

*Leave of Absence**Monday, October 7, 1991***SENATE***Monday, October 7, 1991*

The Senate met at 2.30 p.m.

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

Mr. President: Hon. Senators, I have granted leave to Sen. Horace Broomes, Sen. Haji Ralph Khan and Sen. Salisha Baksh, to be absent from today's sitting of the Senate. I have also granted leave to Sen. Dr. Sahadeo Basdeo to be absent from sittings during the period October 6—26, 1991, he is out of the country on official business; Sen. Herbert Atwell to be absent from sittings of the Senate during the period October 6—20, 1991, he is also out of the country on official business. I have granted leave of absence to Sen. Leonard Bradshaw to be absent from sitting of the Senate during the period October 7—11, 1991.

COMMITTEE OF PRIVILEGES REPORT**Adoption**

Sen. Amrika Tiwary: Mr. President, I have the honour to move a resolution standing in my name on the Order Paper and that is to the effect that the Report of the Committee of Privileges of the Senate, for the 1990—1991 session be adopted.

The Members have already been circulated with that first report which is referred to as MP. Parl. 16/2. This is the first report of the Committee of Privileges of the Senate.

A short while ago, I proposed a small amendment to the effect that a further recommendation be made. I believe the Clerk is in the process of having it circulated. I shall refer to it at a later stage.

Members will be aware of the circumstances in which this committee was appointed and of the fact that it did hold meetings, not only with the hon. Dr. Emanuel Hosein, who complained to this Senate that a report which purported to be an accurate report of a proceeding of this Senate was not correctly reported in the *Express* of March 9, 1991.

As a result, the Senate decided to appoint a committee. The President of the Senate decided that a *prima facie* case had been made out. Three meetings were

held; evidence was heard from the hon. Minister, Sen. Mootilal Moonan and the Acting Hansard Editor, Ms. Jean Sandy. The committee also heard evidence from Mr. Keith Smith, Managing Editor of the *Express* newspaper and Mr. Kevin Baldeosingh who is a staff writer.

The facts are set out in the report. A large part of the article purported to represent the contribution of Dr. Hosein in concluding the debate on the second reading of the Domestic Violence Bill 1991. The report which appeared in the newspaper actually contained a large part of the contribution of Sen. Mootilal Moonan and appeared with the caption "Investigate The Causes" and a photograph of Dr. Hosein. Dr. Hosein complained to the committee that only the first column and first paragraph of the second column could be attributed to his contribution and that 50 lines of the second column did not form part of his contribution. He also informed the committee that the remainder of the article appeared to be excerpts from Sen. Moonan and subsequently this was confirmed, not only by the Hansard Editor who referred to the official report of the proceedings, but by both representatives of the *Express* newspaper.

2.40 p.m.

The committee also learned that subsequent to the publication on March 9 and March 14, in the *Express* newspaper, there was an article headlined, "Senate accepts Hosein's Motion", where the *Daily Express* said that it regretted the transposition that led to the last paragraph of Hosein's address being mixed up with Moonan's. This article suggested that only five lines of the original article published on Saturday, March 9 could not be attributed to Dr. Hosein. Sen. Moonan informed the committee that the section of the newspaper article disclaimed by the Minister was in fact part of his own contribution to the debate on the Domestic Violence Bill.

Mr. Keith Smith, Managing Director of the *Express* newspaper admitted to your committee in evidence that there was a juxtaposition of the contributions of the two Members which was caused by clerical error and failure of the checks and balances within that organization. Mr. Smith sought to assure the committee that, notwithstanding the foregoing, no malice was intended on the part of the *Express* newspaper or its Staff Writer, Mr. Kevin Baldeosingh, who had in evidence, admitted to being the author of the offending article.

Representatives of the newspapers agreed that the subsequent publication of the article headlined, "Senate accepts Hosein's Motion" was not a formal apology, and what was significant is that the purported apology appeared to refer only to

the five lines of Sen. Moonan's contribution, when in fact, according to Minister Hosein and as was confirmed by the Hansard Editor, I believe 50 lines in the second column of that article were not Minister Hosein's.

The committee concluded, therefore, having heard the parties, that the newspaper is in breach of parliamentary privilege to the extent that the article is inaccurate.

The recommendations set out in the last paragraph of this report state that while the committee has power to recommend that a newspaper be debarred from covering the proceedings of the Senate for a stipulated period, it is of the view that inasmuch as this is the first occasion on which a Committee of Privileges of the Senate has had the opportunity to present a final report to the Senate for its consideration, the *Express* newspaper should be reprimanded and that, further, they be requested to exercise due care in reporting the proceedings of the Senate.

It is my view, as a Member of the committee, that not only should the newspaper be reprimanded, but that some adequate apology, together with an appropriate explanation for the breach, should be published in the newspaper. A short while ago I proposed to the Clerk that an appropriate amendment be put before this House and I recently discussed this with Sen. Alexander, also a Member of this committee, who has indicated that he is prepared to second that amendment to the motion. I believe that the actual form of words of the amendment will be circulated to Members very shortly.

It is my view, Mr. President, bearing in mind that this was more than a mix-up of the contributions of two very important persons in the debate on the Domestic Violence Bill: one by the Minister who not only piloted the bill, but who was concluding his contribution, and the other by Sen. Mootilal Moonan of the Opposition Bench. What was significant was that Minister Hosein complained to the committee that he has had similar experience and also when this similar situation had been drawn to the attention of the particular newspaper, no appropriate redress had been forthcoming. What is also important is, as Members will see, the caption of the "Senate accepting Sen. Hosein's motion, that four days after, Saturday, March 9, 1991, when the offending matter was published, rather than five days later, on Thursday, March 14, the *Express* merely referred to the transposition that led to the last paragraph of Hosein's address being mixed up with Moonan's. Up to the time that this committee sat and heard explanations from representatives of the newspaper, up to that time and even up to today, no

appropriate or adequate apology had been published in that newspaper, certainly not to the Minister, for the breach of parliamentary privilege. Against that background, I wish to move that this report be adopted with the amendment, which will be circulated very shortly. I thank you.

Resolved, that the Report of the Committee of Privileges of the Senate (1990—1991 Session) be adopted.

Also that the *Express* newspaper be required to publish an adequate apology together with an appropriate explanation for the paper's breach of privilege.

Seconded by Sen. Allan Alexander.

Question proposed.

Sen. Dr. Ramesh Deosaran: Mr. President, I think that this provides the Senate with a good opportunity to consider the matter of reporting alongside what happens in this Senate.

I have read the report and first of all, I must commend the committee for spending its time on trying to finalize this matter. As I look through the report, my first reaction is that this is a very simple matter. The error is seemingly so, a mechanical one, in that it includes the transposition of part of somebody's speech on to that of another person and certainly, if I understood correctly what happened, Minister Hosein did contact the particular medium and called for some rectification.

2.50 p.m.

Given the facts stated here, it was a mechanical error. Certainly, the newspaper in question should have had no difficulty whatsoever in rectifying what, on the face of it, was a simple mechanical error. It had nothing to do with an attack on the freedom of the press; it had nothing to do with a difference of opinion or an editorial. It was simply a mechanical error. If we have to go through all these proceedings and spend so much time on what really is a simple mechanical error, well Mr. President, I shudder to think what would happen if we really come as a Senate to confront a more fundamental issue affecting the role of the press in covering the Senate proceedings.

I must say, we are all lovers of a free press. We have argued very vociferously time and time again to maintain and preserve the guarantees affecting the right to publish in this same Senate, so we must therefore feel some disappointment when

the very media that we so feverishly try to protect, should show some reluctance to correct what, as I said, on the face of it is a very simple mechanical error.

Mr. President, I know a little about the press. I know how pages are composed. You have these lines in print and you take one line, column by column and you paste it up. Of course, things have been improved by computerization and so forth, but it is the same technique of aligning stories under particular headlines. It is a mechanical process which is what we are now looking at. So it is conceivable that some errors will be committed over time, given the number of pages a newspaper has to compile and, more particularly, with a deadline always hanging over their heads from all these layout artists. So what I believe the editor or person in question, in this case the managing director, should have done, is to quickly make a correction and also publish an apology. That is why I am standing to speak on this issue today, because though it is simply an example, it does give us a chance to indicate perhaps in a mutual, beneficial way what we expect of the press in terms of fairness and in terms of accuracy.

This is what the issue is here. We have to come with a report, move a motion, and yet there is no proper apology. We have good newspapers. I will not say we have the leading newspapers in the world, but those who have the reputation to be the leaders in the world, the *New York Times*, *The Washington Post*, even the *Toronto Star*, on a daily basis, they carry apologies and they carry corrections because newspapers, above everything else, are liable to imperfections because of the deadlines, the bulk of work they have to generate every single day. So it should be, as part of the new art in our local media, if something is demonstrably inaccurate beyond subjective differences, it should be easy and accepted, as a matter of fact, the media should have a policy that a correction be made swiftly and soon thereafter a formal apology, if necessary.

There is nothing wrong with that and a newspaper or television, or radio station for that matter, should not feel itself unduly humbled by offering such a correction or an apology because we are left with a tail-end problem on this particular issue. What happens if the newspaper does not comply? Of course, whoever is at fault is in the newspaper is a matter for the newspaper to work out, but on the face of it—and I do not know how other Senators feel but certainly, there are times when we ought to defend the integrity of the House collectively and I believe this is one such occasion.

Mr. President, I would go so far to suggest, not because other newspaper houses have it, but because of the flow of events, over-time and some of the experiences some of us have had, that we need a referee of some kind in newspaper houses. We cannot totally depend on the whims and fancies, or even the discretion or the judgment of the newspaper persons behind the desk, because quite often when you raise an issue, if only for mere correction, it is taken too personally; it is felt as if they were attacking the professionalism of the man or woman behind the news-desk, whereas it is far from so. You are trying to help the newspaper maintain its reputation by pointing out something that needs simply to be corrected. But this is the culture of this society, undue peevishness even on the face of it when a simple error is made and it deserves to be corrected.

The kind of referee, perhaps, which they should consider is a newspaper Ombudsman or some senior officer positioned as a mediator between the public and the newspaper editorial management where you can be assured of having your complaint properly assessed and if ever there is room or correction or even an apology it may be conveyed to the relevant editor or newspaper authority. Because this is a case that the Hon. Minister took upon himself to raise. I was here when he raised it but I must tell you, Mr. President, there have been so many inaccuracies over time in the newspapers in this country that many of us do not even bother to take them on anymore. It is almost as if it is beyond correction in the total sense because we, individually, and perhaps, collectively, do not relish doing anything that would seemingly undermine freedom of the press, and that is why we have some restraints.

Some of us have suffered in some way or the other but it is not an individual matter for individual redress. I think the matter has now reached a stage where a collective position, perhaps facilitated through this motion, ought to be conveyed to the relevant quarters, because there is no body, there is no agency actually policing the private media. We have something for electronic broadcasting and television and its related aspects coming up—a television authority—but as I have said on previous debates, publication of news is a critical element in this society and whilst it is good to allow the publishers and the editors to write a story how they want and use market forces to determine the value of the sales of their product, certainly, if it wants to be called a profession, publishing houses on journalism ought to have some kind of self-policing arrangements.

Other countries, as you know—I will not call names, but many other countries have press councils. We had one, it is no longer in existence, and even when it was in existence, it was not really up to the task for various reasons which I will not go into right now.

3.00 p.m.

I am shocked, Mr. President, to read that only 5 lines out of 50 lines were chosen in what seemed to be the corrected version. Now, that is really aggravating the issue. If Minister Hosein, whatever the politics are, whichever party it is, it really does not matter, because we are speaking about a matter of professionalism. I think this is a good opportunity, through this motion, to make a comment on this particular point.

Newspaper reporters should be told—those covering Parliament, or the media generally—if a Senator or a Member of Parliament contacts the relevant authority in the newspaper or the media-house and says something is inaccurate, I believe, out of respect not for the person complaining but for the institution being covered, there should be some fixed machinery to initiate a quick investigation and a proper correction. I see nothing wrong with that. On the contrary, the first newspaper, radio station or television station that does that will gain the respect of the total community.

I firmly agree that no malice was intended, because no malice could have been intended in transposition. I do not know if Sen. Moonan's presentation was more brilliant than Sen. Hosein, or *vice versa*, because whenever Sen. Moonan speaks, I listen with rapt attention, I must tell you that.

