

*Leave of Absence**Tuesday, June 1, 1993***SENATE***Tuesday, June 1, 1993*

The Senate met at 1.30 p.m.

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

**Mr. President:** Hon. Senators, I have granted leave of absence from today's sitting of the Senate to Sen. Hydar Ali.

**LATE ARRIVAL**

**Mr. President:** Hon. Senators, I have been advised that Sen. Muntaz Hosein will be a little late for today's sitting.

**JOINT SELECT COMMITTEE****(Companies Bill)**

**Mr. President:** I have received the following letter from the Speaker of the House of Representatives:

"Dear Mr. President,

I wish to inform you that at a sitting held on Friday, May 21, 1993, the House of Representatives agreed to the following resolution which was moved by the Leader of Government Business:

'Be it resolved that this House consider that it is expedient that a committee of both Houses be appointed to consider the Companies Bill, 1993.'

The resolution is accordingly forwarded for the concurrence of the Senate.

Yours faithfully,

Occah Seapaul,

Speaker."

**The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith):** Mr. President, I beg to move the following motion:

*Be it resolved* that this House consider that it is expedient that a committee of both Houses be appointed to consider and report on the Companies Bill, 1993.

**Sen. W. Mark:** Do we have to take that particular Motion today, Sir? I would prefer if we defer it until later in the proceedings; I need to get some clarification on that matter. I would not want to say yes or no and the next thing the hon. Leader of Government Business stand it down for just a little while?

**Mr. President:** The Leader of Government Business was waiting on you to second it. If you do not, I suppose he will get somebody else to do so.

*Seconded by Sen. M. Mansoor.*

*Question put and agreed to.*

#### PAPERS LAID

1. Report of the Auditor General on the Accounts of the Sugar Industry Labour Welfare Fund for the year ended December 31, 1981. [*The Minister of Planning and Development (Hon. L. Saith)*]
2. Report of the Auditor General on the Accounts of the Sugar Industry Labour Welfare Fund for the year ended December 31, 1982. [*Hon. L. Saith*]
3. Report of the Auditor General on the Accounts of the Sugar Industry Labour Welfare Fund for the year ended December 31, 1983. [*Hon. L. Saith*]
4. Report of the Auditor General on the Accounts of the Sugar Industry Labour Welfare Fund for the year ended December 31, 1984. [*Hon. L. Saith*]
5. Report of the Auditor General on the Accounts of Trinidad and Tobago Export Credit Insurance Company Limited for the year ended December 31, 1992. [*Hon. L. Saith*]

#### ORAL ANSWERS TO QUESTIONS

##### ILO Conventions (Ratification of)

**62. Sen. Wade Mark** asked the Minister of Labour and Co-operatives:

Could the Minister state whether the Government intends to ratify any additional International Labour Organization conventions in the near future?

If the answer is in the affirmative, could the Minister identify the International Labour Organization conventions to be ratified by the Government?

**The Minister of Labour and Co-operatives (Hon. Kenneth Collis):** Mr. President, no final decision has been taken by the Government, at this time, to ratify any additional ILO conventions. However, I am pleased to report to this

honourable Senate that the Ministry of Works and Transport is, nevertheless, actively assessing all the implications involved in the ratification of:

1. Convention No. 68, that is the Food and Catering-Ship Crews Convention;
2. Convention No. 73 Medical Examination-Seafarers; and
3. Convention No. 92 Accommodation of Crews Convention.

**Sen. W. Mark:** Mr. President, could the hon. Minister indicate whether the Government intends to establish any tripartite machinery to deal with the possibility of ratification or the possible studying of proposed ratifications of one or two other ILO conventions? Is there any intention on the part of the Government to establish a tripartite committee to deal with the question of further ratification in the near future?

**Hon. K. Collis:** In answering that question, Mr. President, I should like to say to the honourable Senate that ratification of ILO conventions carries certain responsibilities on the part of the member state and I would like to read these to the honourable Senate:

- (1) The enactment of new legislation and/or the updating of existing laws and the establishment of administrative procedures such as the setting up of inspection services et cetera that will ensure continuous compliance with all the terms of the instruments;
- (2) The submission of periodic reports showing the methods through which the Articles of the convention are being observed and the general effectiveness of the administrative procedures;

I should also like to say to the honourable Senate that failure to comply with the terms of a ratified convention can result in various sanctions, embodied in the constitution of the International Labour Organization, being applied against the defaulting member state. It is therefore essential for a member state to consider thoroughly its ability to meet the requirements of a convention before reaching the conclusion to ratify.

**Sen. W. Mark:** Mr. President, could the hon. Minister indicate to this House when was the last time the Government ratified an ILO convention and which convention that was?

**Hon. K. Collis:** Mr. President, at this point I would not be able to answer. I can always check and make the information available to the Senator.

**T&TEC  
(Occupants of Properties)**

**65. Sen. Wade Mark** asked the Minister of Public Utilities:

Regarding the sale of properties by T&TEC, could the Minister state:

- (a) whether properties owned by Trinidad and Tobago Electricity Commission are occupied, and by whom?
- (b) the designations of the persons occupying those properties, the period they have occupied those houses and whether those houses are rented furnished or unfurnished?

**The Minister of Public Utilities (Hon. Morris Marshall):** Mr. President:

- (a) Eleven of the 14 properties are occupied: nine of the 11 are occupied by members of staff of the Trinidad and Tobago Electricity Commission.
- (b) The designations of the persons occupying the properties and the periods they have occupied them for are as follows:

16 Alcazar Street, St Clair	Chief Engineer Distribution	March 1, 1987	Furnished
4 St. Vincent Ave., Federation Park	General Manager	May 15, 1986	Furnished
6 St. Kitts Avenue, Federation Park	Assistant General Manager-Engineering	February 1, 1976	Partly furnished
32 Collens Road, Maraval	Non-employee	May 15, 1990	Furnished
7 Valleton Avenue, Maraval	Area Administrative Officer	October 1, 1990	Unfurnished
#6A Mary Avenue, Diego Martin	Area Superintendent	April 1, 1990	Furnished
#14 Hillside Avenue, Cascade	Non-employee	June 24, 1989	Unfurnished

*Oral Answers to Questions**Tuesday, June 1, 1993*

#18 Chelsea, Cascade	Field Controller	January 15, 1991	Unfurnished
#52 Elizabeth Gardens, St. Joseph	Area Superintendent	June 15, 1980	Partly furnished
#12 Fourth Street, San Fernando	Senior Area Engineer	November 1, 1984	Furnished
Ponderosa, Rio Claro	Senior Foreman	April 1, 1992	Furnished

**Sen. W. Mark:** The Minister indicated that there are 14 homes, 11 of which are occupied. Could he indicate to this House what is the present status of the three remaining homes? Are they occupied or rented, and by whom.

**Hon. M. Marshall:** The other three units are vacant.

**1.40 p.m.**

**T&TEC  
(Rental of Properties)**

**66. Sen. Wade Mark** asked the Minister of Public Utilities:

Regarding the sale of properties by T&TEC, could the Minister state:

- (a) whether the rentals for these properties were increased and by how much, and precisely when those increases took place?
- (b) whether employees of Trinidad and Tobago Electricity Commission occupied these houses, and whether these employees do not own homes of their own?

