all property held by a specified person so that it can, for example, restrain, as it were, in advance, assets held by the defendant but discovered only after the restraint order has been made. It can also restrain in advance, property which may be acquired by a specific person after the order has been made.

In making a restraint order, the court may specify conditions and exceptions. This might be thought appropriate to allow for reasonable living and legal expenses, for example, of a defendant. You may impose a restraint, but the court may say, “well, look, I am allowing you to have certain of the assets for the purposes of your day-to-day living and for your legal expenses”. The order can subsequently be discharged or varied as the court sees fit and must be discharged where proceedings for the offence in question are concluded. The court may at any time after making a restraint order, appoint a receiver to take possession of—

SITTING OF THE SENATE

Sen. Alloy Lequay: Mr. President, I beg to move that this Senate continue in session until the conclusion of the Attorney General's presentation. I also move that Standing Order 40 be suspended to allow him the time necessary to complete his presentation since he has already used his allotted one hour.

Mr. President: Hon. Senators, the time of the Attorney General as prescribed in the amended Standing Orders has expired, so the Senate will have to agree to the suspension of Standing Order 40(1) if he is to be allowed more time. The Leader of Government Business in the Senate has moved that Standing Order 40(1) be suspended so that the Attorney General can be allowed to continue and that the Senate continue to sit until the conclusion of his presentation.

Question put and agreed to.

Mr. Smart: Mr. President, I thank you and hon. Senators for giving me the opportunity to complete my presentation. I assure you that we should be out of here before 7.00 p.m.

The bill provides that if property is restrained or is made subject to a charge or is realized, the holder of that property may suffer financial loss as a result. Clause 47 sets out the circumstances in which compensation may be payable. An application for compensation may be made to the court either by the defendant or a third party who held realizable property.

Before the court can award compensation, the following conditions must be met. The proceedings which gave rise to the restraint or the charging order must have ended without a conviction for a drug trafficking offence. Now, remember these charging orders and restraint orders can be imposed before proceedings are instituted for a drug trafficking offence, or after they are instituted and before there has been a conclusion or conviction. So that if those charging orders or restraint orders on properties have been made and it turns out that the defendant was not guilty, there are provisions in the law for compensation for the defendant. There must have been serious default on the part of the person involved in the investigation or prosecution and, but for that default, the proceedings would not have been instituted or continued and the applicant must have suffered substantial loss as a result of a restraint order or charging order or the realization of his property, and the amount of compensation is at the discretion of the court

Now, we come to a new and interesting provision which gives certain additional powers of investigation. It is all well and good to have provision for confiscation orders and charging orders, but it is sometimes difficult and most times it will be difficult to get the evidence. This bill seeks to make it possible, where it was not possible before, for orders to be made to make certain material and information available. This is under the powers of investigation.

Where there are reasonable grounds for suspecting that a given person has carried on or benefited from drug trafficking, the police may apply to a judge in chambers for an order under clause 49, requiring specified material or material of a particular description to be made available to assist the investigation, or for a relative or an associate of a suspected person to make a statutory declaration identifying property belonging to the suspected person.

Before granting such an order, the judge must be satisfied, not only of the reasonable grounds for suspecting the specified person for involvement in drug trafficking, but the judge must also be satisfied that the material is likely to be of substantial value to the drug trafficking investigation for the purpose of which the application is made.

6.35 p.m.

The judge must be satisfied also that it does not include items subject to legal privilege or items which are considered excluded material. Items subject to legal privilege are communications between a legal advisor and his client about legal advice or legal proceedings, provided that such items are not being held with the intention of furthering a criminal purpose. Excluded items include personal records compiled in the course of a business, human tissue held for diagnosis or treatment and journalistic material, if they are held in confidence.

The court must also be satisfied that there are reasonable grounds for believing that it is in the public interest that the material should be made available, having regard to the benefit likely to accrue to the investigation and the circumstances under which the person possessing the material holds it. Such an order that is made to make material available, overrides any obligation of secrecy a person might otherwise have in respect of the material in question, save as to the exceptions already given.