Sen. F. Hosein: Mr. President, I think it ought to be made clear to the honourable Senate, a number of references have been made to Sen. Hosein. I think it is Minister Hosein. I think we ought to be careful that we do not mix that up.

Dr. Deosaran: If it were you, you would have taken this matter to court, I am quite sure you have the facilities to do so. But the other Hosein is the Minister of Social Services.

Well, as I was saying, if no malice was intended that makes it easier to correct, because then no motive of subversion, no kind of hostility, no mischief was afoot. It was, I repeat, a simple mechanical error. Why would the particular newspaper, or for that matter any other newspaper, want to drag on a matter like this?

Mr. President, I support the suggestion for an apology and an accompanying explanation, because it would be in the common interest, not only Minister Hosein's interest. Thank you.

Sen. Gerald Furness-Smith: Mr. President, I agree very much with what Sen. Deosaran has said. It really should not have come to this.

The aspect of it which strikes me is not the mistake which, in fact, I do not think caused too much harm, distressing though it must have been for both Minister Hosein and for Sen. Moonan. The crux of the matter is the failure to apologize either properly, or at all, and one has to ask oneself: Why up to this day?

It has been my experience, over the years, the press has a great difficulty in putting in a proper apology, and only when the apology has been drafted by counsel as part of a court settlement, does the matter appear in any satisfactory manner. I have asked myself from time to time, "Why is this?" I think the answer is that the press, given the respect we all have for it, and it is real, is inclined to be a little arrogant. They think they are so good, they think they have such power that if ordinary people complain to them, they are inclined to brush them aside. It is a sad comment that that is a human reaction from anybody who is given a little power.

In this case, I do not think it was quite the kind of mistake that Sen. Deosaran was indicating. It was not a question of the rush in transposing columns and so forth. My understanding is that it was a secretarial mistake in that the young reporter who prepared the article for them—for whom, I may say, I have a lot of respect, because from reading his work, he is a highly intelligent and literate young man. Apparently, in dictating his work, must have been making a reference to probably a copy of the *Hansard* report and his secretary got the passages muddled up.

Again, like Sen. Deosaran, that is an error that can happen. One knows, oneself, preparing documents, that is the sort of thing that can happen, particularly nowadays, with the word processors and so forth, mistakes can happen. One would not think anything of it, but why not an apology?

Now, I would support the amendment, but I ask the question, what happens if the apology is not satisfactory? This Parliament is coming to an end, will there be any effective sanction on our resolution today? I am just putting it out as a suggestion to the hon. Members who, I am sure, having heard what we have from

the speakers, so far, we want our decision to be effective. It seems to me that we should make our resolution tied to something a little bit more substantial. I would have liked to have framed the amendment that the *Express* newspaper be fined, say, \$100,000, to be donated to a charity of our President's discretion, or charities, provided that if a proper apology is published in the newspaper within seven days of the date, to the satisfaction of our President, then the fine will be reduced to nothing. If not, the fine will stand. I put that forward for consideration for Members. Thank you.

Sen. Dr. Prakash Persad: Mr. President, the two previous speakers mentioned that these problems arose from either secretarial problems or mechanical problems. But I want to look at it from a slightly different angle, because my experience with the press has been slightly different. Might I indicate, before I go into that, that I do agree with the committee's report, and I do commend them on this work.

Now, Mr. President, I would like to draw an example of something that happened to me and to indicate why I think that more drastic action is needed. Subsequent to my debate on the National Carnival Commission Bill, I was quoted in the *Sunday Guardian* as having introduced race in the debate, and it was so stated as to imply that I am a racist. As the hon. Sen. Furness-Smith, indicated, if you send a letter phrased in legal terms the reaction is quite quick. So I did so, and I got an apology the other Sunday. Mr. President, as if the newspaper must have the last word, they spelt my name right everywhere in small print, but at the bottom, where my signature appeared as to who sent the letter, they spelt my name wrong: instead of "Prakash", "Pragmash", as if to have the last say. It sounds childish and trivial, but I find it hard to believe that a reputable newspaper, will do simple editing, name-spelling—bearing in mind that they spelt my name correctly four times or so above. It would seem, as the hon. Senator has pointed out, the newspapers seem to think that they are too big. Even if they apologize, they must have the last say.

Also, Mr. President, I would tend to believe that this House should look seriously at the accuracy of reporting. Maybe what is needed is more of an Ombudsman. Maybe we need to take drastic action. Because, even when they apologize, as they did in my case, notwithstanding that they spelt my name incorrectly, they create an image of you to the general public.

Now, my question is, is that a design or is it by accident? The reason I raise the issue is that when I spoke to the reporter concerned with this matter and asked him, "But I made no such statements. How could you say that I made such a statement?" He told me, "Well, did you not make such a statement?" I said, "No. Were you there?" He said, "No". I said, "Did you read the *Hansard* record?" He said, "No".

So Mr. President he was not here when I was speaking, he did not have the courtesy, or maybe, as Sen. Deosaran pointed out, did not have the professionalism to verify the accuracy of what he was saying. Nevertheless, he said what he had to say, an apology was printed. But, Mr. President, even though an apology was printed, people do not read apologies. Even if some read apologies, some believe what he said, and if, indeed, he has set out to do mischief, then he certainly achieved that purpose. My question is: What are we going to do about this? That, if reporters do not check the accuracy—and this certainly was not a mechanical matter, he did not even check the *Hansard*, so he could not use the excuse that he got the *Hansard* pages mixed up, he could not have said that—what is the House going to do on such matters?

Now, my impression and belief is, that if media think that they can make and break politicians and otherwise, this House, with particular reference to proceedings in this House, must take very firm action. Media sell, and it hurts a Member of Parliament with inaccurate reporting—like I said, in my case I am convinced it was malice, because the reporter indicated to me, "But you said a lot of things that could be interpreted". Now, what the reporter wants to interpret is his prerogative. But when he is reporting Parliament, a reporter ought not to report his opinions or let his bias prejudice his reporting, he ought to report accurately what takes place in the House. This is what he ought to do.

I would go along, with firstly, calling for a ban on the reporter covering the proceedings in such instances. Because in the first instance, if a reporter is not a party to either the debate, or does not check the *Hansard* then they ought to be banned. He shows a complete disregard for this House.

Also, Mr. President, if his editor and his newspaper have such employees in their employ, then I think they should be made to pay, also, because they have a responsibility to ensure that the people whom they choose should be accurate and professional. Therefore, I would suggest, and I would agree with Sen. Furness-Smith on this, that a fine be placed on the particular newspaper or a ban for a

period of time be placed on the reporter to make sure that he cannot come and report the proceedings in Parliament. It is about time that reporters realize that if they are here, they are here to report accurately. Most of the dailies are read every day and people look forward to accurate reporting of what is taking place.

Mr. President, I do not want to go into talk of conglomerates and who owns the newspapers and whether it is in their interest, *et cetera*, but the fact is that we are guaranteed freedom of the press in this country. For a democracy to survive, for a democracy to prosper, there must be freedom of the press, and that freedom of the press must not be subverted. Trinidad's situation is a bit unique in that the two dailies are controlled by two rather large business enterprises. Now, let me state again, clearly, I am not against business enterprises nor am I against enterprises. I believe in capitalism and I believe in democracy, firmly.

But, Mr. President—I draw a hypothetical situation—that if a party were to come into power, or if there were a party whose ideology might be perceived by these business enterprises who own the newspapers to be inimical to their intent, could we expect honestly to have accurate reporting? Could we expect these newspapers to reflect fairly the views of that party which they believe to be inimical to their interests? This is an important question that we must address. If our democracy is, indeed, to survive, these issues must be addressed.

So with these few words, Mr. President, I will end by saying that I agree with the report but I will go one step further, and I would call for the banning of the reporter. I would also call for some mechanism to be set up by this House, some sort of joint meetings with the press and its reporters to set out some sort of guidelines as to how they must conduct themselves, and how they must report fairly and squarely the issues and the debates in Parliament. When such guidelines are flouted, when there are inaccuracies, then they must pay the price, and they must ban the reporter in question, the newspaper must be fined and/or banned from this House for a particular period of time. I thank you.

Sen. Wade Mark: Mr. President, allow me to make a few brief remarks on this particular matter. Some time ago, when I made my presentation on the Telecommunications Authority Bill, I made reference to the fact that sometimes actions taken by organizations and actions taken by individuals can serve to undermine the very institutions and organizations that we are seeking to promote and advance as we deepen the democratic process in Trinidad and Tobago.

Therefore, it is always important before critical decisions are taken that the major actors involved in those decisions be adequately informed, and at least have at their disposal the kind of information that would allow them to take decisions that would be in the best interests of the organization or at the higher level, the nation.

Mr. President, so it is with any organization, whether it is newspaper, industry, whether it is the cabinet of a country. We need to, at least, be properly informed and, therefore, when reports are being produced, when reports are being printed or published, at least what would be expected is an accurate reflection, as far as is practically possible, of what has been said or what has been debated, or what has been discussed at the level of the Senate or at other levels in society. There are times, Mr. President, when errors can be made, and I am certain that people who understand the newspaper industry know that you can have a situation where the journalists who are involved in that exercise can make errors, but the important point here is that when errors are made, as far as possible, if the system within the industry is accurate, if the system is well-organized, if the machinery is well-oiled, then the checks and balances established would at least seek to eliminate, as far as possible, those errors that were, in fact, made by the particular journalist or the particular reporter.

In this instance, we had a situation, as reported, where a statement was made, but a confused article printed. However, I am certain that what most of us would have looked forward to was at least some kind of—not necessarily a retraction—but subsequent to the article being printed, the *Express* newspaper, in this instance, ought to have reproduced the corrected version of what was, in fact, printed in their newspaper at the time.

I am certain when the *Express* appeared before the committee, they would have at least taken some guidance, or taken some guideline from what was being discussed. So that what we are discussing here today would not have really been as harsh as is being proposed.

Mr. President, I feel that we cannot argue too much on the point of a newspaper committing an error and reporting inaccurately, proceedings of the Senate or somewhere else, and calling on that newspaper to make an appropriate retraction, an appropriate apology. But what is a bit confusing to me is that we have a report indicating that a particular line was agreed upon but it seems as if it was an afterthought because the same day that we are going to debate this report, we have a late recommendation being introduced.

Now, I have a difficulty with that. I think that, for instance, if a committee is sitting, and a committee agrees to a particular line of action—because as I look at this report, the committee did, in fact, agree with a particular line of action, and the committee recommended that the newspaper in question be reprimanded, and that, further, they be requested to exercise due care in reporting the proceedings of the Senate—I feel that would have been adequate. But then we have this late amendment being introduced. I do not know, Mr. President, from your own experience, whether this is a normal practice in the Senate.

Mr. President: I am glad that you gave me the opportunity. It is the first time that a report of a committee of privileges has been brought—for a very long time, indeed. The procedure is that when a Member of Parliament considers a matter a breach of privilege and raises the matter, it is for the presiding officer in that House merely to be satisfied whether or not a *prima facie* case has been established. He does not decide whether a breach of privilege has been committed or not.

If he is satisfied that the Member has established the *prima facie* case, he refers the matter to the Committee of Privileges. The committee is summoned. When the committee meets, it will consider whether the *prima facie* case was well founded, and whether it would require further investigation. Then they will call in the Member who made the complaint and the people against whom the complaint has been made.

Now, the committee only has power to report and recommend what form of punishment should be taken. The final form of punishment or penalty, whatever you call it, must be for the whole Senate to decide when they adopt the report. So that, at this stage, when the report has come to the House, it is in order for the whole body to decide upon the final penalty to be agreed upon.

Sen. Mark: Yes. Mr. President, I would say that it was very unfortunate what, in fact, transpired. I feel that, as far as possible, the newspaper in question, the *Express*, given what had transpired and what is transpiring here, would have to exercise extreme care and caution when they are, in fact, reporting proceedings from the Senate in the future so that the kind of inaccuracies that were reflected in this article reported on Saturday, March 9, 1991, would not be repeated in the future. At least the journalist in question, and I would say the whole regime at the *Express* that is responsible for the final product that gets into the newspaper, should be more careful. They should be able to do the proof-reading that is necessary to ensure that the kind of embarrassment that was

caused, that resulted in this matter being brought to the Committee of Privileges of the Parliament would not repeat itself in the future, and I would want to indicate that the newspaper, as recommended, be strongly reprimanded.