**The Minister of Public Utilities (Hon. Morris Marshall):** I wish to advise that the rentals of the following properties were increased as follows:

<b>Address</b>	<b>Old Rent</b>	<b>New Rent</b>	<b>Date of Change</b>
16 Alcazar Street, St. Clair	\$350.00	\$1,320.00	March 1, 1990
4 St. Vincent Ave., Federation Park	\$218.50	\$930.00	March 1, 1990
6 St. Kitts Avenue, Federation Park	\$218.50	\$840.00	March 1, 1990
32 Collens Road, Maraval	\$301.00	\$2,400.00	May 15, 1990

*Oral Answers to Questions**Tuesday, June 1, 1993*

7 Valleton Avenue, Maraval <b>Address</b>	\$203.00 <b>Old Rent</b>	\$750.00 <b>New Rent</b>	Oct. 1, 1990 <b>Date of Change</b>
6A Mary Avenue, Diego Martin	\$147.00	\$301.00	April 1, 1990
14 Hillside Avenue, Cascade	\$350.00	\$800.00	June 24, 1989
18 Chelsea, Cascade	\$300.00	\$650.00	Jan. 15, 1991
52 Elizabeth Gardens, St. Joseph	\$150.00	\$309.50	June 15, 1980
14 Butu Road, Valsayn (South)	\$280.00	Vacant	Vacant since 1987.06.30
3 Gibbs Street, San Fernando	\$1,200.00	Vacant	Vacant since 1992.06.05
7 Henry Pierre Street, St. Joseph Village, San Fernando	\$150.00	Vacant	Vacant since 1992.05.01
Ponderosa, Rio Claro	\$350.00	\$500.00	April 1, 1992
12 Fourth Street, San Fernando	\$50.00	\$350.00	Nov. 1, 1984

The following houses are occupied by employees of the Trinidad and Tobago Electricity Commission:

1. 6A Mary Avenue, Diego Martin
2. 16 Alcazar Street, St. Clair
3. 4 St. Vincent Avenue, Federation Park
4. 6 St. Kitts Avenue, Federation Park
5. 7 Valleton Avenue, Maraval
6. 18 Chelsea, Cascade
7. 52 Elizabeth Gardens, St. Joseph
8. Ponderosa, Rio Claro
9. 12 Fourth Street, San Fernando

Nine of the 14 properties were occupied by T&TEC employees; two by non-employees of T&TEC, and three were vacant. Houses are assigned on two bases—by reason of the employees position in the managerial/executive hierarchy, and on the basis of the need for some officers at the supervisory level to reside in particular districts.

In the latter instance, whether the officer owns a house or not, he is expected to reside in the house provided, in order to ensure his availability virtually on a 24-hour basis.

Thank you Mr. President.

**Sen. W. Mark:** Could the Minister indicate to this Senate what were some of the factors responsible for the low levels of rent that existed prior to the increases that were mentioned by him a short while ago? Could the hon. Minister indicate to this House whether he intends to alter the arrangement that currently exists which allows T&TEC senior employees to occupy a T&TEC property at the same time that he owns his own home and, which arrangement facilitates him to, perhaps, rent his home?

**Hon. M. Marshall:** Mr. President, as relates to the first question—the low level of rentals, what the reasons were—I really cannot say. This goes back a long time ago. It may be that the emphasis was not on some sort of commercial arrangement, but rather to ensure that somebody was there. You are dealing with power supply—electricity—and you want to ensure that if there is a problem in Rio Claro, for example, the person in charge is there on the spot rather than having to bring him from Port of Spain. I want to assume that may be the reason.

As relates to his second question about altering the arrangements. We will continue to seek to adjust any arrangements that are there at any of the utilities that may not be working in the best interests of the utility. We will continue to do that on an ongoing basis. So in that context we will continue to review what is happening and if we think that adjustments are necessary in the interest of the utility and the country, we will simply do that.

**Sen. W. Mark:** Mr. President, could the hon. Minister indicate to us whether there are any more houses for rent by T&TEC at this time?

**Hon. M. Marshall:** Would you like to have one?

**Sen. W. Mark:** We would like to know if you have any more houses for rent.

*Oral Answers to Questions*  
[HON. M. MARSHALL]

*Tuesday, June 1, 1993*

**Hon. M. Marshall:** Mr. President, what I know is that there are some houses that none of the employees themselves have taken up. They are now being put on the open market, not for rent really, but, as I understand, for sale. We want to dispose of them because they are an undue burden on the utility. If you are interested, probably—

**Sen. W. Mark:** I am not interested.

#### **TAKING OF HOSTAGES BILL**

Bill to give effect to the International Convention against the Taking of Hostages opened for signature at New York on December 18, 1979 [*The Minister of Foreign Affairs*]; read the first time.

*Motion made,* That the next stage be taken at the next regular sitting of the Senate.

*Question put and agreed to.*

#### **ENVIRONMENTAL FOUNDATION (INC'N) BILL**

*Question put and agreed to,* That a Bill to incorporate the Foundation for the Environment of Trinidad and Tobago, be now read the first time.

*Bill accordingly read the first time.*

#### **ORDER OF BUSINESS**

**The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith):** Mr. President, I beg to move that the matter under Private Business, Bills Second Reading, a Bill to amend the Hindu Seva Sangh of Trinidad and Tobago (Inc'n) Bill, 1993 be taken at this time before proceeding to Government Business.

*Assent indicated.*

#### **HINDU SEVA SANGH OF TRINIDAD AND TOBAGO (INC'N) (AMDT.) BILL**

*Order for second reading read.*

**Sen. Salisha Baksh:** Mr. President, I beg to move,

That a Bill to amend the Hindu Seva Sangh of Trinidad and Tobago (Inc'n) Bill 1993, be now read a second time.



*Question put and agreed to.*

*Bill accordingly read a second time.*

*Bill committed to a committee of the whole Senate.*

**1.50 p.m.**

*Senate in committee.*

**Mr. Chairman:** I just want to draw to the attention of Senators to the fact that this Bill was amended in the other place and the list of the amendments was circulated together with the Bill and, therefore, should be read in conjunction with the Bill.

*Clauses 1 to 5 ordered to stand part of the Bill.*

*Question put and agreed to, That the Bill be reported to the Senate.*

*Senate resumed.*

*Bill reported, without amendment; read the third time and passed.*

#### FINANCIAL INSTITUTIONS BILL

[SECOND DAY]

*Order read for resuming adjourned debate on question, [May 18, 1993]:*

That the Bill be now read a second time.

*Question again proposed.*

**Sen. Michael Mansoor:** Mr. President, I am very pleased to be able to make a short contribution on the Financial Institutions Bill, 1993. I should like to start off by saying that in many respects this legislation is good legislation, legislation which empowers the Central Bank to carry out its job as the virtual policeman, if you will, of the commercial banks and non-bank financial institutions. But as with all good legislation, there are always concerns which need to be addressed prior to that final act which puts into law, legislation that can affect the day-to-day transactions and the method of doing business in as important a sector of the economy as the commercial banking sector.

One of the essential differences, as I understand it, between the Banking Act as we have it up to now, and the proposed Bill, is that in instances where the Inspector of Banks determines that there are solvency problems with an individual commercial bank, his mode of operation in terms of what he does, has changed

somewhat. Under section 21 of the existing Banking Act, the Inspector basically reports to the Central Bank and to the Minister of Finance, presumably, and the Central Bank, after considering all the relevant facts and circumstances, and with the approval of the Minister, may order such bank to suspend business in Trinidad and Tobago forthwith, and may order the Inspector to take charge of all books, records and assets of the bank.

So that, essentially, under the existing law, the Inspector does his work; the Inspector reports to the Governor of the Central Bank or to the Central Bank; there is consultation with the Minister, and only after the approval of the Minister can the suspected insolvent bank be closed down.