There is also a provision on authority for a search. There are a number of circumstances where access to material may be needed but where it is not feasible or appropriate to apply for an order under clause 49. In these circumstances, clause 50 provides for application to be made to a judge in chambers for a warrant to search the premises on which the material is believed to be held. Such warrants may be issued in any of three sets of circumstances.

The first is that an order already made under clause 49, in respect of the material, has not been complied with. In other words, where the DPP has made an

order for material to be made available and the person has not made the material available, then the DPP can get a warrant to go in and search for that material.

The second circumstance is that all the conditions for making the order, under clause 49, are satisfied—all the conditions that we discussed earlier on for an order making material available are satisfied—but it would be inappropriate to make such an order because it is impractical to contact the persons entitled to produce the material or grant access to the premises or because the investigation might be seriously prejudiced without immediate access to the material in question.

The third set of conditions is that there are reasonable grounds for suspecting that the named person has engaged or benefited from drug trafficking, that the specified premises contain material relating to that person, or to drug trafficking, which is likely to be of substantial value to the investigation but the material cannot be particularized; and that it is not practicable to communicate with any person who can grant access to the premises, or that entry will be refused unless a warrant is produced, or that the investigation might seriously be prejudiced without immediate access to the material.

If a warrant is issued, a police officer may seize from the premises any material, other than the excluded material we talked about or items subject to legal privilege, which is likely to be of substantial value to the investigation for the purpose of which the warrant is issued. He may not seize material which might be useful for other purposes.

There is a provision for Government departments to disclose information. Before that, under clause 50 subclause (6), where a warrant has been granted, the person to whom the search warrant is granted must furnish a report to the judge stating whether the warrant was issued and what was the result of the execution of the warrant. It even goes into detail and says, if a judge who granted the warrant has ceased to be a judge or is absent, then that report must be issued to the Chief Justice. So that we have a number of provisions to safeguard, as we go along.

There is a provision too, for, as I have said, disclosure of information held by Government departments and this is provided for in clause 52, enabling the court to order the disclosure of material likely to facilitate a restraint or charging order or a realization of property order under clauses 38 to 40. The court will also order that any material that is obtained should be disclosed to a receiver appointed in the case.

An order can also be made that all or part of material should be disclosed to a police officer or to the DPP, provided that the—this is in respect of information coming from a Government department—department has been given a reasonable opportunity to make representation and that the material is likely to be of substantial value in exercising functions relating to drug trafficking. Such material may then be further disclosed subject to any restrictions imposed by the court in pursuance of the police officer's duty relating to drug trafficking. Again, any order to produce material from a Government department overrides any duty of confidentiality otherwise owed by the department to certain persons, and obliges any officer of the Government department who may be in possession of the material, to comply with the terms of the order.

We come now to the new offence of money laundering. This offence is set out in clause 48 and it is aimed at those who assist another person to retain the benefit of drug trafficking, whether by laundering the proceeds, concealing them, removing them from the jurisdiction or otherwise. So it is a very wide clause. The offence is defined in terms of "entering into or being otherwise concerned in an arrangement". Those are the words used in the bill. The phrase "otherwise concerned in" broadens the scope of the offence and may, for example, bring within its range, people who advise a drug trafficker on the best way of investing or disposing of his proceeds. The sort of arrangement with which this clause is concerned, is one whereby another person is helped to retain or control his drug trafficking proceeds; or whereby another's drug trafficking proceeds are used to secure funds for him; or to acquire property for his benefit.

There is a crucial mental element. In order to commit the offence, the person entering into the arrangement must know, or at least suspect, that the person he is assisting is, or has been, involved in drug trafficking, or has benefited from drug trafficking. It should be noted that it is sufficient that the person assisting should have received payments in respect of another's drug trafficking activities. He need not ever have handled the drugs himself, nor need the person assisted have been convicted of a drug trafficking offence.