I do not know to what extent, as Sen. Furness-Smith indicated, if, for instance, you call for an apology, what form this apology is going to take. We may make a blanket kind of recommendation here, as proposed by Sen. Tiwary, that the newspaper be required to publish an adequate apology, together with an appropriate explanation, for its breach of privilege. But what does this really mean?

Suppose, for instance, the *Express*, tomorrow morning, based on the decision we take here today, produces some kind of apology that both Sen. Mootilal Moonan, as well as the Minister, are not in agreement with, what do we do? I think Sen. Furness-Smith proposed a fine, but I think that stretches it a bit far, at this time. I really believe, that, as a Senate, we will need to properly determine, once we adopt this report, what we consider to be an adequate form of apology in the context of the error committed by the *Express* and, therefore, would need to say that, at some point. We will have to look at that, so that, for instance, when the apology does come, it would not only be satisfactory to the Minister and the Senator involved, but it would be satisfactory to the Senate.

3.30 p.m.

Mr. President, I think there is a culture of irresponsibility and, what I call, immaturity, that pervades very critical institutions in our country. Somehow you get the impression that things are taken for granted on many fronts. This culture of irresponsibility is not only confined to the newspaper industry at times because there are very good journalists of whom all of us are proud, but we know also that there are other journalists who are inadequate to the task. You have emerging in the society, not only in the field of the press but in many other areas, a kind of culture of irresponsibility manifested in the kind of immaturity and in other ways.

I feel that if the institutions and organizations were to take their responsibility in a more serious way, the mediocrity that has passed, and continues to pass, in many institutions of this country would be significantly reduced and we would move from mediocrity to a more professional level in our society. I feel that once we move toward that particular height or once we seek to scale those heights where we would move towards higher ideals, where we would focus more on professionalism, where we would be concerned about standards, I think that not

only the industry of journalism but many other institutions and organizations of our country would be able to perform admirably and adequately for the entire country or the entire nation.

Mr. President, in closing, I would like to again indicate that it was a most unfortunate development. My view is that these things happen from time to time. It is important that when they do happen, and it is drawn to the attention of the particular organization, that they seek to understand the conditions in which it took place and ensure that such an error, or errors, are not repeated in the future, so that we move from a lower to a higher level in terms of our standards and in terms of our professionalism.

Thank you very much, Mr. President.

The Minister in the Ministry of Industry, Enterprise and Tourism (Sen. Dr. The Hon. Surujrattan Rambachan): Mr. President, perhaps I am a little bit different in my view of what took place. I can see such an error occurring in a newspaper, and what upsets me though, like I think upsets all Senators, is the fact that the newspaper did not move as hastily as one would have expected, to issue the formal apology that they should have issued.

I want to disassociate myself, in this Senate, with an impression created by Sen. Prakash Persad, with respect to his statement, “that the reporters paint the image that they want of you.” Am I interpreting him right?

Assent indicated.

I want to be very careful as a politician, and I want to stoutly defend the right of reporters and their right as professional journalists to interpret politicians and political behaviour in the manner in which it is presented to them. From the moment you enter public life, and political life, you enter the realm of public scrutiny, and every action, every innuendo, every behaviour, every statement, every speech, every word that you utter, becomes one for interpretation by journalists and their right to interpret as they see fit. Equally, it is the right of the politician—

Dr. Persad: Mr. President, on a point of order. The Minister is misquoting me. I stated specifically with reference to the reporting of proceedings in the Senate, that they should be accurate. I think he is extending the picture outside, which I did not do and, therefore, he should be careful in his statements.

Dr. Rambachan: Mr. President, if I remember what the hon. Senator said, he said that the newspaper painted him as a “racist” and that is how they interpreted him in terms of what he said on the National Carnival Commission Bill.

Sen. Persad: On a point of order. What I said was that a particular reporter did so; the Minister is distorting my statements.

Dr. Rambachan: I asked him if I was quoting him correctly and he said I was quoting him correctly. It is useless in terms of engaging in any cross-talk because his end is drawing near.

I rise to stoutly defend—and I do so—the right of a journalist to interpret and to write about politicians' behaviour. In this society, people depend on newspapers and good journalists, as we have in this country, to help form their opinions about politicians, political parties and about Governments, and I do not think that, as politicians, we should, in fact, be challenging that freedom which journalists have, and perhaps the only freedom which they express in terms of how they see the society from where they sit, and from their point of view.

Mr. President, I am very tired, in this Senate, of hearing big business being criticized for owning newspapers. Who says that if a small man owned a newspaper that he would not be equally guilty of the offences being talked about, as big business? It does not mean that ownership of big business means either bias reporting or non-bias reporting.

If you look at Radio Trinidad, for example, that runs some of the talk shows from 7.00 p.m. to 9.00 p.m., 9.00 p.m. to 11.00 p.m., or 4.30 p.m.—to which I try to listen—you will find that some of the programmes most critical of the Government of Trinidad and Tobago are those programmes run by Radio Trinidad. Does it mean that the Government has to be annoyed? No, the Government is not annoyed. People will form their opinions. If we want to guarantee freedom of expression, if we want to ensure maturity, if we want to ensure growth, if we want to ensure the broadest free expression in the society, then surely let us allow—

Sen. Furness-Smith: Mr. President, the issue here is surely not the general rights of freedom of the press. The question is the report which has indicated quite clearly that it is not a question of opinion at all. This is a totally inaccurate factual statement and the only thing the committee is being concerned about is a lack of willingness to apologize. That is all. I submit that the hon. Minister's submissions are irrelevant.

Mr. President: Hon. Minister, I think things have been going quite well, so far. I just want to remind the Senate that we are on a very specific matter—we do not want to wander too much. We are dealing with a specific complaint made by Minister Hosein which was referred to the Privileges Committee, and thoroughly investigated. Some passing reference to some similar cases is fine but we do not want to go into any detail otherwise.

Dr. Rambachan: Mr. President, I was referring specifically to what Sen. Persad said because I do not want to be associated with that. I do not want it to be said that this politician is afraid of any journalist creating images or interpreting what he had to say from the journalist's point of view in accordance with the journalist's rights.

Thank you very much, Mr. President.

Sen. Dr. Martin Sampath: Mr. President, I assure you I shall not stray from the matter at hand. I do not propose to repeat what has been said, especially by the Senators of the Independent Benches and the Opposition. Some of them have been repetitious already, so I want to say I agree with most of what has been said.

3.40 p.m.

One is trying to explain how this mistake arose and I think we have been very gracious and merciful in attributing this merely to a transposition of type or some secretarial error. I do not think we must be entirely as gracious as that. I, too, have been in journalism for many more years than I care to remember. I have had my stuff printed from the days of Flatbed—I wonder how many members of the press here remember those days or were here in those days—Flatbed, then the rotary press, offset printing and so forth. My experience is that there has been a certain miasma permeating the editorial room which is typified by the old aphorism that if a dog bites a man it is not news, but if a man bites a dog then it is news. In other words, unless something is sensational, it is not worth printing. This is the miasma permeating the atmosphere.

So that if Sen. Mootilal Moonan's contribution is put under his name, there is nothing sensational about that, but if it is put under the name of the Minister, it is sensational and it is likely then to pass the purview, the criticism and the proof-reading of the sub-editors because it is sensational. So a mistake which starts here, goes right through.

Sen. Furness-Smith: May I ask the hon. Member whether he is putting Sen. Moonan in the position of the dog or the man?

Dr. Sampath: I just told my colleague here that I was expecting Sen. Furness-Smith to make a remark of that sort. Now of course, it is something which I do not propose to answer. I have had some experience with pets and I do not propose to give the Senate the benefit of that particular experience in this particular instance.

Now, if I may continue. We have noticed here that when something which is likely to be sensational is uttered by anyone—and I will give three examples in chronological order—the first one was made by Sen. Furness-Smith some time ago. It was a very small part of his contribution on the Dangerous Drugs Bill. The rest of it was magnificent but he said something about hanging. I told my colleague on my side who is not here today, that, “look out, that is the headline tomorrow.” I do not remember whether it was in red ink or not, but that was the headline. Then when my dear professional and senatorial colleague, Sen. Sealey, in a very small aside almost, spoke about abortion, that became the headline for weeks and weeks afterwards.

I wish Sen. Mark would not leave because I am referring to him now. When Sen. Mark spoke about conflict of interests on a recent occasion, what did the press carry? What was the headline? “Senator talks about conflict of interests” and a tremendous seven or eight-inch double column appeared. But Sen. Atwell who pointed out that there was no conflict of interests got a little piece at the end. It happened in both newspapers. I believe it was also in the electronic media.

So that I do not wish the members of the press present here to think we are criticizing them as such. We, too, have been journalists; we too do research; we, too, have things published and we, too, have suffered from sub-editors not carrying what we put in. We sympathize with them, but I am pointing out that they have to be a lot more careful and they must pursue their stories through to the time when they appear in the newspapers right down to the final printing.

You have noticed here that excellent contributions made by the Government side do not get the coverage to which they are entitled, but something sensational said by Members, especially from the lower bench on the opposite side, get most of the headlines and most of the publicity. Now, this is something that I would ask them to be very careful about. The electronic media do the same thing. On the television you do not get sufficient of the facts, of the meat of the debate carried,

you only get the sensationalism being carried. After all, there is *Hansard* which can be looked at. But we have a breed of journalists today who do not appear to be as active or perhaps as research-minded as they ought to be.

When these former colleagues of mine come in here, it seems to me that they are looking for the easy way out. If somebody has prepared an essay outside and comes in and reads the essay they are happy because they ask for the essay, and they get it and they print it. But a Member who makes an *ex tempore* speech here; they may talk about the best things in the world, and very little is carried in the newspapers. I do not want to use the word “laziness” in their connection, it is a very harsh word but sometimes they are inclined to be not as industrious as they ought to be.

In the particular instance—I do not want to impute ulterior motives to the mistake that was made—but let us remember that it is possible because the reporters were not as industrious as they should be, and did not follow up this carefully, that is why the mistake was made.

I support the view that harsh measures should be taken in this particular instance, if only to alert everyone from the bottom up, from the cub reporter to the highly professional reporter, the sub-editor, the editor and to the shareholders of the newspapers, that this Senate is empowered to take strong action when the time calls for it. Thank you.

Sen. Mootilal Moonan: Mr. President, I am of the opinion that this Privileges Committee should give the *Express* a firm warning but that the newspapers should publish it as a headline on the newspaper and paid advertisement on all the television stations, and all the newspapers saying that they have made a mistake.

We have very intelligent lawyers in this Senate and they should draft a proper apology so that they would not be going on the sideline and saying something that is right and something that is wrong, and when tomorrow comes, we have to correct it, and there is a long debate on this issue. It costs a lot of money for us to sit here and deal with issues like this. I believe that freedom of the press should be given a chance. We should not penalize them at this point in time. They should be big. A big person should have no fear to apologize. The newspapers carry a big circulation and they should not be ashamed to apologize. They should apologize to the nation, to the Senate and to the Government of this country and to everybody because they have made a mistake. I repeat myself, that all the television stations should carry the apology. It should be a paid advertisement by the newspaper. We

should not be so harsh because probably this young writer might be penalized by the management and may lose his job. We are not here to make people lose their jobs; we have to teach them certain things; to forgive them, to make them better people and I think they will learn if you tell them this. Some of these young writers are inexperienced and they do not know the consequences of these things. We, as more experienced people in this Senate, should try to advise them instead of penalizing them. Thank you very much.

Sen. Fyard Hosein: Mr. President, I am grateful for the opportunity to intervene very briefly in this debate. I want to indicate that it appears to be a consensus in this honourable House that there has been some breach of privilege on the part of the *Express* newspaper. Consequently, I think that a remedy should be put into place that is commensurate with the breach of privilege which has taken place. I agree with what has been said by most Senators that this remedy should not be left at large to the newspaper concerned, but rather some kind of mechanism should be devised with a degree of precision with which all persons concerned can be sure of what is expected of the newspaper in these circumstances.

I think it should take the form of an apology that should be published in a prominent position in the newspaper and preferably on the front page, and that the terms of this apology should be settled between the Chairman of the Privileges Committee and the Editor of the *Express* newspaper. So that we can have some kind of uniformity, the nature and the extent and the wording of the apology can have a relationship between what is said in the apology, and what was wrongly published in the newspaper.