Under the proposed legislation, the Inspector reports to the Central Bank, and the Central Bank, without consultation with the Minister, may proceed to direct the Inspector to take charge of the assets of the suspect bank and basically either move towards the appointment of a receiver or to postpone the date of the closure, or to initiate any of three sets of courses of action that may take place as set out in clause 32 of the Bill.

So what we are dealing with is essentially the involvement of the Minister of Finance in the closure of a bank whose solvency and conduct are suspect, and the essential change in the legislation is really the non-involvement of the Minister. Now, one has to ask the question: Why has the Minister been left out of this process of decision-making, and whether or not the delegation of the responsibility for the closure of a bank to the Inspector and the Governor of the Central Bank or the Central Bank whether these constitute a sufficiently strong group of people to make that decision without the involvement of the Minister of Finance?

Before one seeks to answer that question, however, one cannot help but review what has happened in the commercial banking sector in recent years, and ask the question as to what has really happened to some of our commercial banks, and basically to ask the more pertinent question as to how the Central Bank has satisfied its responsibilities in supervising the operations of certain commercial banks, and why, on the basis of what has happened, it is now necessary to change the way these decisions are made.

If one looks at commercial banks as they go, one cannot help but be somewhat dismayed, I suppose, by the results, the accountability and the accounting of some of the commercial banks, or, in particular, of one commercial bank that has come to my attention. You see, when we propose to change laws and change decision-

making structures, we have to say: Well, why the change? Why are we leaving the Minister out of the loop? Is this a good thing? What does the history suggest? What in our past performance makes it now necessary for this change? As I said, on the basis of a very cursory review of the financial statements of one bank in recent times, one really has to ask the question as to whether or not a sufficient level of policing or monitoring has taken place.

One has to ask the question as to whether or not the Inspector of Banks reported on the matter to the Governor of the Central Bank, and, the Governor of the Central Bank sought the approval of the Minister to deal with the realities of this particular bank.

**2.00 p.m.**

Mr. President, I have no intention of being unduly detailed in this particular matter, but could the Minister state whether there are any banks on which reports of problems of unease or insolvency have been filed? And, what has really happened? Because, there is one commercial bank whose financial statements would suggest that all is not well. This particular bank, for example, I believe it was in 1990, sold a portion of its loans to another organization in exchange for a note at 2.5 per cent.

I have to ask the question, before we make this quantum leap into changing everything: What happened there? Has the Central Bank not noticed this? What assurances do we have that this kind of non-response to commercial realities would not continue?

As I said, I have no wish to be an alarmist, but I think it is important that some answer be forthcoming as to what has really happened in the monitoring of banks over the last five years. If I remember correctly, in the very able contribution of the Minister of Finance, he sought, in some detail, to explain that the rationale for this Bill the protection of depositors. If my memory serves me correctly, he enumerated some of the failures. I ask: Why? Is it that no reports were filed? Is it that the Central Bank would not act? Is it that the Minister did not give his approval? Or, is it that it is not an issue at all?

Now, one comes to the point of leaving the Minister out of the loop. Will we have better decision-making today by allowing the Inspector to report to the Central Bank; and the Inspector and the Central Bank make that final decision that a specific bank is no longer solvent and, therefore, we should close it down? I suppose that the change suggests that wise men have come to the conclusion that

the approval of the Minister fetters the Central Bank. If that is so, we need to know why. In the Bill the Minister retains some sought of responsibility for what happens in this industry; responsibility in the sense that he has to be consulted on certain matters. Quite what that consultation means, I really do not know, but the Government cannot just walk away from this industry. It is too important. The essential issue is, given all the powers that the Central Bank will now have in this new Bill, to whom is it accountable? Is it accountable to the Minister, who is then accountable to the population? Or, is it accountable to no one?

Mr. President, I am very concerned about what has happened. I need to be told why this change in this important procedure has been found necessary? I need to know whether the facts are that the Inspector has, in fact, reported, but nothing was done. And, if nothing was done, why?

I would leave that troubled matter alone, because, as I said, I want to be very careful in the way I speak about it, and I have no wish to sound unduly alarmist, but I do not believe that this debate should be allowed to end without some indication as to how this policing mechanism has, in fact, worked in the past, and if by putting all this responsibility in the hands of the Central Bank we may get a better level of surveillance in the future than we have had in the past.

I come to the question of the power of the Central Bank and the Inspector. Most of us would remember that Sen. Daly was very specific about the powers of the Central Bank, and the Inspector to act on the basis of 'cease and desist orders'; the power of the Central Bank to revoke licences or to change the nature of the licences of these institutions; and, indeed, the power—perhaps the most potent power—to close down a bank if it has become insolvent.

The suggestion was made by Sen. Daly, in his contribution and amendments, that we should have a board of supervision which would be consulted and which would rule and decide as to what should be done in cases of the revocation of licences; the changing of the nature of a licence or, indeed, the closing down of a bank.

What has now happened is that the Minister has been essentially left out, and the proposal is that the Inspector and the Central Bank will make this decision without the Minister. The feeling is, I believe the term used by Sen. Daly was "commissar". It is a new term to me. I did not think that our political culture could accommodate such a term, but it appears that in Sen. Daly's vocabulary, as it relates to the Central Bank, that is perfectly permissible.

The essential question here is: Will we get a better quality of decision if this board of supervision is put in charge—the Governor, the Inspector and one or two members of the board of the Central Bank; without the Minister? Or, will we get better decisions with the Central Bank being able to act on facts and figures, if you will? Does the stipulation that the Governor of the Central Bank shall keep the Minister informed at all times as to what is happening in this industry impact upon these decisions that are to be made either by the Central Bank and the Inspector, or the Central Bank, the Inspector and two or three independent members of the Central Bank's board?

**2.10 p.m.**

I am more concerned, with respect to the closure of banks consequent upon solvency problems, about inaction than about precipitate action. The reason why I am more concerned about inaction is that the history suggests quite forcefully that in the last decade we have been slow to act, and without attempting to lay blame anywhere, one really has to wonder if it was the Minister's approval that was slow in coming, and is the proposal in the Bill a better way of doing things.

The point in the end is whether or not other interests, whether they be political, social or, if we want to be kind, big-picture issues, would be so well articulated and so forcefully put by these members of the board, other than the Governor and the Inspector, that those issues would rule the day and that the very pertinent judgment of the Inspector of banks to make a decision on the basis of facts and figures would be put off, postponed or forgotten.

The other consideration is: Are the Inspector of Banks and the Central Bank, however that is constituted in terms of this provision, likely to be so cavalier that they would wish to close down a bank, suspend its operations on the basis of the consideration of a commissar, as Sen. Daly so delicately put it.

If it is that our concern should be more about inaction, rather than precipitate action, the conclusion would be that we should leave it to the Inspector and the Central Bank, because by doing that one eliminates the possibility of interference, whether it be political interference, or big-picture interference if one wanted to be kind. There really is a dilemma.

What does one do here? Does one leave it to the Central Bank and an Inspector who in real terms are really responsible to no one, because the Act makes it very clear that the Inspector can be removed only if he misbehaves. I

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

cannot imagine how an inspector of banks would misbehave, but that seems to be what is contemplated by the Act. The Inspector of Banks, in the absence of misbehaviour—whether it be on carnival day or what kind of misbehaviour, we do not know—is a fairly permanent person.

The Act says that the Inspector of Banks is appointed by the President on the advice of the Governor; no specific qualifications or anything; just we have an inspector of banks who must behave himself. He is really accountable to his own professional type of considerations. He may be accountable to the Governor. I do not know. But then, to whom is the Governor accountable, and to whom is the board of the Central Bank accountable?