If the person assisting him suspects him of involvement in trafficking, that is enough. Because the laundering offence is itself a drug trafficking offence, by virtue of the definition of drug trafficking in the definition clause of the bill, it will be an offence knowingly to assist a launderer to retain the benefit of his own proceeds of laundering. So that if A assists B who is a drug trafficker, in

laundering his funds, if C also assists A in laundering those proceeds that he got from the drug trafficker, C will also be involved in the commission of the offence of laundering.

6.45 p.m.

Subclause (2) of clause 48 makes it clear that it is not only the actual payments or rewards received in connection with the original trafficking or laundering offence, which may be involved in an offence under clause 48. The offence extends to assisting another to retain the benefit of any property, which in whole or in part, directly or indirectly, represented in his hands, his proceeds of drug trafficking. Where a person or institution whether it be a bank or any other company which might handle a drug traffickers property, develops suspicions that funds or investments are connected with drug trafficking, that person or institution cannot continue to handle the suspect’s affairs without risk of falling foul of clause 48.

On the other hand, it may be against the public interest to close the suspect's account, or otherwise suddenly to stop dealing with him, because that might alert him that he has fallen under suspicion. Subclause (3) of that clause, therefore, offers two kinds of protection to those who inform the police of their suspicions. These would be bankers and so forth. First, such disclosure is deemed not to be a breach of any confidential obligation of confidentiality which the person or institution would normally owe the suspect. Secondly, the person or institution may continue to deal with the suspect's funds or investments without committing the laundering offence, provided either the person or institution has told the police of the intended transactions and the police have consented, or that he or the institution intends to inform the police as soon as possible after the transaction has been made.

So, there are ways out for bankers not to be implicated in the laundering offence; if they come clean, let the police know once their suspicions are aroused. As I said earlier on, there is a mental element involved. They must have suspected or have known that the person was involved in drug trafficking.

Three specific defences are provided for persons accused of a money laundering offence. It is the defence for the accused to prove that he did not know or suspect that the arrangement related to any person's proceeds of drug trafficking, or that it would have the effect of assisting the known or suspected trafficker in the manner prohibited by the offence. It will also be a defence that he intended to disclose the transaction to the police as soon as required under the law

but that he had a reasonable excuse for his failure to do so. Anyone convicted under clause 48 of a money laundering offence will be liable on summary conviction to a fine of $5,000.00 and imprisonment of five years, and on indictment to a fine of $25,000.00 or half the value of the proceeds of drug trafficking involved, whichever is the greater, and to imprisonment for 10 years.

There is also a new offence under clause 53 which is designed to deal with those who tip-off a suspected drug trafficker that his affairs are under investigation. The provision in the bill ties the new offence to circumstances in which an order requiring the production of material has been made, or applied for, under clause 49, or a warrant issued under clause 50. Anyone who knows or suspects that the investigation is taking place and makes any disclosure which is likely to prejudice it, is guilty of an offence.

There are two specific defences provided for in subclause (2) of this clause. The accused must either show that he did not know or suspect his disclosure was likely to prejudice the investigation; or that he had lawful authority or reasonable excuse for making the disclosure. What constitutes lawful authority or reasonable excuse will be a matter for the courts to decide. This defence might, for example, be available to someone who received an order or warrant, but could not himself comply with it and needed to seek the assistance of another. He may have spoken to this other person and that would have been a tip-off, and the person he may have spoken to might have been the culprit. That person would have been advised in those circumstances; the person having spoken to the culprit would not have been guilty of the offence. The maximum penalties are**:** On conviction and indictment, to five years' imprisonment and to a fine of $5,000.00 and on summary conviction, to two years', imprisonment and to a fine of $2,000.00.

Finally, I have completed in some detail what the main provisions of the bill are. There is a provision also for the protection of informers—those persons who assist the police by giving information; to protect their identity from being disclosed before the courts.