3.50 p.m.

In addition to all of that, there should be some kind of default provision—to deal with the situation which may not occur at all, but for which provision has to be made—for a fine; a contribution to a charity in the event that the mandate of the Senate is not properly carried out. In those circumstances, I respectfully suggest, for acceptance by this honourable Senate, that the following amendment be considered, in respect of the breach of privileges:

"The *Express* newspaper be required to publish, within 14 days of the adoption of this report, an apology, on its front page, for two consecutive days, together with an appropriate explanation for the newspaper's breach of privilege.

The contents of the said apology and the explanation must be agreed upon between the Chairman of the Privileges Committee of the one part, and the Editor of the *Express* newspaper of the other part.

In default thereof, the said newspaper do pay the sum of \$50,000 to a charity or charities to be designated by the President of this Senate."

Seconded by Sen. Prakash Persad.

Mr. President: Honourable Senators, there is an amendment proposed by Sen. Fyard Hosein and seconded by Sen. Dr. Prakash Persad which he has read in full. I believe you all understood the amendment. The amendment as well as the original motion, are now before the Senate for debate.

Sen. Spence: Mr. President, I agree with most of what has been said with respect to the particular issue, but I would just like to make a comment on the amendment that is being proposed. I do not believe that the terms of the apology should be agreed between the two parties. The terms of the apology should be acceptable to the Senate. Therefore, I would say:

"...acceptable to the Chairman of the Privileges Committee acting on behalf of the Senate..."

But not just an agreement between the two.

Sen. F. Hosein: Mr. President, may I just point out to Sen. Spence, that is contained in the amendment. That the terms of the apology be agreed between the Chairman of the Privileges Committee and the Editor of the *Express* newspaper.

Sen. Spence: That is what I do not agree with. I do not agree that the Editor of the *Express* should come into our acceptance of the apology.

Sen. Furness-Smith: Mr. President, surely, it should be written in a form acceptable to the President. You do not need agreement.

Mr. President: To reiterate what I said earlier, when Sen. Mark was speaking, Sen. Spence is on the right track. It is the Senate, as a body, to finally determine the penalty to be imposed. It could reduce or increase the penalty recommended by the committee. So that in fact, the apology would have to be one acceptable to the Senate. It would be sent therefore, to the President of the Senate who would make arrangements and discussion to have it accepted.

Sen. Tiwary: Mr. President, I am grateful to all Members for their contribution and I do wish that on more occasions we can find consensus on matters that come before the Senate.

Everybody agrees that whether it was a mechanical or secretarial mistake, really, we also had to consider what was the subsequent conduct of the people who committed the error. When you look at their subsequent conduct, then you are able to determine whether or not a penalty ought to be imposed, and if so, what kind of sanction.

For the record, I should also point out that when the Managing Editor appeared before the committee, the Chairman of the Privileges Committee drew to his attention that to date no apology or explanation had been published, several months after the complaint of breach of privilege; the Chairman of the Privileges Committee also drew to the Editor's attention that while the Senate or the committee did not have the power at this stage to call upon them to publish an apology, that if some appropriate apology was published, the Committee would take that into consideration.

This took place, I believe, on June 12, 1991, before this committee of Parliament. What is significant is that we are in October. The report of the Privileges Committee was laid in Parliament since September 25, 1991. To date, there has been no reference in the *Express* newspaper of any attempt or intention to publish any explanation. What is also significant and what all Senators are agreeing to, respectfully, I believe, is to whom much is given, so much is required. While the print media must understand that they have a very, very powerful machinery, they also have a grave responsibility.

In these circumstances, where a complaint was drawn to their attention since March—motion moved in the Senate a few days later, since the middle of March—the newspaper appeared before the committee which heard the case against it; and Mr. Keith Smith, the Managing Editor, very readily said "If that is what you want, we will publish that". Whereupon the Chairman of the committee indicated that we did not have the power to require the newspaper to do anything. But would that not have been the correct step or the next step to have been taken. Mr. Smith readily agreed with that, but he did confess that perhaps the initial reluctance to publish an apology was one of the characteristics of a certain kind of journalism.

I would say, respectfully, that I support the amendment to the present motion which is before the Senate. If the Senate is so minded and if it is in order, I wish to

withdraw my amendment and seek instead to support Sen. Fyard Hosein's amendment in the last part.

What is important for hon. Senators to recognize is that if the report is adopted, and the motion is accepted in accordance with Sen. Hosein's amendment, we are really making two statements. One would be the professionalism and the high standards of journalism which we in this country expect; we want to emphasize that to all those who have responsibility for disseminating information, particularly, information on the proceedings of Parliament.

The second point which must also be emphasized, is if there is a directive which the Parliament gives, with which a newspaper fails to comply, one must consider if that is not a further contempt of the proceedings of Parliament or a further lack of respect which that institution has for this, the highest court of the land.

4.00 p.m.

So while Senators may be very reluctant to impose any kind of penalty, bearing in mind that, as Sen. Deosaran pointed out, if you have committed an error, what is the least that is required; common courtesy would have required that when it is drawn to your attention that you publish some appropriate explanation therefore. That not having been forthcoming, Senators have agreed that a breach of parliamentary privilege has taken place. I therefore respectfully ask Senators to consider adopting this report subject to the amendment moved by Sen. Hosein and to the effect, that an appropriate apology in a form acceptable to the Chairman of the committee, on behalf of the Senate and to the Editor of the newspaper, on behalf of that newspaper, be published within 14 days of the adoption of this report and that it is to be borne in mind that the sanction which is being imposed, is only being imposed in default, and that is in the event that the offending publisher chooses not to comply with the directions of the Senate.

In those circumstances, I beg to move.

Sen. Hosein: May I indicate that I have accepted the amendment, with your leave, of Sen. Spence, and therefore, I have amended my amendment appropriately so as to achieve some kind of consensus on the issue.

Mr. President: Hon. Senators, first of all, does the Senate grant leave to Sen. Tiwary to withdraw the amendment originally proposed?

Question put and agreed to.

Mr. President: I will first propose the amendment proposed by Sen. Fyard Hosein and seconded by Sen. Dr. Prakash Persad. If that is accepted, I will then put the question on the motion, as amended.

The amendment is that in the resolution add the following words immediately after the word “adopted”, appearing at the end thereof:

“The *Express* newspaper be required to publish within 14 days of the adoption of this report, an apology on its front page for two consecutive days, together with an appropriate explanation for the newspapers breach of privilege.

The contents of the said apology and explanation must be submitted to the President of the Senate in sufficient time to allow the newspaper to comply with the required time herein.

That in default thereof, the said newspaper do pay the sum of \$50,000 to a charity or charities to be designated by the President of the Senate.

Sen. Alexander: Before you go, Trinidad Express Newspapers Limited, that is the correct entity.

Mr. President: Trinidad Express Newspapers Limited is the newspaper to which we are referring and which is referred to in the resolution.

The motion as amended, reads as follows:

Resolved that the report of the Committee of Privileges of the Senate 1990—1991 session, be adopted subject to the following being added to the recommendation:

That the Caribbean Communications Network Limited, formerly Trinidad Express Newspapers Limited, be required to publish, within fourteen days of the adoption of this Report, an apology on its front page for two consecutive days together with an appropriate explanation for the newspaper's breach of privilege, in a form acceptable to the President of the Senate.

In default of such publication the said company shall pay the sum of fifty thousand dollars to a charity or charities to be designated by the President of the Senate within thirty days of the adoption of this Report.

A draft to the said apology and explanation must be submitted to the President of the Senate for consideration within seven days of the date of the adoption of this report by the Senate.

Question on amendment, put and agreed to.

Question on original motion, as amended, put and agreed to

Resolved:

That the Report of the Committee of Privileges of the Senate (1990—1991 Session) be adopted.

**OMBUDSMAN'S OFFICE
(LEGISLATION REVIEW)**

Adoption

Sen. Fyard Hosein: I beg to move that the Report of the Joint Select Committee of Parliament appointed to review legislation establishing the Office of the Ombudsman in order to strengthen that office, so that it may provide more effective resolution of the citizens' grievances and curb bureaucratic abuses be adopted.

Hon. Members will recall that on January 16, 1990, this honourable Senate agreed to the following resolution:

"Be it resolved that this Senate consider that it is expedient that a committee of both Houses be appointed to review legislation establishing the Office of the Ombudsman in order to strengthen that office so that it may provide more effective resolution of citizens' grievances and curb bureaucratic abuses.

And be it further resolved that this Senate appoint and nominate a Select committee comprising of the following five Members to join with a select committee of equal number, appointed and nominated by the House of Representatives to review the matter referred to above and that the committee be authorized to submit interim reports."

Hon. Members would recall that this committee of both Houses was appointed pursuant to a provision in the NAR's election manifesto of 1986. It is in pursuance of this, that this joint select committee was appointed. The committee appointed by this hon. Senate sat and focussed principally on two problems.

Firstly, the financial administration of the Office of the Ombudsman and secondly the absence of any real mechanisms for review thereof and giving effect thereto, recommendations contained in the annual report of the Ombudsman, and

the special reports made to Parliament by him under section 94 (4) of the Constitution.

The committee that was appointed took into consideration the fact that the Constitution Commission which began its work in 1987 had an exhaustive review of the legislation, touching and affecting the office of the Ombudsman and, in fact, made several recommendations with effect to that office.

The work of this particular joint select committee focussed principally on the two problems mentioned before, and as a consequence the following recommendations are being made to this honourable Senate:

Firstly, that the office of the Ombudsman should continue to be serviced by Parliament in respect of financial matters.

Secondly, that the Standing Orders of both Houses of Parliament be suitably amended to provide for the establishment of, and procedure for a joint parliamentary committee, to consider and report on all reports submitted to Parliament by the Ombudsman in accordance with the Constitution. This committee should have power to send for persons, papers and records.

4.10 p.m.

Although the amendment to the Standing Orders of both Houses of Parliament is desirable to give effect to this recommendation, the committee is of the view that, until such time that the required amendment is effective, there is adequate provision in the existing Standing Orders of both Houses for the establishment of this joint select committee, providing that this report is adopted by both Houses. Mr. President, I beg to move.

Resolved: That the Senate adopt the Report of the Joint Select Committee of Parliament appointed to review legislation establishing the Office of the Ombudsman in order to strengthen that office so that it may provide more effective resolution of the citizens' grievances and curb bureaucratic abuses.

Seconded by Sen. Wade Mark.

Question proposed.

Sen. Dr. Ramesh Deosaran: I have a few words I would like to say on this motion and while I do so I think we cannot ignore the fact that—and I recall your own views on this matter—it is not always that we spend enough time looking

after the business of the Parliament itself, in this case, the Senate. In fact, if I recall correctly, that is the reason we have put aside this particular afternoon.

I have my few comments on the question of the Ombudsman and again I would like to extend my commendation to the Joint Select Committee for the work that they have done.

I remember it was in the 1970s when the country went into a fit of enthusiasm for an ombudsman. People of all walks of life; all shades of political opinion felt that with an ombudsman—be it after the Swedish model, the Canadian model or another model—once we put that ombudsman into the proper constitutional position, much of the hardships that many citizens were experiencing would be put to rest. I remember in the first annual report for the period, December 6, 1977 to December 5, 1978, by the Ombudsman, he stated:

"I intend to pursue the question of delays vigorously in the ensuing year with a view to obtaining the fullest cooperation of Ministries and Agencies in responding promptly to correspondence directed to them from this office"

When I come over the years to the report for 1989, what I read is really cause for great apprehension, more specifically, over the effectiveness of an ombudsman in this country. When I review the estimates of expenditure for this year—because I do not want to be concerned in a vacuum, after all, if it is a cheap exercise and it is providing some kind of employment for a number of our citizens, I do think that Sen. Mark would agree, no great amount of love is particularly lost. In my own review of the estimates, I see it costing, this year particularly, in the vicinity of \$3 million. So, taking a cue from my English colleague whose concern over public expenditure is so well maintained, I believe that we ought to see if we are getting our money's worth in this particular exercise of the Ombudsman. Of course, the number of complaints over the years has dramatically increased, but the proportion of cases solved has not dramatically increased at all. And with the multifarious Government agencies being established year after year, I believe the burden on the Ombudsman's portfolio is accordingly increased.