I do not believe that there are any easy answers particularly in the light of the history of inaction rather than precipitate considerations with respect to the closing, or cease and desist orders or whatever variant of that was possible in the old Act.

It would seem to me that the current legislation which says the Central Bank and the Inspector, indeed, implies tacitly that there would be some sort of consultation within the Central Bank: maybe the Governor and others. If that is the intention that would be good, but I believe because of the fear of interference, it may be on balance better to have a board of supervision. The history has to be taken into account, and whether or not one or two members of the board of the Central Bank would make a difference, is really something that is a theoretical conundrum to me.

On balance, I would support the amendment that has been proposed, that we have a board of supervision, but I do that with a lot of fear that inaction, rather than precipitate action is likely to follow from that arrangement. However, in situations like this there is never a clear-cut answer.

Having regard to the fear that the actors in the industry have with respect to decisions being made unilaterally and without reason, a fear which is not supported in the Bill, and having regard democracy, it may be better for the words "Central Bank" as set out in the Bill be defined for the satisfaction of the players in the industry, because that is really all that has to happen. The Central Bank has to be defined, and if we have to define it by way of setting up a board of supervision, that may be the way to go. Let me leave that one alone for the time being.

The role of the Minister in this Bill is really surprising in some way. There is a requirement that the Governor shall inform the Minister. There is a requirement that prior to the issuing of a new licence the approval of the Minister should be obtained. Of course, as I said before, the Minister has been left out in some of the key decision-making, except, of course, the possibility that he may be able to act through the independent members on the board of the Central Bank. I do not know.

I think that it would be useful if we can settle the issue as to really to whom the Central Bank is accountable. Is it accountable to itself? Is it a law unto itself? What really is the nature of the information that the Governor of the Central Bank is obliged by statute to give to the Minister? What are really its obligations? If something massively were to go wrong, who is responsible? Is it the Minister, the Governor or the Inspector? I think an issue like this we need to know. It cannot be just anybody, or any of the above or all three of the above. The strictures here need to be very clearly defined.

We need to set out and talk a little about who is responsible, because now that the Central Bank has all of this power to get information from everybody to basically play a very important role in the appointment of even relatively junior officers at the bank—they have all kinds of powers—that is good maybe, but having got that power, how do they account for carrying out those responsibilities?

There is nothing in this Bill that tells me how this this is going to be done, or is it only that we are going to judge the Central Bank on the basis that there is a collapse or there is not a collapse. I do not know. You cannot give all of these responsibilities without seeking to set out how the Central Bank is accountable for the enforcing of this legislation.

Now, I come to the very troubled issue of the prohibitions. I believe it is clause 22, where the prohibitions are set out. When one looks at these prohibitions and the question of the ability of the Central Bank to give very specific instructions to banks as to how they should lend their money and which industries they should lend to, one has to ask the real question: Does this legislation require a two-thirds or three-fifths majority?

**2.20 p.m.**

I am not going to get involved in that; that is for the lawyers. But it seems to me that when one is enacting legislation of this nature, especially when one wants

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

to suggest that this legislation will be the bedrock—if you will—of this financial centre that we are seeking to set up, one needs to be very, very clear that this Bill is enforceable. This is not an academic matter for lawyers to talk about in the courts of law.

There is one instance, the securities industry legislation, which I know a little about. I know that in a certain matter which was taken to the courts, one of the parties was basically debarred from proceeding because the other party said, consistently and quite seriously, that even if they lost the matter, they would not lose because the securities industry legislation was not properly enacted with the required majority.

With respect to the securities industry legislation, if one seeks to use it to defend one's commercial rights, one can be told quite convincingly and correctly, "Well, you know, the Act is of no use. The Act can be challenged. It affects people's rights and, therefore, it requires a certain majority". Mr. President, if we do the same with this Bill and we say cavalierly, "Well, it just does not matter", we could very well end up in a situation where when the time comes to test the legislation, we are told, "Well, you know, we will take it to the Privy Council", or to whomever else these things are taken, and the Act will be thrown out because it is unconstitutional.

That is my humble submission on that matter. I am not an attorney. All I can say is that, as far as I am concerned, the rights of a certain litigant in very recent times have been severely hampered because of this question of the constitutionality of another piece of legislation in the commercial world, and I wonder about this; I really wonder about it.

To come to the specific prohibitions. My concern centres on clause 22(1) which speaks about granting secured credit facilities to any one person or borrower group exceeding 25 per cent of its capital base, or such greater proportion thereof, as the Central Bank may from time to time approve.

This legislation would be very fine for large financial centres where there are many banks, a very well-developed capital market and where businesses are not starved of capital and can very easily access either loan capital or equity capital through a very vibrant market. The same is not true in Trinidad and Tobago. The fact of the matter is that many businesses are financed, perhaps in not the best fashion, by bank capital, either in the nature of overdrafts, revolving loans or



evergreen facilities, but basically there is a fair dependence on commercial bank credits.

The Bill seeks to put a severe restriction on the amount that a borrower group, which is very, very widely defined, can access. A borrower group is, basically, anybody who has even a vague relationship with anybody else. So that the large conglomerates in this country are all borrower groups. The notion that the banks will only be able to lend 25 per cent of their capital base to these large borrower groups would essentially create financial mayhem in this country, if accepted and legislated the way it is set out here.

One has to examine the facts and then ask the question: Why is this decision even being contemplated? Is it for the very good reason, that the Minister articulated two weeks ago, that the protection of the depositor is of paramount importance? To have a bank invest a hugely disproportionate amount of its funds in one borrower group, could be very injurious to the rights and ability of depositors to realize their deposits in the long-term.

That is the concern, Mr. President. I respectfully suggest that we have carried the concern too far because borrower groups can encompass several industries. It is not just the question of lending to one industry that may fall on hard times, which would be a concern, or to one company, which could also be a concern. Borrower groups, as we know them in Trinidad and Tobago, can be very, very widely dispersed in several industries and have a lot of financial strength.

So that this particular prohibition is really not at all acceptable in the current state of our financial arrangements. Maybe at some time in the future when our financial capital markets are fully developed, we could afford, within a four-month period to bring this type of stricture to change the way business is done in a very immediate fashion. But, Mr. President, this particular prohibition, to say nothing of the rather Draconian provision with regard to unsecured credit facilities, will cause much trouble.

The provision itself does not seem really to be warranted by the financial facts. I will tell you why. I believe it is clause 28 of the Bill that says that the maximum deposit liabilities of a commercial bank will be 20 times the amount of the share capital and the statutory reserve fund. So that, a bank that had, let us say, a total capital base of \$200 million and shareholders funds and statutory reserve fund of \$130 million, will be able to hold deposits from the public in the amount of \$2.7 billion.

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

I use the figures for one particular bank, I think it is Republic Bank; their capital base with the parent company of the bank was \$197.2 million at the end of September 1992, and their share capital and statutory reserve fund were \$133.7 million. So that bank could lend or would have to lend as much as \$2.8 billion. If one looks at 25 per cent of the capital base of that bank, one would get a figure of approximately \$49.3 million, let us say \$50 million. We are saying that for a bank as large as this one with virtually \$3 billion worth of assets, the maximum they can lend to a borrower group—which, as I said before is a very large type of group that could be in several industries—will be less than \$50 million. That is extremely Draconian and, really, it cannot be brought upon us within a four-month period.

First of all, I have to ask the question: Why should you limit the exposure of a bank to a borrower group to 1.67 per cent of your total assets—that is what the numbers work out to be—particularly when those lendings are secured?