This bill as I indicated earlier, complies with the provisions contained in the UN Convention dealing with the convention against illicit trafficking in narcotic drugs and psychotropic substances. We have met the requirements under this convention to which Trinidad and Tobago is a signatory. At least we will have met it if the bill is passed. Trinidad and Tobago signed the convention on December 7, 1989. We have not to date ratified the convention but I have no doubt that once this bill is

passed we would be in a position to ratify the convention. The convention itself came into force in November of 1990 and to date 47 member states have either signed, ratified or acceded to the convention.

The bill very closely follows the provisions of the 1986 Drug Trafficking Offences Act in Britain. I think it is a good thing because first of all, that Act has proven to be very effective in Britain, over the last five years, in the confiscation of the proceeds of drug trafficking in cases where persons have been convicted.

Secondly, there is no point in re-inventing the wheel. If we have an act that has demonstrated it can work; that fits into the jurisprudence and the rule of law to which we are accustomed, it certainly will help us in Trinidad and Tobago, in that there would be precedents and judgments that one can look at and one can apply in our situations. I say for that reason it is also a good thing.

In addition to that, Britain was one of the main countries responsible for the convention. I understand it is the country which pushed the most for the International UN Convention and the provisions of that convention very closely follow the British Act.

In addition, as I said earlier, everybody knows that drug trafficking is an international problem; it is an international crime. It transcends borders so that if there can be harmony in the legislation it would facilitate co-orporation among countries in dealing with this nefarious disease.

6.55 p.m.

Again, I compliment the Select Committee for going in that direction. This Government is certainly not one to follow slavishly what other countries do. What we do is look at what other countries do, and if it makes sense, we follow; if it does not make sense, we do not follow. In this case, I think it makes sense for us to follow.

Mr. President, to deal with this problem, there has to be a lot of co-operation among the countries which suffer from the problem. So that this Government expects to enter into a number of mutual assistance agreements with various countries that are seeking to deal with the menace. In fact, at this time there is a great deal of co-operation between Trinidad and Tobago and the United States; Trinidad and Tobago and the United Kingdom, and Venezuela in attempting to deal with this problem.

With the passage of this piece of legislation—which was a long time in coming, not for want of effort or determination on the part of this Government—I have no doubt that we will be making one further step in our drive to rid our society of this very severe problem.

Legislation is one necessary way of dealing with the problem, and we have taken steps. I have no doubt that in the course of the debate other Members of the Government will indicate what other steps the Government has taken to deal with this problem of drug trafficking.

As you know, Mr. President, the Prime Minister of this country has—from the very day that he became Prime Minister, and we became the Government—taken steps to deal with this problem in various ways, be it rehabilitation, information, and so forth. As I said, that will be dealt with as we go along. Legislation is an important aspect of the solution to the problem but it is not the only step that one has to take.

I have no doubt that hon. Senators—and I see that it is 6.59 p.m; I promise to end by 7.00 p.m.—will support the legislation, and I commend this bill to the Senate.

Thank you very much, Mr. President.

ADJOURNMENT

Sen. Alloy Lequay: Mr. President, permit me, just before moving the adjournment, to compliment Minister Broomes on his maiden presentation of a bill and its successful passage. I think in his presentation there was clarity, purpose, and the voting showed there was a willingness to get consensus, which he eventually got. I think he deserves our congratulations.

I had indicated previously, verbally and in writing, that we are likely to sit tomorrow. There has been a request from the Opposition benches that we do not sit tomorrow. I attempted to get consensus—and everybody has not agreed—but I got consensus that we should not sit tomorrow.

With the agreement of the hon. Attorney General, I beg to move that the Senate do now adjourn to Tuesday, August 27, 1991 at 10.00 a.m, and to indicate the possibility of sitting on Wednesday, August 28, 1991.

In moving the adjournment, may I also say that the Opposition has agreed to concede Private Member's Day next Tuesday, and we will move the appropriate motion at that time.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 7.02 p.m.