My reason for wanting to speak on this matter is not so much, on this occasion, to assess the work of the Ombudsman or the efficacy of his role, but really to pose the question that, if the Ombudsman is responsible, as he constitutionally is, to Parliament, and given the structure of Parliament—if you might pardon the expression, Sir—as a bottle-neck institution, which is for all practical reasons at the behest of the executive, meaning more specifically the

Cabinet, I wonder, in matters of certain vital hardships suffered at the hands of certain public officers and public agencies, whether we as a Parliament would have the disposition to take up the cause of the Ombudsman.

Now, Mr. President, this, as we all concede, is a very delicate point. It is an assumption that we have areas of weakness as far as our powers go, notwithstanding what we recently decided. When it comes to confronting the executive or the agencies which function under its ambit, I wonder how much power really the Parliament has, given the composition of the Parliament when a particular vote is taken or not taken—which is where the action is going to be if Parliament is going to tell itself that it is going to take up the cause of the Ombudsman.

Just as editors are embarrassed or defensive when matters under their jurisdiction come before them in the form of complaints, so too I would expect, Ministers or the Cabinet as a whole, to be equally defensive in preserving what we might call the *status quo* when matters of citizens' grievances under the Ombudsman's process come to their attention. So, Mr. President, we really cannot do much about the effectiveness of the Ombudsman's role if it falls within the ambit of Parliament, unless Parliament itself is restructured to release itself from the practical grasp of the executive as obtains today.

Now seriously, this is a point of principle and not a point that is directed against the last regime. I want to make it quite clear that if my views are interpreted in that way, the whole brunt of my argument is lost. I am on to facilitating the work of the Ombudsman, but I believe that unless Parliament is restructured in such a way that even when it becomes necessary for the Parliament as a whole to confront policies of the executive or challenge policies of the executive successfully, not just ritualistically, until such time the objective here as stated in the report—"to provide more effective resolution of the citizens' grievances and curb bureaucratic abuses"—will not be properly achieved.

4.20 p.m.

Mr. President, in my view in the Constitution, and the section which contains provisions affecting the Ombudsman—pages 58 to 61—I am now satisfied and I am very happy that in a practical way the members of the committee are, in my view, on the right track. The Ombudsman cannot be given any more power. To give him more power is really to subvert the role of representative government because really, he cannot assume the mantle of ministerial responsibility or he

cannot assume the role of a people's representative to the extent where he can dictate to an elected representative, in this case the Minister, what to do or what not to do. There is a limit, of necessity, to his jurisdiction and I think Members of the Joint Committee as enlightened as they are—I am sorry, the members of the Senate committee—I thought this was another joint committee report, I apologize for that.

The members of the Senate committee have within ranks some distinguished people and I am not surprised therefore that they appreciate the limits to which the Ombudsman's powers could be extended. For the Ombudsman's sake his effective performance therefore exists to the extent that Parliament itself has certain powers to enforce its wishes upon the executive, which is the Government, in practical terms, of the day. That is my contention. The Parliament as is presently constituted does not have that kind of power in a practical way because of the composition, naturally, that it enjoys. So what do we do? My suggestion is, in terms of considering the effectiveness of the Ombudsman's role, we have to consider the restructuring of Parliament, for example, by opening up the system, by having public hearings, which is a compromised position because of course Government—at least for the time being—would want to enjoy its majority jurisdiction here and in some cases rightly so. I can think of no better way than putting on the agenda the restructuring of Parliament in a way that its wishes can be enforced more extensively on the executive, given the limitations on the Ombudsman's power.

Mr. President, my last point is a minor one really. On page 5 of the report, recommendation No. 2, states as follows:

"This committee should have power to send for persons, papers and records in order to carry certain problems raised by the Ombudsman to their successful resolution."

I am merely wondering Sir, whether this is not a mere duplication of the Ombudsman's role because he too has powers to do such things.

In my own humble assessment when I look at the Constitution, the Ombudsman has power to investigate any decision or recommendation made, he could enter any department, summon anybody, ask for any relevant documents and papers. I am wondering whether this committee is not recommending something for which the Ombudsman already has powers. Even so, Mr. President, this committee would still find itself locked into the bottle-neck system which I

mentioned initially because the very position of the committee would have to bear some favour from the majority side, and would the majority side in this Senate want to undertake action or actions that would even at times embarrass the executive of the day? I think that is the fundamental point. It has nothing to do with the NAR, PNM or UNC. It is a principle over the need for constitutional reform in terms of restructuring of Parliament if the role of the Ombudsman has to be really more effective. I thank you, Mr. President.

Sen. Gerald Furness-Smith: Mr. President, Sen. Deosaran has raised an interesting question on which I do not think I entirely agree with him, surprisingly. I feel I have to pass a few remarks on it.

He questions whether the Ombudsman has given proper service or value for money. Reading the reports that the Ombudsman has put out regularly since I have been in Parliament, I think he has performed a very useful service.

Dr. Deosaran: I made the point that I am not here at this time to assess the work of the Ombudsman. I really pointed out the trend of the figures but I switched during my contribution, Mr. President, to other matters and I would not like for it to be put on the record that I denigrated the work of the Ombudsman. I think that is a genuine error on, perhaps, Sen. Furness-Smith's part.

4.30 p.m.

Sen. Furness-Smith: No, I am sure he did not intend that. I think the gravamen of the thing was that in spite of all the hard work done by the Ombudsman, he has not, in fact, been very effective. Because, certainly, as one reads the reports, his requests have not been answered, in some cases, in a most miserable fashion. There are some appalling cases in which it has been impossible for him to get to the root of that matter.

Now, as I read those reports, that is exactly the same conclusion which comes from reading the reports of the Public Accounts Committee, which we may be discussing just now; the reports, or the lack of them of the Public Accounts (Enterprises) Committee; the reports of the Auditor General. Administration in this country has declined, gradually, and precipitantly. That is what the ombudsman was intended for, to give some protection to the citizens, and I think he has. Because in quite a number of cases he has achieved something. He has certain powers in the Constitution. He has the powers of the High Court to summon witnesses and to compel them to give evidence on oath and to produce documents.

Now, of course, he can summon the witnesses, but if the person he is summoning has been a replacement for the person who was really responsible for the manner of administration—that person has retired—he is not going to get anywhere. That is the truth of the matter.

It is possible that the Ombudsman could have been more formal in his use of the powers of the High Court. I get the impression from talking to him at our committee, that he was reluctant to take things too far, because he did not think it would achieve anything. I doubt if it would. But the fact that somebody is there, able to ask questions and able to bring these civil servants to account is a most valuable thing. Even if, in the end, his success rate is not particularly large.

Now, I think he has been justifiably upset that when he puts his reports in, no further notice is taken by Parliament. One has to admit that is the case. As I see it, as an Independent Senator, there did not seem much point in bringing a motion that the report of the Ombudsman on any particular issue should be considered, because there has always been half a dozen or a dozen other motions in front, and one never reaches them.

In the last Government, no time whatsoever was given to private motions. In this Government, there has been time, but there is a whole wash of private motions which seem to take an extraordinarily long time putting down a motion for a particular Ombudsman's report to be debated. Having debated it, what could one do? This is the genesis of the idea which is put into this report that, if all reports of the Ombudsman should go to a parliamentary joint select committee, they could pursue the matter.

Now, although the Ombudsman has powers under the Constitution, he does not have the powers of a joint select committee. A joint select committee can commit people to prison and can fine them. But I think, more than anything, the publicity and the trauma for a public servant of being called before a joint select committee of Parliament and being cross-examined in public would provide a very severe sanction, a sanction which does not appear to be terribly effective if it has ever been used by the Ombudsman.

Now, the next point: Sen. Deosaran suggests that the only way to deal with these problems is to change the Constitution and to change the Parliament to take it outside of the control, as he puts it, of the executive. I think we should be very careful before entertaining such an idea. I personally would prefer that we try to make our present system work before we decide to change to another system.

For instance, the United States' system, although it would provide an answer to his point, it would provide endless other problems.

In my experience, joint select committees can be perfectly impartial. Now, when it comes to a political issue, again, in my personal experience, difficulties can arise. I am speaking of the joint select committee, Public Accounts Committee—well it is a kind of joint select committee—the Public Accounts (Enterprises) Committee in the last Parliament, in which one made very considerable progress. The Government Members were not obstructive until an issue arose in respect of PLIPDECO and it was felt that political mileage was being made against the Government of the day, but who then behaved badly.

But, Mr. President, that is the secret of our system of Government: You reap what you sow. If, as a Member of Parliament, you are on a joint select committee, and you are there not as a representative of your party, but as a representative of Parliament, to uphold the principles of the Constitution, and you choose to ride roughshod over those principles, you suffer the political consequences. I think that particular incident, which resulted in a certain Parliamentary fasting on the steps of the Hall of Justice for 40 days, had an impact.

Of course, after 30 years in power, of one Government, we are only now beginning to make this system work. That is the thing we must all remember. We must not be too hasty to call for changes when we really have not tried to make it work yet, because the essence of the Western system is that there should be at least two parties and occasionally there should be a change of power. It does not mean, in answer to my friend, the Leader of the Opposition's somewhat searching glance, that there should be a change every five years. But there must be a change, and the possibility of a change. For 30 years, somehow or other, it just did not happen. We all probably know the reasons. But we are still hopeful, at least I am, that we are past that stage, and that it would be possible to make this system work. Of course, as it works, as Parliamentarians have work to do on that kind of committee, traditions are built up.

The only problem I have is that Parliamentarians' time is so short. It is so difficult to get quorums at these select committees, even a joint select committee, that it is hard work to get things done. Nevertheless, I think that this proposed joint select committee might work. Its task will be in quite a limited area: in those few cases where the Ombudsman has reported, and there has been a scandalous

situation. I request see such a joint select committee getting together, irrespective of party, to pursue the matter.

Now, I think I am right in saying that these complaints which the Ombudsman presents are not matters that should raise any political issue. He does not raise questions of policy. The Ministers are supposed to be responsible for policy, and the administration, or the lack of it, is in the hands of the civil servants. As it is, the result of my enquiries from Ministers is that they cannot get anything done. They have virtually no influence on what goes on underneath them in their ministries. It is a matter of administration.

So that when letters are written, neither the Permanent Secretary, nor the Minister, can force a proper reply, or a prompt reply to be given, and that is what happens. You see these Ombudsman's reports, where he writes and he writes and he reminds, and nothing happens; one can scarcely blame the Minister.

Sen. H. Charles: Thank you, very much, for giving way. I would wish to indicate that I was present at a meeting of the Cabinet of this country when the Prime Minister issued the instruction to every Minister of our Government that reports of the Ombudsman must be dealt with by the administration, Permanent Secretary downwards, within seven days. Failure to do so, the matters must be brought directly to the attention of the Minister so that action can be taken.

I can say, in respect of my own Ministry of Justice and National Security, that is in practice, and we have been dealing with matters of the Ombudsman on that basis.

Sen. Furness-Smith: Well, that is a revelation which astounds me. I am delighted to hear it, but this is the first time I am hearing it. I have sat on this committee for the last year or so and we were not so informed. The Ombudsman was not so informed. If, in fact the reports of the Ombudsman are being dealt with on that high level, promptly, of course, we would not know, because there is no publicity about it.

One would have expected to see in the newspapers that certain civil servants were to be put on a charge, because what is revealed in some of these reports—I am sure it is a very minor percentage of the civil service affected—but some of the reports disclose quite scandalous behaviour. So that these things can be going on in this country without our knowing about them. Everybody in this country knows everything that is going on. So what has happened?

If that sort of Cabinet intervention is possible, and is effective, as the Minister suggests, then we do not need this at all. But what I want to know is: is it effective and why have not we heard about it? Thank you.

Mr. President: Does anyone else wish to make a contribution to this debate.

Sen. Lequay: I would like to make a comment.

Mr. President: In that case we will take the break at this stage. The Senate is suspended; the Senate will resume at 5.15 p.m.

4.45 p.m.: *Sitting suspended.*

5.15 p.m.: *Sitting resumed.*

Sen. Alloy Lequay: Mr. President, I want to make two short points in discussing this resolution. One is to disagree with Sen. Deosaran, and to support the view of Sen. Furness-Smith, and that is to say that there should be no difficulty for joint select committees with Government representatives not being willing—and Government in the sense does not necessarily relate to the present Government—to look at the Ombudsman's reports very critically for fear that they might offend some particular Minister.