**2.30 p.m.**

Mr. President, very clearly, what would result from the Bill if it is put into law is either that the commercial banks would become completely dependent upon the Central Bank to make decisions in the areas of credit—because the Bill suggests that the Central Bank should be responsible to raise these limits, if the Central Bank considers that necessary—either we will be putting another level of decision making on the backs of the Central Bank or we will be creating a situation where several of our large conglomerates will not be able to finance their business with all the consequential things that will happen as a result of that.

It does not seem to me to make financial sense to say that a bank cannot lend more than 1.67 per cent of its asset base on a secured basis to a borrower group that could span several industries. This seems far too onerous for our present state of affairs.

The options that we have are either to adopt the amendment that Sen. Daly suggested, which is to change the ratios and to put it off until 1998, or to do, as I have suggested in an amendment which I will be circulating, to say that as of right now a bank can lend to a borrower group on a secured basis an amount equal to its share capital and statutory reserve fund. This would mean, that a single bank—let us say our largest commercial bank—would be able to lend approximately \$130 million to a borrower group on a secured basis. That might be a way out.

I will be circulating my own amendment in this regard; we have Sen. Daly's amendment, and it is something that I would ask the Minister to consider. The reasons that I am advancing are:

- (1) The financial confusion that would result from bringing the Bill into law, as it now stands is incalculable.
- (2) I do not believe that the Central Bank really wants to take on the responsibility of saying it is okay to lend in excess of what the law stipulates to this or that particular borrower group.

I do not think that that is a responsibility for the Central Bank. The commercial banks need to make their own credit decisions. Why should we be institutionalizing this dependency syndrome, that in order to advance funds you have to go to the Central Bank to say it is okay? Let us set it out very clearly. Let us recognize that we are talking about secured lendings. And the Central Bank should not be put in that position, in my respectful view, of having to assist or to approve the credit decision that the commercial banks are quite entitled to make on their own.

Surely the Central Bank can go in and say, this is not a secured facility, because the security in which you have made this loan is not valued properly; that is an issue for the Inspector of Banks. But to have the Central Bank approve these loan decisions, in the way that is suggested, I think is unduly burdensome.

The last reason that I wish to suggest, is that when one looks at the assets available to a commercial bank to lend, on the basis of 20 times your share capital and capital reserve fund, to suggest a figure as low as 25 per cent of your capital base to be a maximum limit, that percentage in my view, is too low, because you are really saying that a commercial bank cannot lend more than two per cent of its funds available for on-lending to one borrower group, which is very widely defined.

Mr. President, I have another concern and it has to do with affiliates. Affiliates—I did what is called an organization tree—an affiliate really, as defined in this Bill, would be the equivalent of what we call in Trinidad and Tobago, 'pumpkin vine family'. An affiliate is anybody with whom you have the slightest and smallest relationship. But let us leave the definition of affiliate alone and look at the practical implications of it. In clause 42 (2) there is the requirement that:

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

"Every licensee shall submit to the Central Bank in respect of an affiliate an audited balance sheet and profit and loss account signed by two directors within four months after the close of the financial year of that affiliate."

There is nothing wrong with that, but let us look at the practical implications of it. Affiliates as broadly defined as this would mean that the Central Bank will get hosts of financial statements of affiliates and, really, it will do very little with this. I have suggested an amendment which I would beg to circulate, that the licensee should be required to submit financial statements for all affiliates with whom it has credit facilities, deposits or related party transactions.

The Central Bank will have at its disposal, the financial statements of affiliates who have borrowed money, who have received guarantees or who hold deposits for the licensee. Because one remembers within very recent times the bank that got itself into difficulty internationally, that the local branch was reasonably okay except for the fact that it had a deposit with an affiliate of its parent, and because of that deposit, depositors in Trinidad and Tobago are likely to lose money.

Mr. President, I suggest to the Minister that, purely as a matter of administration, we would seek to limit the affiliates for which financial statements need to be circulated, to people who have deposits or have credit facilities with the licensee. I think that that is a sensible, practical approach and that it would really reduce the amount of paper work and control or monitoring that the Central Bank would otherwise have to do. That is an amendment and that is the background to that amendment.

There is another requirement in the Bill and that is that non-bank financial institutions or new institutions must have a capital base of \$15 million. I believe that this Government is very keen to support small business and the growth of business, and I also believe that the Government is, quite rightly, concerned about the financial viability of our financial institutions, but it seems to me that a share capital requirement of \$15 million for a non-bank financial institution, without any reference to what kind of business that enterprise would do, is really a very arbitrary way of setting the limit for entry into the financial industry.

It seems to me, Mr. President, that with respect to a non-bank financial institution which may not be in the business of lending or even taking deposits at all, to suggest a capital base of \$15 million is a sine qua non and is really an impediment to the development of the financial industry. I would wish to suggest

that the capital base for non-bank financial institutions be reduced, subject, of course, at all times, to the Central Bank saying that one of the conditions of giving a licence to carry out commercial business of a financial nature would be that your capital base be  $x$ , depending on what you are going to do. But to stick into our laws, the requirement of a minimal capital base of \$15 million for anybody, in my respectful view, is unduly onerous and is really an unnecessary impediment to the growth of small business.

**2.40 p.m.**

I say that, Mr. President, in the context that if this Bill becomes law, the Central Bank will have at its disposal all the powers that it needs to monitor these financial institutions. So that in an era when there really is no curtailment of Central Bank's powers, why are you making it so difficult for people to enter the industry?

**Mr. President:** The speaking time of the Senator has expired.

*Motion made,* That the Senator's speaking time be extended by 15 minutes.  
[Sen. M. Daly]

*Question put and agreed to.*

**Sen. Mansoor:** So Mr. President, what I am essentially saying is that now that the Central Bank has all of these powers to monitor and to police, let us see how good it is at this business. You do not have to make it virtually impossible for legitimate interests to enter this industry. It is quite possible to have non-bank financial institutions completely and quite adequately capitalized with less than \$15 million worth of share capital.

The other concern that I have has to do, again, with the decision-making powers of the Central Bank. We have seen that the Bill suggests that the Central Bank could coerce the commercial banks to make decisions with respect to borrower groups, which is something, I think, is not at all the Central Bank's responsibility; and also we see that in clause 26 (2), the Central Bank by statute—not by persuasion, but by statute—can impose controls in respect of the volume, terms and conditions upon which credit may be made available to all or any sectors of the economy.

It seems to me that to enable the Central Bank to abandon the persuasive powers which it has always had in this area, and to give it the power to legislate how much is to be lent, in which industry, is giving to the Central Bank a level of

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

decision-making which it really does not need, especially because of the fact that the Inspector is being empowered—either by way of "cease and desist orders", or by the other strictures in the Bill—to police the industry. Why should we lumber the Central Bank with the responsibility to impose controls? I do not see the need for that power at all. If the Central Bank retains the power and carries out its job of monitoring and policing what the banks and non-bank financial institutions do, it would not need this power.

We see, again, Mr. President, in clause 27 (2) and (3) the Central Bank is given the right to purchase all the foreign currency in excess of working balances which a commercial bank may hold. It seems to me that in this era of liberalization—we came out on Easter Monday, if I remember, to liberalize currency—why should there be a statutory requirement that the Central Bank has this power to mandate and to force the commercial banks to hand over and sell to it currency in excess of a working balance which would be, I assume, determined by the Central Bank? It seems to me, again, that in addition to the powers of monitoring and policing, we are giving the Central Bank a power that it does not really need in an age of liberalized exchange control. The two sets of legislation seem to be going in different ways.

Another clause that gives rise to some concern is the question of the appointment of the Inspector of Banks. I believe that there should be some sort of qualification for the Inspector of Banks. It is not a major point, but I think it should be required that the Inspector of Banks be a banking professional—and there are ways in which bankers certify themselves professionally—or a professional in the finance area, whether it be in the accounting area or other areas. But to have a very important position, such as the Inspector of Banks, not subject to a requirement that the person holds certain qualifications, seems to me to be somewhat lax, if you will, in this day and age.

I come to clause 38 which, I believe, was very well debated by Sen. Daly, and it has to do with the question of the ability of the Central Bank to make bye-laws with respect to prudential criteria with which licensees shall comply: Clause 38 (2) states:

"(2) Bye-laws pertaining to prudential criteria may include but shall not be limited to—"

and there are about 15 types of items listed.

Mr. President, it is very clear to me that the Central Bank should not be given this power without reference to Parliament or to the Minister. While I would accept that the Central Bank is the key player in the monitoring of commercial banks, to give the Bank the ability to set up bye-laws, and all sorts of things, it really seems to be an unwarranted type of power.

You see the bye-laws can be made on a wide variety of matters, for example, "new financial instruments" and that could mean anything. It seems to me that if we are going to say that the Central Bank unilaterally can make bye-laws with respect to new financial instruments without reference to Parliament, Minister, or anybody, that power is too great and is not warranted by the facts.

The other concern I have, Mr. President, has to do with a detailed matter that is included in the part of the Bill that has to do with accounts and auditors. The Central Bank has the power to mandate and to require that independent auditors and any appointees, any members of staff in a commercial bank, must give to the Central Bank whatever information the Central Bank requires. I can understand why this has been put in there, but I find it more than passing strange that we are suggesting that independent auditors should provide the Central Bank with information, but nowhere in the Bill is there a definition of what the auditor's responsibilities are. Who is the auditor? What is he supposed to do? Is it defined in the Companies Act where anyone, your grandmother included, can be the auditor of a company? If we are going to say that the auditor has a role to play in the policing and monitoring of banks, surely we should define somewhere what the responsibilities of this auditor are, or what does he have to do with all of this.

The strictures that are put on auditors are quite severe. If he decides not to go for re-election and he does not inform the Central Bank, I believe he can go to jail, or have to pay some large sum of money. So there are all kinds of responsibilities that are put upon the back of the independent auditor, but nowhere is there defined, to my satisfaction, what the role of this independent auditor is in the monitoring of the commercial banking activities.

It may be a question of setting out very clearly what is the role of the independent auditor vis-a-vis the Inspector. This, in the past, I can suggest with a fair amount of certainty, has been a problem. What is this independent auditor's responsibility with respect to a commercial bank or non-bank financial institution vis-a-vis the Inspector? Is the independent auditor to do some of his duties? Is the Inspector allowed or supposed to depend upon the independent auditor? I suggest that this is a very pertinent omission from this Bill.

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

Mr. President, just to wind up, I suggest that this is good legislation. I think that the Government needs to be commended on bringing a Bill of this nature. I believe that there are two major difficulties with the Bill. The first has to do with the power of the Central Bank and the Inspector, vis-a-vis the Board of Management and the Minister; and I also believe, and have attempted to suggest, that the prohibitions with respect to secured lendings to borrower groups are far too severe and really not workable in Trinidad and Tobago today. And they are really not necessary, if the Central Bank does all the work that it is now empowered to do.

I therefore wish to indicate that if favourable consideration is given to the amendments suggested by Sen. Daly and by me, I would be very well disposed to support this Bill.

I thank you.

**2.50 p.m.**

**Sen. Surendranath Capildeo:** Mr. President, when the financial history of this country is written, this Bill, the Financial Institutions Bill, 1993, will be ranked among the many guideposts, as one of the most significant Bills in the legislative history of this country. This is an important piece of legislative engineering. It is, of necessity technical in the extreme and its language is filled with the esoteric mysteries of the fine art of economic and legal jargon. It is impossible to do dissecting justice to this Bill in 45 to 60 minutes. One wonders how many man-hours of research and drafting were spent by the legal department to produce this 60-page document. I expect weeks, perhaps months. And yet, we ordinary souls here in the Senate have a few hours to publicly bare our thoughts on it. I am told that this is not quite accurate. There are a few here who believe they are extraordinary souls, but I will leave those souls to the divine and to the Ambassador of the United States of America.

I want to quote from the *Trinidad Express* of May 27, 1993, page 2. There is a blaring headline here: "Sally Cowal Praises T&T Government—Washington, (Cana).

"The US Ambassador to Trinidad and Tobago, Sally Cowal..."

I do not know whether it is intentional, but the surname is spelt with a common "c".

"has praised the twin-island state's efforts to privatise the economy,..."



Now, Mr. President, I admire this Ambassador. Straight talk! There is no distinction between divestment and sharing. She comes right to the bone. Straight talk!

"revise its tax code to encourage more investment, and reform customs policies to stop drug smuggling.

Speaking this week at a Washington conference on business opportunities in Trinidad and Tobago, Cowal praised the Government's "courageous" decision in April to float its currency. The move made it easier to exchange Trinidadian dollars for US dollars, encouraging investment and making exports from the twin-island country of 1.2 million people more attractive."

Here, Sir, is where we get to the authorship of this Bill.

"Cowal, according to the US Information Service, said the United States was working with the Trinidadians on a "few remaining steps" to ensure stability in the economy, which, she said, included changes in an intellectual property rights law, and new laws enacted to liberalise the country's banking and financial services."

So here we have the authorship of this Financial Institutions Bill, 1993. But I fear that the Ambassador, in using the words, "working with Trinidadians on a few remaining steps" forgot the Trinidadian facility to stumble on those steps. This piece of legislation should really be withdrawn, for running through this Bill, like an invisible thread, is what I say, is the intentional, deliberate act of the drafters to create in the Central Bank a self-contained body, accountable to no one, making its own rules and regulations. This is entirely unacceptable, and if only for this, the Bill should be withdrawn and submitted for public comment before it is introduced again.

I have said it here before and I make no apology for once again quoting Juvenal in the original: But who will guard the guards? *Sed Quis Custodiet Ipsos Custodes?* Because there is no authority within this legislation—nobody—to oversee the acts of the Central Bank and the Inspector. Several times I have used this quotation in the Senate, and it seems to me a pattern is emerging in the legislative agenda, a tendency to bring these bits and pieces of legislation to seek to bypass the authority of this Parliament. If only for that reason, this Bill ought to be withdrawn in its entirety and put for public comment. We cannot sit here, and we will not sit here, in silence, and allow the creation of what will turn out to be a monster in this country, that is, a Central Bank accountable to no one. We have a

*Financial Institutions Bill*  
[SEN. MANSOOR]

*Tuesday, June 1, 1993*

history in this country and we are not blind to that history. We are ordinary human beings and we are open to all the forms of corruption that man could invent. You will find them here in this little island.

Mr. President, this Bill will lay down for years to come the regulations of banking in this country. It affects, every institution, every company, every business everybody. So far, in this honourable Chamber, we have had the voice of the banking industry; we have had the voice of very big business, and now, with your permission, I want to articulate the concerns of the ordinary citizen, who is as confused as the Government is. He is not interested in what we had when the hon. Minister introduced the Bill—a world tour of banking institutions. Like the Government, nobody in this country knows what is going on. We have got to read a Washington report to understand that it is the American Ambassador informing us that the US Government is working with the Trinidad Government to enact laws to liberalize the country's banking and financial services. If this report did not appear in the newspaper, this Senate would not have known about that.