If we look at the Constitution itself, Mr. President, section 94(1) tells us:

"In investigating any matter relating to, resulting from or connected with the decision of a Minister, the Ombudsman shall not inquire into or question the policy of the Minister..."

So I think that the Constitution safeguards the Minister from making any policy decision being investigated. Subsection (2) says:

"The Ombudsman shall have power to investigate complaints of administrative injustice..."

So to me it is clear that the Ombudsman's role is restricted to complaints of an administrative nature, and it has nothing to do with the policy decision of a Minister.

In that context, I do not think we should have any fear that the joint select committee, which by the very nature of our Standing Orders, will have a large majority, or a majority of Government Members.

Dr. Deosaran: Well then, why are you having a joint select committee? If the rule will still be prescribed within the jurisdiction of the Ombudsman, in the Constitution, what further action can a joint select committee take? I will leave it there for now.

Sen. Lequay: Again, I want to pursue the point made by Sen. Furness-Smith in response to that question. To me, if they have a joint select committee of Parliament, to which public servants are going to be answerable, then they will need to be more cautious in not responding to queries of the Ombudsman.

In that context, I want to raise the whole question of the review of our parliamentary procedures. In my view, Sir, we are too limited and restricted in our present parliamentary procedures, and we are tempted, when we look at the Senate Standing Orders, to widen our scope of investigation, and to put in our own Standing Orders, joint select committees. I want to submit that there is no need for a special select committee on the Ombudsman, because our own Standing Orders already made provisions for a joint select committee on constitutional and legal affairs and what we need to do then, is look at the terms of reference of that particular joint select committee and give it sufficient latitude to look at the report of the Ombudsman. There is no need to have a special joint select committee mainly to deal with the report of the Ombudsman, that is already in our Standing Order.

What is unfortunate is that the other place has not seen it necessary to review their own Standing Orders, which, I believe, have been in use since 1962, and which they must know are in need of serious revision, just as we knew that since 1988, and we took action to have them reviewed. I am disappointed that the House of Representatives has not seen it fit to get involved in that very necessary exercise, and to widen the scope for the performance of Parliamentarians.

While we were discussing joint select committees, we looked at the role of the back-bencher, and his involvement on joint select committees and giving him a perspective of the whole parliamentary process. To me that is the crux of the matter at this point in time. We need, as early as it is possible, to influence the House of Representatives to have a review of its Standing Orders and to include therein the establishment of these joint select committees.

Mr. President, if I may be bold enough to say so, the manifesto of the National Alliance for Reconstruction called for a review of the Standing Orders and for the

establishment of joint select committees. Again, I must say, I am disappointed that the Members in the other House have not seen it fit to proceed in that way.

So that I make the two points, Mr. President, that there should be no fear of a joint select committee having to deal with the report of the Ombudsman, and having any conflict with the responsible Minister, because the Minister is safeguarded by the very provisions of our Constitution. And I make the other point, that I do not see the need for establishing a joint select committee purely to deal with the report of the Ombudsman, because in our own Standing Order, No. 72, we have made provision for a joint select committee on constitutional and legal affairs and all we need to do is to look at the terms of reference of that particular committee.

The final point I would like to emphasize is that these committees, having a right to call before them public servants, will be able to expose the inefficiencies of the administration of the various Ministries. I think that is very necessary. I only have to refer Members to the Auditor General's report which I, myself, had attempted to have some more public debate on, and unfortunately it fell on deaf ears, and it was claimed that I was attempting to fire civil servants. But civil servants have got to be made accountable for running their departments. We seem to have no process, no mechanism in place to make them accountable.

You look at the Auditor General's report—and I am going to deal with it at more length when we look at the resolution in the name of Sen. Mansoor—that, for 10 years a civil servant has been asked to respond to correspondence from the Auditor General and there is no response and nobody seems to be in a position to do anything about it. Every year you pick the Auditor General's report and you see the same complaint, and Parliament, which is responsible for the finances of the country in general terms, has no redress, absolutely no power to do anything, to tidy up all the inefficiencies and all the criticisms that are being levelled in the Public Accounts Committee report, the Public Accounts (Enterprises) Committee report, the Auditor General's report. We just get them, we know their inefficiencies and we put them on the shelf.

So while I am in support of the report that is before us, I submit that there is really no need for a special joint select committee on the Ombudsman. Also, if the House of Representatives were to review their own Standing Orders to accommodate the review that we, ourselves, have done, then we can establish the joint select committee on the constitutional and legal affairs and that joint select committee would deal effectively with the report of the Ombudsman.

Sen. Horne: Mr. President, our Ombudsman must experience great frustration, and there is also the disappointment of citizens who expect redress for their complaints.

What has not been said and is of importance is that our citizens are indeed disenchanted with the results of their complaints. The words frequently used in all the reports are under the headings "result", "are informed", and "under investigation". You see this right through the report. This is totally unsatisfactory. I am of the opinion that a joint select committee ought to assist in resolving the complaints of our citizens. Thank you.

Sen. Fyard Hosein: Mr. President, I am very happy that this particular motion before this house provoked a considerable amount of comment. Therefore, I want to focus some attention, particularly on recommendation No. 2, that is, the proposed creation of a joint parliamentary committee.

Mr. President, I would like to indicate two things about this committee. The first thing is, in my respectful view, that is the kind of direction in which this Parliament should be moving in order to have a great deal of this work done in the future.

It is becoming increasingly impossible, as it should be, to have this Senate transact business during a normal day's sitting, because of the multitude of responsibilities which have been assigned to the Parliament under the Constitution and under various pieces of laws. Therefore, this country, Trinidad and Tobago, should move increasingly towards a committee system in the Parliament.

A committee system is desirable, because you are then able to bring together a certain body of expertise in respect of various areas. You can bring attention to bear on specific problems that would mesh with that particular kind of expertise. You can explore areas that need to be more thoroughly explored and, therefore, you can arrive at some kind of consensus as to what should be done.

Now, Mr. President, I think that the establishment of the joint parliamentary committee in this particular case is suited to the reports from the Ombudsman, because, as Sen. Furness-Smith indicated, what normally happens is that reports are brought to the Parliament, they are pushed into a cubby-hole and they take a low level of priority in terms of focussing attention on citizen's grievances.

The image of the Parliament is affected in the country as a whole, and people get the impression Parliament is insensitive to the everyday problems of the citizens. On the other hand, you cannot have a Parliament in full session, dealing with the multitude of problems that arise from day to day in the discharge of their responsibilities. So you a happy compromise is to utilize a committee system increasingly in the future to bridge that gap.

Now, Sir, I am attracted to the statement made by Sen. Deosaran about the question of restructuring Government. I think it is a laudable proposition. In the the process of restructuring, one has to take into consideration, on the one hand, affording the executive a sufficiently large majority to Parliament, so as to be able to discharge its constitutional responsibilities, and at the same time not taking away from the Parliament the teeth that is so necessary in order for the Parliament to discharge its function.

5.30 p.m.

Mr. President, an executive with a very large majority in the Parliament can be just as dangerous as an executive with no majority in the Parliament, so therefore compromise has to be found somewhere between there. On the one hand, you cannot ask for stable government supported by a majority in the Parliament, and on the other hand, ask for a government which has to be constantly teetering in the brink of a majority in order to get its policies through the Parliament.

I think an important area in this restructuring exercise is not to reduce the level of the majority that the Government has in the Parliament, because in the Senate the Government does not really have a majority at all and it really depends—the way the Constitution is structured—for support from the Independents and the Opposition, in all cases, to get legislation through.

This restructuring exercise does not necessarily have to take the form of re-establishing some kind of equilibrium in terms of majorities. What has to be done, is the committee system has to be strengthened in the future.

Secondly, Parliament has to move towards a full-time Parliament—I am dealing with down the line—so that hon. Senators and hon. Members of Parliament can discharge their responsibilities, have the staff, the expertise, and the persons who can look at these reports and bring their experience to bear on this situation. The system which we have inherited is one which is basically part-time, so therefore, it is difficult for Parliament to function in all material respects and to discharge all its functions because of the limited time and resources at its disposal.

I think also that this committee, like other committees—if that is looked at down the line—would have to explore the possibility of these committees utilizing their full powers in terms of subpoenaing witnesses, demanding answers, getting persons to testify, putting fear into the hearts of those persons who are responsible to the committee, and to the Parliament, concerning the discharge of administrative functions.

I congratulate Sen. Deosaran for his suggestion. We need to find that kind of fine balance which is absolutely necessary in the development of this process.

Mr. President, much attention was focussed on (2), particularly, because it was felt that the Constitution Commission may have made some recommendations in respect of the legislative framework within which the Ombudsman presently operates, and they were perhaps better equipped than the Parliament, having regard to the fact that there was consultation at various levels and various memoranda received and discussions taking place between groups, to establish the legislative framework for the operation of the Ombudsman.

What this committee did was focus on administrative and parliamentary issues to ease the burden of the Ombudsman and on the tail-end of the problem because, apparently, the problem is what happens to those reports when the reports arrive here.

Mr. President, I think that much good information was exchanged this afternoon in terms of the various options that may be open to the Parliament in terms of making recommendations. Not too much attention was focussed on the first one.

I also want to indicate that contrary to what people think, the Ombudsman in this country is not a toothless tiger in the sense that he is not devoid of powers. He has powers which he may exercise, and the idea of having a committee of the Parliament doing some of the things that he may redo, is really like an appellate body. The committee will say the Ombudsman has responsibility and powers. What will happen is that we will focus attention on those issues in which the Ombudsman has reported that there are abuses; bring the power of the Parliament to bear upon them and, therefore, attempt to resolve those disputes in that kind of way.

Therefore, Mr. President, I commend the report once more for the consideration of the honourable Senate. I beg to move.

Question put and agreed to.

Resolved:

That this Senate adopt the Report of the Joint Select Committee of Parliament appointed to review legislation establishing the Office of the Ombudsman in order to strengthen that office so that it may provide more effective resolution of the citizens' grievances and curb bureaucratic abuses.

BUSINESS OF THE SENATE

Mr. President: Hon. Senators, if the Senate would agree, at the request of certain Senators, we would like to skip the next resolution, No. 3, and move on to No. 4, which deals with the Public Accounts Committee.

Question proposed.

Sen. Alloy Lequay: Mr. President, perhaps I should indicate that this particular resolution dealing with broadcasting is on our normal standing Order Paper, so at some point in time we could deal with it, but the one on the Public Accounts Committee, if it has to wait in line under "Private Members' Motion", we will never be able to deal with it. I think there has been a special request—I have seen a letter, I do not remember who signed it—that we should attempt to air that particular report in Parliament. That is why I want to persuade Senators that we should advance that one while we can deal with the other one at some point in time.

Sen. Spence: While I would not oppose that statement, I regret that it was not stated earlier because there were some things which I would have said on earlier resolutions which I retained, because I could have said them under the one with broadcasting. So I very much regret that we were not told that earlier.

Mr. President: I believe that in the interest of all, we would probably be in a better position to proceed with motion No. 4. Let me assure hon. Senators that as long as time is available, I will certainly set aside time to complete these four motions that we have brought today. We have finished two and we can start another one. If we cannot accommodate the one which is on the Order Paper, we would try to set aside time to deal with it. It is just a question of making the best use of the time available, at present. So I shall ask Sen. Mansoor to proceed.

**PUBLIC ACCOUNTS COMMITTEE
(FIRST REPORT)**

Sen. Michael Mansoor: Mr. President, I beg to move the resolution standing in my name, which reads as follows:

That this Senate take note of the First Report of the Public Accounts Committee, 1987—1991.

Before I start, I should probably point out that the "First Report of the Public Accounts Committee" would have been tabled some time in 1988, and I understand that several Senators do not have a handy copy of this report. So that I start off at a disadvantage, in the sense that Senators do not have a ready report to refer to as I speak.

Notwithstanding that, Mr. President, I would wish to spend a few minutes summarizing the "First Report of the Public Accounts Committee" because I believe that the contents of that report are very important for the country and for the future of accountability in this dear land of ours.

On page 24 of the report, where the recommendations are summarized, one of the primary recommendations of the committee is—the recommendation reads in part:

- "(i) The review of the provisions of section 119 of the Constitution must be undertaken to clarify the functions and objectives of the committee. Provision should also be made for the Committee to hold public hearings."