I think that the first thing that the small businessman would want to know is whether or not this Bill is fair. Is it equitable? You know, in this country, we have an Orwellian situation. Some are more equal than others. Even the hon. Prime Minister is wont to give new definitions to the meaning of equality. If you want to put it in local parlance, "If you eat roti and bhaji, that is not equal to a fast food diet." Come to think of it, he may have a point there, but I do not want to digress. I want to know: Are we assured in this Senate that this Bill is equitable to all who are in the banking industry and all who intend to be in the banking industry? We cannot ignore our historical circumstance. Certain banks have made good because of their early banking roots in this country.

### **3.00 p.m.**

In fact, Sir, certain legal firms owe their existence to these banks. And, there are monopolies both in the banking and the legal systems...*[Interruption]* I do not want to be side-tracked, but in the law, a lot of mediocre non-entities of these banks made it because of the insistence by the banks that they go to their lawyers. One has a situation where mediocrity becomes the norm, and that is a historical fact; we suffer from it. This piece of legislation is evidence of it.

Let us ask ourselves: Is this Bill equitable to a new entrepreneur who wants to get in into banking industry? We have seen what the present system of banking

can do, and, perhaps, if I use the words, "oligarchic banking system" it will strike a responsive chord. *[Interruption]* They are money-lenders, plain and simple.

Mr. President, we are supposed to have a free economy; a free-floating dollar, but, the banks, with their silent, enormous power, are effectively controlling the rate of the so-called "free floating" dollar. Even in this banking enterprise, there is a clear-cut distinction; we all know, and even though we pretend not to notice, there is a clear distinction between all the banks on the one hand and the Workers' Bank, the National Commercial Bank and the Co-operative Bank on the other. It is as graphic as black and white. It is an historical fact; it is something we have to live with and understand.

We all know, Sir, that these banks are carrying enormous bad-debt portfolios. I do not want to reveal the names. I do not want our friend, Sen. Kuarsingh to jump up, but I am told there are so-called "important people" who owe some of these banks millions and millions of dollars. The money is not being collected, but the employees assigned to the collection departments are being told to ignore those debtors. I want to know: Does this Bill deal with a situation like that? Because, we have just come through, what I would call, "the purging era of the non-banking financial institutions" when money was allowed to flow through the system like that celebrated quote "a dose of salts". How does this Bill protect the citizen? That is the question that the ordinary man in the street will ask; "How am I protected by this Bill?"

Mr. President, with your permission, I will tell of a personal experience. I am a one-man legal firm. I do not want to talk about quality and quantity, but I have a client who went mad. He lost \$900,000 in a finance house. The directors of that financial house are still around, Sir. They occupy positions in high society and drive Mercedes Benzes and Royal Saloons. My client is an out-patient of St. Ann's. In my one-man firm, I handle matters involving clients who lost millions of dollars in finance houses which collapsed. How does this Bill protect those kinds of people? Because there is nothing to say that banks will not collapse like finance houses. There is no guarantee; nobody here can give me a guarantee that there will not come a day, if we continue on the present path, that banks will not collapse like finance houses. When that takes place, Armageddon.

The most important question in the minds of the pensioners, the widows and those who invested and lost their savings before is: How does this Bill protect them?

*Financial Institutions Bill*  
[SEN. CAPILDEO]

*Tuesday, June 1, 1993*

Let us move from the finance houses to the banks. We have had the recent experience of a failed bank, and doubts have been expressed as to the effectiveness of the control of the Inspector of Banks and the Central Bank with respect to what happened to BCCI. Does this Bill safeguard the public? I think the expression used was "inaction by the Central Bank and the Inspector of Banks". There are allegations, again, and I go no further than that.

There are allegations that with respect to certain banks, their debt portfolios are unnaturally high. In fact, I am told that one former permanent secretary and one former manager of a bank owe between them millions, and there is no sign of any serious effort to collect the money. Does this Bill protect shareholders from that kind of situation?

Mr. President, let us go to the newcomers. Are we really geared to deal with the 21st-century banking systems? We have all read of the Italian banking scandals; we have seen the problems that the US Treasury Department, the US Department of Justice and the American Congress have with their banking system. We have seen the problems that the Bank of England faces. Are we, in this country, seriously saying we can police the system? We cannot even police the streets, we would police the system?

Mr. President, I see the hon. Minister looking at me. His ASYCUDA reform, is it working, in shape? Are we policing the Customs via ASYCUDA? Is it working?

**Sen. Kuei Tung:** It is coming along.

**Sen. Capildeo:** It is coming along shortly. Mr. President, do you see? One and a half years have gone, and it is still coming along.

When one looks at clause 3(2) of the Bill:

"Except with the approval of the Central Bank a person other than a bank shall not trade or carry on any business or undertaking under any name or title of which the word "Bank" or any variation of the word forms part."

What happens to a man who has the name "Bank"? There are people with that name. What happens to them? It may sound trivial, but it is going to impact on the meaning of this clause.

Mr. President, clause 4(1), states:

"A person other than a company licensed by the Central Bank for that purpose shall not carry on any banking business in Trinidad and Tobago."

Clause 4(4) reads:

"A person shall not carry on banking business without having a minimum paid-up share capital of fifteen million dollars or such larger amount as may be specified from time to time by Order of the Minister on the advice of the Central Bank."

**3.10 p.m.**

We all live in Trinidad and Tobago. If you have the wrong people administering this piece of legislation, there would be favouritism. We are guilty of that. Favouritism would show its ugly head and people would be made to suffer for no reason, other than they do not find favour. Where in this Bill does anybody have any recourse for justice?

Clause 4 (6) states:

"An institution which, under subsection (5), is deemed to be licensed, and which does not have a minimum paid-up share capital of fifteen million dollars may be required by the Central Bank to increase its paid-up share capital within a specified period and where it fails to do so, the Central Bank may limit its business and impose conditions until the share capital requirement has been met."

This section is ready-made to allow the wrong kind of person, if he is in charge, to squeeze people. It could be easily abused. Where does the institution have any recourse in this Bill against this sort of situation?

**Sen. Huggins:** In court.

**Sen. Capildeo:** Courts. We will come to the question of courts in this Bill just now.

Clause 8 (1) states:

"The Central Bank may, on an application duly made in accordance with section 7, and after being provided with all such information and documents as it may require under that section, and after consultation with the Minister, approve or refuse the application."

Total and complete power is being given. There is no time frame. You can have an institution sitting there and waiting until the Minister consults and the Central Bank approves. That could be from now until doomsday if the "wrong" type of institution makes the application. We have had a history in this country of the "wrong" types of institutions not getting approval. Just look at the list of the

*Financial Institutions Bill*  
[SEN. CAPILDEO]

*Tuesday, June 1, 1993*

judicial review cases and you would see in almost every single one of them, the state has lost and it has had to pay costs because of a wrong exercise.

Clause 8 (2) states:

"The Central Bank, upon being satisfied that this Act and any regulations made thereunder have been complied with, and upon payment of the fee specified in section 9, may issue a licence to the applicant, duly signed by the Governor."

To issue the licence, when? Again absolutely no time frame. The institution is left at the mercy of the Central Bank, the Minister and the Governor of the Central Bank. I say that having regard to the history of this country, that is a luxury we can ill afford.

We come now to the clause which tells me that this Bill must be withdrawn. It has to be withdrawn. It cannot go through, amendments or no amendments. The Bill must be withdrawn and submitted again for public comment and redrafting.