Mr. President, that recommendation is a very important one, because if one looks at how funds are disbursed by Government one would immediately realize that Parliament does not exercise any satisfactory degree of control over public expenditure. We have the budget debate in which appropriations are approved and, as we know, there is much parliamentary time allocated to what has become known as the budget debate.

The financial year starts and ends, and the Auditor General reports on the public accounts, the accounts of the Government of Trinidad and Tobago. Anyone who has read the Auditor General's report will agree that the Auditor General's report is, by nature, very circumscribed and very narrow, in the sense that it deals primarily with financial accountability. The report says very little as to how effectively, or how ineffectively, the funds of Government were expended. Let me give you an example. Let us take the Ministry of Health, the administration of our hospitals.

5.40 p.m.

The Auditor General would review the accounts of the hospitals, review the accounts of the Ministry of Health and he would concentrate on whether or not

Public Accounts Committee
[SEN. MANSOOR]

Monday, October 7, 1991

those entities have adhered to the financial provisions of the Exchequer and Audit Act and other detailed Government regulations. The Auditor General does not comment as to whether or not health-care was efficiently or inefficiently delivered to our citizens. All he says is whether or not the financial provisions were followed or not followed. So that the most basic tenet of accountability, which is whether or not our citizens are well served or not well served, is not really checked or audited and the basic fundamental bone of accountability, as it were, gets lost somewhere in the legislation and procedures.

The way the Public Accounts Committee operates is that the Public Accounts Committee reviews the report of the Auditor General so that if the report of the Auditor General does not deal with questions of effectiveness, and efficiency in this very broad way, in a way that encompasses a lot more than finance and detailed financial provisions, if the Auditor General's report does not take in the bigger picture, it follows naturally that the Public Accounts Committee will be similarly circumscribed in its review of the financial operations of Government. So that at the end of the day there is very little real accountability in terms of whether moneys were well spent or not well spent; whether or not people received the degree of care at our hospitals that they are entitled to because of the taxes they have paid; whether or not the education system is working as it should. As such, in terms of the people receiving value for their tax dollars, that contract of accountability is really not established.

Notwithstanding all the detailed provisions of Public Accounts Committees and the provisions of the Constitution, this basic fact will continue to plague us in public administration in this country until we change it. Simply put, it is my opinion that there is no real accountability whereby citizens can establish whether or not they get value for their tax dollar, and until we adjust that basic fact, I do not believe that our interest would be best served.

So that we need to review the Constitution; we need to review the way the Public Accounts Committee works. All that section 119 of the Constitution says, is that the Public Accounts Committee should consider and report. It does not say anything about subpoenaing documents; it does not talk about fining anyone; it really is a toothless tiger.

I wish to move on a bit from this question of the Constitution and the powers of the Public Accounts Committee to some detailed findings of this

committee. I hope that my short review of some of these detailed findings would prove the point that I am trying to make. At page 21 of the report, paragraph 3.8, there is a report on the affairs of the St. David/St. Andrew County Council for the years ended December 31, 1981 and 1982. The first point to note is that in 1987/1988 we are looking at the accounts for 1981/1982. Some five or six years have expired.

At that sitting the current members of the St. David/St. Andrew County Council came before the committee and members of the committee asked them all sorts of questions about the accounts of the council for 1981/1982. One of the questions we had to ask, was the whereabouts of vouchers because in 1981, this county council spent \$788,000.00 and no vouchers could be found to substantiate that expenditure.

In 1982, the council spent \$15.4 million and similarly no vouchers were brought to the attention of the Auditor General which could establish if those funds were properly spent. Mr. President, you will agree that if a county council spends \$15.4 million and all the supporting documentation regarding that amount of money has disappeared, it provokes suspicion. Here was this committee, a Public Accounts Committee, reviewing this matter in a very serious fashion, notwithstanding the fact that five or six years had elapsed.

So what does the committee do? The committee first of all expresses alarm, concern, horror, perhaps, that the vouchers have disappeared. So we requested the members of the county council to come to us a second time with the vouchers. They came a second time and they said that in the meantime they would have attempted to make contact with the accounting officer who would have been in charge at the time.

I do not remember the details, but that accounting officer proved to be either dead or migrated so he could not come to the committee with these vouchers or tell us the whereabouts of these vouchers. It went on and on and we met several times. At the end of the day we were no further ahead. We had not found the vouchers. Nobody could tell us where they were; we went into all sorts of detailed requirements as to the names of the payees of the cheques, and so forth. But at the end of the day the vouchers were not produced and the committee could not do very much about it.

Public Accounts Committee
[SEN. MANSOOR]

Monday, October 7, 1991

The committee was so concerned about the gravity of this matter, I will read in part:

"The Committee endeavoured to have the problem resolved by the Administration of the Council before it reached the stage of submitting this Report to Parliament. The Committee was disappointed to find that the response to this gesture indicated a great deal of uncertainty about the whereabouts of the vouchers, or even their very existence."

So basically you had members of this county council saying, "Well we do not know where they are; we do not know what happened to them; we do not even know whether they exist." And the presumption being well, perhaps we do not even care. That probably is my unfair interpretation.

So if you have a public accounts committee dealing with matters of this nature and when a very serious irregularity such as this occurs, and nothing can really happen, you immediately realize that accountability is not really alive; it is not working. It is not limited to organizations like county councils and now that we have municipal corporations, I do not know if the matter will ever be looked at again. Even other institutions, some perhaps a lot better run and better administered, the committee reviews their accounts and has very limited power.

Let us look, for example, at the committee's findings on the National Insurance Board for accounts for the period July 1, 1982 to June 30, 1983. Again, I point out that in 1987/1988 we were looking at accounts for 1982/1983, so a lot of time had elapsed and people's memories perhaps were not as good as they would be if we were dealing with accounts at a more current date.

The principal finding of the committee appears at page 16, paragraph 3.3 (b) and the heading is "Administrative Expenses—\$39,360,281.00". The report says:

"The Committee noted with grave concern that the figure of \$39,360,281.00 representing administrative expenses incurred by the Board was in excess of 9.5 per cent of contribution revenue. As a result, a deficit of \$15,247,334.00 was sustained by the Board after taking into account miscellaneous income of \$31,381.00. This was clearly a breach, not only of the requirements of section 22(1) of the National Insurance Act, Chapter 32:01, but of the trusteeship function of the law."

5.50 p.m.

Here we are again; another very major finding. The National Insurance Board is spending more on administration than the legislation, which put it into being allows. The committee expressed horror. It happened from 1981—1982 and, I

dare say, it must have happened for all of the subsequent years. The representatives of the National Insurance Board pointed out that the legislation is bad; 9.5 per cent is too low. The reality of the situation is that they need to spend a lot more on administration than the law provides.

What is the Public Accounts Committee to do? Agree with them? Maybe they are right. The fact of the matter is strict interpretation of the law; there has been a breach of the regulations; legislation has not been changed; the Public Accounts Committee gets its report and it can do nothing but report this.

It is a very important matter because the National Insurance Board will have to, in the fullness of time, pay insurance benefits to the public. The last paragraph of the Public Accounts Committee Report for this period, on page 18, reads as follows:

"The Committee expressed deep concern over reports that certain actuaries in the country were of the opinion that the National Insurance Scheme was heading to a real crisis and noted that the National Insurance Board was about to embark upon an actuarial review on the position of the Fund. Members look forward to the report on this review."

Now, the purpose of the National Insurance Board is to be in a financial position to fund its pension liabilities. The committee found that it is spending more on administration than it should.

In addition, the committee noted that several of the investments which were reported were, perhaps, not viable. In particular, the committee noted that residential mortgages totalling \$51,606,315 were more than 12 months in arrears. So, there is cause for concern. You cannot comply with the law, you say, because the law is antiquated; the valuation of some of your assets—particularly the assets which have been noted in this report—appear to be doubtful; there is no certainty with respect to whether or not the fund is actuarially solvent and the Public Accounts Committee finds all these things and is unable to really come to definitive conclusions about any of the matters of which I have spoken, and one really wonders what we have accomplished. We have reported it and presumably, not very much will happen.

Now, this story is true for several of the institutions which we have examined in the period to which I refer and it is very important, in my view, that this Parliament take note of the fact that its Public Accounts Committee is hamstrung in its ability to pursue the ideal of accountability.

With respect to what might be done. It is very clear to the members of the committee that one of the first things that should be done is that the hearings of the Public Accounts Committee should be in public. The feeling is that if members of the public find out about all of these things that the committee finds out on a regular basis, there will be some pressure made to bear upon the entities to account in a more satisfactory fashion. Of course, there is the contrary view that if the hearings are public, members would be very nervous and shy, but, on balance—and I agree with the committee—I think that these hearings should be held in public.

Then there is the question of research staff. The committee relies upon the Auditor General, who himself complains at every opportunity, quite justifiably, in my view, about the inadequacy of his human resources, given the task he has to perform.

So, Mr. President, all is not well. I regret to state that there is not really very much accountability when it comes to how public moneys are spent. The Auditor General does not have the resources to do the type of job that I know that his department wants to do. They need to carry out performance audits or value for money audits; they need to look at the operations of these ministries to see whether or not the health departments are delivering health care; to see whether or not the education system is delivering real education; to see whether or not all the other functions of government are effectively carried out. That is not happening. None is checking.

In summary, therefore, I hope that Members of the Senate, in noting the comments which I have made; and noting the comments of this report, would realize that the comments made by Sen. Alloy Lequay earlier today, are very true. We need to have committees that really work. Not only after the fact, when the moneys have already been spent, five years later. We need to have a committee of Parliament to deal with the budget before it happens; before it becomes law; before the Appropriation Bill is passed. Only in that way would Parliamentarians be able to make sensible remarks about whether or not the country is likely to get value for money.

Beyond that, we need to establish a Public Accounts Committee with resources to do the job. We need to give the Auditor General the constitutional power to carry out value for money audits. We need to give the Auditor General the resources to do that job. If he does not have adequate resources to do the job,

when you consider the fact that the Auditor General is supposed to look at the accounts of all the departments of Government, county councils—now municipal corporations—and several other entities, you immediately realize that he cannot do the job. If there are not enough resources to do that job, there will be no accountability or very little of it.

I trust that Members have noted my comments and will give them the consideration that, in my opinion, they deserve. Thank you.

Question proposed.

Sen. Wade Mark: Mr. President, we have heard from Sen. Mansoor on the Public Accounts Committee report. We know for a fact that the Public Accounts Committee has been charged with a number of important responsibilities. One would have thought that at least, things would have been better, having regard to the experience we have had with the Public Accounts Committee in the past, where I think Sen. Furness-Smith referred to the present Minister of the Environment and National Service who fasted for some 30 to 40 days, seeking to have his committee—of which he was Chairman at the time—get the power and the authority to summon, investigate and obtain information relevant to certain enterprises. Five years later, the Public Accounts Committee apparently is in the same state. Its power seems to be very weak. In fact, listening to Sen. Mansoor one gets the impression that the public—

6.00 p.m.

Mr. President: I just want to clarify a little point. There are two committees on the public accounts. One is the Public Accounts Committee which deals with the report of the Auditor General on government ministries and departments; statutory boards and local government bodies. There is another one which was established in 1976 called the Public Accounts (Enterprises) Committee. That is the one which caused someone to sit on the steps of the Hall of Justice for a period of time.

The Public Accounts Committee, which is really a committee of the House of Representatives, has been functioning for some considerable time quite effectively even before 1976.

Sen. Mark: Thank you very much. The simple point which I am making here is that from listening to Sen. Mansoor, one would get the impression that the Public Accounts Committee remains like a toothless bulldog. It seems to be a

paper tiger, in the sense that many of its demands and requirements to execute its responsibilities seem to be very limited. As was mentioned, there is a situation in which the Auditor General provides a lot of back-up assistance and support to the Public Accounts Committee.

There are four main links in the chain of financial accountability of which the Public Accounts Committee is the final. The others are Parliament, the Treasury and the Auditor General. The issue which has to be addressed here is the issue of public accountability.

When we look at the kinds of comments being made in this particular report on a number of enterprises, state agencies, statutory agencies and local government, one gets the impression that there has been a complete collapse of accountability. The whole issue of really assessing the performance of these enterprises and agencies seems to have fallen flat. The Auditor General as an example, has been struggling for some time now as was indicated, to get the necessary human resources in order to carry out its responsibility under the Constitution of Trinidad and Tobago.

Over the last 20 years, the responsibility of the Auditor General's Department has expanded and increased enormously. For example, the staff establishment of the public service grew from 20,668 in 1962, to 64,124 persons at the end of 1986. What is taking place simultaneously is that the staff of the Auditor General's Department has increased very minimally. We have a situation where, at the end of 1976, they had increased the staff at the Auditor General's Department by a mere 76 persons.

When we examine the kind of responsibilities which the Auditor General has to carry out one could well appreciate the difficulties and the lack of accountability which we are experiencing in Trinidad and Tobago. The Auditor General wants to engage in a process described by Sen. Mansoor as comprehensive auditing, or performance auditing, or money-for-value auditing; but the Auditor General cannot carry out these responsibilities and functions if that department does not have the capacity or the resources.

When you examine the fact that the Auditor General is responsible for the accounts of 34 ministries and departments of the central government; 65 statutory boards and similar bodies; 56 state enterprises and projects funded by the international lending agencies; they are responsible for comprehensive audits; pre-audits of superannuation benefits of all persons paid by the state, under the

Pensions Ordinance; pre-audit of the terminal benefits of all persons who have been permitted to retire under the provision of the Voluntary Termination of Employment Act, and other responsibilities, one cannot really appreciate why today the Auditor General has roughly less than 200 members of staff to carry out all these enormous responsibilities.

How can we expect and how would we be in a position as a nation and as a Parliament, to know when we pump moneys into particular departments, ministries and agencies of the Government, that these moneys are properly spent? Parliament is responsible for approving funds through this annual budgetary exercise for different ministries, departments and agencies. Every year; year in, year out, we hear Sen. Mansoor making the point that we are still not in a position to understand, appreciate and to assess whether the moneys which we approved as a Parliament were properly spent, were properly executed, although the Auditor General is in a position, because there is in fact a division in the Auditor General's Department called comprehensive auditing. They have a comprehensive auditing division.

As I said, the problem is the lack of staff. I think that for instance, it is reflected also in the activities of the Public Accounts Committee because it is against this background that the committee has made a number of recommendations, calling for a research staff in order to give it some back-up support, so that we would be in a position to objectively assess what is taking place in Trinidad and Tobago.

For the last five years, we have spent roughly \$30 billion. The PNM had about \$20 billion over the boom period. When you combine it totally, you realize it is the sum of about \$50 to \$60 billion. This present Government cannot talk about having no money, because they had \$30 billion in the last five years. The question here, is how has that money been spent? Here you have a Public Accounts Committee seeking to have the necessary resources in order to assess and understand what is taking place in different enterprises, statutory boards, agencies, county councils and it does not have the necessary staff; back-up service; it has no research department. It depends on the Auditor General and the Auditor General is strapped for staff and resources in order to carry out a constitutional responsibility under the Constitution of Trinidad and Tobago.

I think it is a serious indictment against Trinidad and Tobago, the Government and the country, that we have an independent institution that has to carry our certain responsibilities, and we are not really funding that institution with the kind

Public Accounts Committee
[SEN. MARK]

Monday, October 7, 1991

of resources, personnel and equipment so that agency could execute its responsibilities in a manner which is fitting to its office and given the powers which have been granted under the Constitution.

The reason I am taking some time on this matter is because I have been reading the Auditor General's Reports between 1987 and 1990. Every single year of the Auditor General's Reports the same complaint repeats itself. They want more staff, more resources and all the appeals are falling on deaf ears. They have appealed; they have written letters. I have memoranda written by the Auditor General appealing for staff.

I think the Constitution Commission has recognized the need for the Auditor General to have greater independence, where the Auditor General could employ his own staff, given some budgetary allocation, instead of depending on the Public Service Commission. That is a recommendation which the Constitution Commission has proposed so that the Auditor General would not be strapped in the way which it has been over the years.

6.10 p.m.

I believe that the question of accountability is a serious issue and we have been going over this issue year in year out—PNM for 30 years, public accountability; the NAR Government for five years, public accountability—and yet we have not been able to come to grips with this issue very seriously.

It is my view, Mr. President, that at this point in time when the resources are scarce; when the economic scenario is worsening internationally; when third world countries are getting greater and greater into debt—they are becoming more and more under-developed, they seem to be disappearing in some areas, they seem to be marginalized—we have a problem with resources and, therefore, we need to focus on economic efficiency. Let us not fool ourselves. If you have an Auditor General who has a department that is willing to focus on this comprehensive auditing of resources, why do we not give the Auditor General the necessary staff to ensure that if we put \$100 million in the Ministry of Health or we put \$800 million in the Ministry of Education, at the end of the year a comprehensive audit can be done to assess how taxpayers' moneys have been spent—whether it has been spent badly or whether it has been spent properly? We are not getting it in the way we are supposed to get it and everyday things are getting more dread and worse in the country and we continue to pussyfoot, while the country burns.

Mr. President, on page 13 of this particular report, the Public Accounts Committee reports something dealing with improper expenditure where it is noted that a sum of \$37,900 was apparently paid in rent beyond the period of occupancy by, it seems, the Property Management Unit of the Ministry of Finance and Planning. This was in 1985. There is worse, you know, because, as Sen. Lequay said, if you look at the report for 1990, it happened under the PNM and it happened under the present regime. The point is accountability. Who is going to account for these things?

I am saying that we have to develop a system in the country where accountability has to be extremely serious. I understand when the Minister of Health visited the hospitals recently he went through different departments, different areas of the hospital and he was attempting to get explanations—from what I picked up—and everybody was passing the buck. Who is accountable? You have to talk about administrative efficiency. If you do not have administrative efficiency in your different departments and ministries, you have many people being hamstrung at the bottom.

Side by side with administrative efficiency is accountability. Somebody must be able to account, but nobody accounts. The buck is passed. For instance, our Sen. Lequay, when he said public servants are to be blamed. You have a situation where the minister is responsible in the final analysis for the working of his ministry. The minister must take responsibility; he is culpable and responsible in the final analysis and, therefore, if civil servants below the minister are not performing, are not accounting, the minister has the responsibility in the final analysis to give account of his stewardship. So I think that the issue keeps repeating itself.

I am concerned about the National Insurance Board. This was in 1982. We do not have an up-to-date report on what is taking place in the area of national insurance but the frightening picture painted in this report, I would shudder to think that the situation has worsened. It has to have improved. Page 18 states:

“The Committee expressed deep concern over reports that certain actuaries in the country were of the opinion that the National Insurance Scheme was heading to a real crisis, and noted that the National Insurance Board was about to embark upon an actuarial review...”

It went on further to indicate a number of bad investments by the National Insurance Board and indicated that at the end of the period that they had investigated, residential mortgages, 12 months in arrears amounted to \$51 million.

That is moneys of workers and employers combined being pumped into the NIS and in 1983 it was heading into a real crisis. I am saying that today I believe it is no different. It might be worse. We do not have an up-to-date report on the situation but what we do know is that sometime ago what happened is that there was a report in the newspaper where the National Insurance Board, in fact, provided evidence where they indicated—at that time, that was in 1989—that they had a serious problem in terms of their mortgage portfolio. There was a crisis in the mortgage portfolio department of the NIB and they had millions of dollars outstanding which they could not account for.

When I made my statement sometime ago that the stock of debt outstanding at the end of 1988 stood at over \$6 million in Trinidad and Tobago, it was no alarmist statement. It was a reality. In 1983, NIB had an outstanding sum of close to \$51 million and this is an area of serious concern to all of us.

6.20 p.m.

You have employers in this country—and this is where, Mr. President, for instance, you should have some heavy fines. I believe there is, in fact, a fine but somehow the enforcement of it is not as serious as it ought to be. You have, Mr. President, given page 18 here, identified delinquent employers owing \$9 million. In other words, they are collecting moneys from workers and they are not submitting their moneys to the National Insurance Board and that was in 1983. We do not know what the picture is now, in 1991, if it is worse or if it is better. I do not have the facts but I know there are many employers, small medium and large, not only do they collect national insurance and not pay it to the National Insurance Board, but they collect taxes from workers and they do not pay the money to the Inland Revenue Department. There is a case of a firm in Curepe. We wrote the Minister of Labour in 1987 about it. It came to our attention that this firm had some agreement—they call it the 807 programme—where they just stitch up garments and export them and this firm was actually deducting moneys for taxes and national insurance and it was not remitting these moneys to the NIB and the Inland Revenue Department.

There are many bandits posing as employers in this country who are actually fleecing the taxpayers of this country, and I am saying that the necessary law must be invoked and enforced. You cannot be collecting people's money and not submitting it to the relevant authorities. What is even more alarming here, is that they have identified the delinquent employers because they say, "...identified

delinquent employers owing the National Insurance Board \$9 million at the end of 1983". How could that be explained when you are collecting the money?

It is extremely disturbing when we look at this Public Accounts Committee Report. It is a litany of woes and many difficulties and problems and we on this side would like to support the recommendations because we are all seeking to ensure that the economy of our country, not only stabilizes, but in stabilizing, it brings about an improvement in the quality of life for all of the citizens of Trinidad and Tobago.

Mr. President, I believe that the recommendations that they have advanced in order to put more teeth into their work, in order to oil the wheels of the Public Accounts Committee, are not too ambitious. They are reasonable recommendations in the circumstances and I think that this honourable Senate should have absolutely no difficulty in accepting the recommendations advanced by the Public Accounts Committee in an effort to ensure that the next report we receive from the Public Accounts Committee, Mr. President, would be a report whereby the number of problems identified could be reduced. It would mean to say that the Auditor General—and I think the recommendations made it very clear that the time has come when the Government of Trinidad and Tobago must provide the Auditor General with adequate human resources so that they can supply the committee with research assistants when necessary. So you see, it is a link, as I said, when we are talking about public accountability in Trinidad and Tobago. It is a series of linkages in the country and it starts not only with the Public Accounts Committee, but we are talking about the Treasury and the Parliament, among others.

I believe in the interest of Trinidad and Tobago, in the interest of public accountability, and of economic efficiency, there is need for us to pay more attention to these matters and to give them the kind of serious consideration that they deserve. For too long people keep talking, year in, year out; advancing recommendations; debating and discussing these reports, and still it seems that nothing concrete is taking place. I hope the next time we meet to discuss a report from the Public Accounts Committee at least I would not be on my feet for so long.

They always say that those people who live in glass houses ought not to throw stones. I know for a fact from all the evidence that we have been picking up on the ground, it seems to us that we are going to have a massive political earthquake; the earth will open and I do not know if people like Sen. Rampersad and the rest will

Public Accounts Committee
[SEN. MARK]

Monday, October 7, 1991

get swallowed up, but I am certain at the end of the day we are going to ensure that whichever party forms the next Government—I cannot say the NAR because it is very difficult. The point I want to make, Mr. President, I do not want to politic at this time—

I want to really conclude by saying that we need to pay attention. We support the recommendations and observations made by the Public Accounts Committee and we urge the Senate to adopt those recommendations, adopt and focus on their observations and to ensure that the next time we meet to discuss a Public Accounts Committee Report, whether our honourable friend, Sen. Mansoor, is a member of that committee or not, at least the difficulties and the problems that he identified in his presentation would be considerably reduced, if not completely eliminated.

Thank you very much, Mr. President.

Question put and agreed to.

Resolved:

That this Senate take note of the First Report of the Public Accounts Committee 1987—1991.

BUSINESS OF THE SENATE

Mr. President: Members of the Senate, we have reached close to the time when the Senate normally adjourns and although we scheduled the meeting to commence one hour later than normal in order to facilitate some of the Senators, I think in view of the fact that we have achieved quite a lot at this special sitting today, I would not ask Senators to go the extra mile as they have to come back tomorrow.

I thank all the Senators present and those who were here earlier, for their co-operation and support in attending this special sitting of the Senate to deal with parliamentary matters. We have been able to dispose of one select committee report and one joint select committee report and, hopefully, next Monday we may be able to come back to finish off the rest of the business on the Order Paper. However, thank you very much.

In accordance with the resolution of the Senate agreed to at the sitting of Tuesday, October 1, 1991, the Senate now stands adjourned to Tuesday, October 8, 1991 at 1.30 p.m.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 6.30 p.m.