Clause 22 (2) (i) states:

"A licensee shall not directly or indirectly—

- (i) grant secured credit facilities to any one person or borrower group exceeding twenty-five percent of its capital base or such greater proportion thereof as the Central Bank may from time to time approve;"

I will not go into the legal arguments, but this clause contravenes the Constitution. I heard a gentle noise from across there say, go to court. Is it the intention that we go along and debate the Bill, and then somebody files a motion and we go to court and find that the Act is unconstitutional? We have had that history again—the Maxi-Taxi Act. We have had the history of that in this Parliament.

Clause 30 (9) is another reason why this Bill must be withdrawn. I would not stand here and allow this sort of legislation to come before this Senate and not open my mouth and say it must be withdrawn. Clause 30 (9) states:

"The appointment of the Inspector by the President or the appointment of a person by the Governor under subsection (4) shall not be questioned in any proceedings in any court."

Forgive me, but this is sheer madness! This is legislative madness! No civilized country should put in this. No country that is worthy of its independence should put in this.

It is Sally Cowal who said, and I quote from the *Trinidad Express* dated May 27, 1993:

"Cowal, according to the US. Information Service said that the United States was working with Trinidadians on a "few remaining steps" to ensure stability in the economy, which, she said, included changes in an intellectual rights property law, and new laws enacted to liberalise the country's banking and financial services."

Nowhere in any American legislation you would find an enactment as specific as this saying that you cannot question something in court. That is sheer legislative madness. If only for that the Bill must be withdrawn.

This is the silent thread that I spoke about. Clause 38 (1) states:

"The Central Bank may make bye-laws with respect to prudential criteria with which licensees shall comply."

So what has happened to all of us? Are we not folks too? What has happened to Parliament? Let us make no bones about this thing. The critical issue in this Bill is that the Central Bank would be used by the Government to enforce its economic policy, and Parliament is being deliberately sidelined.

When you see drafting like this, and you know that the Central Bank is going to be used to carry out the Government's economic policy, all your antennae would go up because you know what they are about. They are going to use the Central Bank, bypass Parliament; make their own regulations and then it would be the poor man to catch.

The sting in the tail is that even the big banks are poor in that respect because they cannot compete with the international people who are going to come in here. None of our banks has that facility. All of them with their millions of depositors, none of them can compete with a single giant that is coming from abroad. If they think they are going to allow these clauses to get through here and we would remain silent, no, Sir.

The power vested in the Central Bank is so enormous that it is not only equal to, but also exceeds the power of Parliament, because you cannot challenge the appointment in court. The Bank can make its own bye-laws and Parliament has absolutely no say. Again, it is another piece of legislative madness.

Let us look at clause 53. When you look at clause 53(3) it links up with all the other clauses to which I have been referring, to show that the intention of the drafter is to oust the jurisdiction of Parliament and to make the Central Bank into a monolithic giant. This Central Bank creature that they want to create would become a monster if this Bill is passed. This is another subclause which is sheer madness. Clause 53 (3) states:

"During the pendency of an appeal, orders made and decisions and directions given by the Central Bank remain in force pending the outcome of the appeal."

**3.20 p.m.**

Sir, I think the hon. Minister, Sen. the Hon. Brian Keui Tung, referred to the steel mill case, which went on for months. There were lawyers there who are capable of taking a case for a year. We would not call the mediocre names, but they were there. They can do it. There is a clause here that says that while these brilliant lawyers are arguing in the courts:

"Orders made and decisions and directions given by the Central Bank remain in force pending the outcome of the appeal."

Sir, I am an Attorney-at-Law and I will never subscribe to any legislation that ousts the jurisdiction of the court. I cannot in all conscience do such. The citizen must have a right, at all times, to go to the protection of the court and this clause violates that right. It is a clause, when combined with the rest of them, which makes it clear what this legislation is about.

We come to clause 64, almost the very last clause:

"The Minister, on the advice of the Central Bank, may make regulations for—

- (a) any matter required to be prescribed under this Act;
- (b) the transfer of funds by electronic means; and
- (c) generally for giving effect to the provisions of this Act."

Now, if we accept the proposition that it is the policy of this Government to use the Central Bank as its vehicle for economic reform, then what we are doing here is completely bypassing, sidelining and getting rid of parliamentary control, by giving the Minister, the Governor and the board of the Central Bank carte



blanche to do anything they want. That goes against the grain of our Constitution. Parliament is supreme, and we are here for a purpose, and that is to protect the ordinary citizen. As I said, the irony in this is that not even the big banks will be protected. Even they will fall subject to this, and they will be at the whim, fancy and mercy of the Minister, whoever he or she may be, and of the board and of the Governor, whoever he or she may be.

This Bill is an insult to the independence of Trinidad and Tobago, and it is a sign of the chaos of our times. When we have a Bill, which I have said is going to be one of the most important financial pieces of legislation in our time, being brought with all these defects to this Senate, no amendment can cure the defects. This Bill must be withdrawn and submitted again for public comment, and after consultation. This Bill, again, is the reason for the call by the United National Congress for a joint parliamentary committee to oversee this kind of thing. More than ever, this Bill supports the proposition that we need to have some joint parliamentary control over Bills like this which come to this Senate, to prevent this sort of debate taking place.

I do not know whether I am misquoting Sen. Daly, but I think he said that he was retained to look at this Bill; he had this Bill in his possession for some time before this debate. I do not know if it is weeks or months. He is a very fortunate man. The banks are very fortunate to have Sen. Daly look at this Bill for them for weeks or months. If this debate had concluded last week or the week before, we, Sir, would have had a mere few hours.

Where is the transition period for the ordinary man in all this? Where is the transition period for the bank? They talk about giving a bank four months. Clause 22(7) says:

"Within four months of the coming into force of this Act a person deemed to be licensed shall notify the Central Bank of all credit facilities to persons and borrower groups".

Mr. President, for us living in Trinidad and Tobago that is impossible. That is going to wreak so much havoc and chaos in the banking system, it will collapse. I do not know whether the people who drafted this legislation are aware of that fact, or whether this is a deliberate thing. My suspicions are all aroused, because I have quoted all the sections to show the trend this Bill is taking. Now, I would say, Sir, not tongue in cheek, but in all seriousness, that it may be that somebody

*Financial Institutions Bill*  
[SEN. CAPILDEO]

*Tuesday, June 1, 1993*

somewhere wants the whole financial system to collapse, and then we start all over again in this country.

I repeat, we—the ordinary people—have not had time to study this Bill. The big banking system has, and their voice comes with innumerable amendments. We have had big business coming with other amendments. I say, for the safety of this country, a Bill of this importance must be subjected to public scrutiny. I will so advise the Minister—if only for the lip service that we are an independent sovereign republic—that we can handle our own affairs and not have some ambassador release a statement in a foreign capital that they are seeing about our business. This, really, is the authorship of this Bill, not this Parliament and not this Finance Minister.

I thank you, Sir.

**The Minister of Trade, Industry and Tourism (Sen. The Hon. Brian Kuei Tung):** Mr. President, let me rise to add my voice in support of this Financial Institutions Bill which seeks to repeal the Banking Act, Chap: 79:01 and the Finance Institutions (Non-Banking) Act, 1979, Chap: 83:01, and to replace them by a single Act which contains more comprehensive and stricter provisions for the regulation of financial institutions engaged in the business of banking.

I have been a Member of this honourable Senate for one year and four months, and would like at the outset to say how much I am enjoying this debate. I say that because I consider the Minister of Finance to be approaching this particular piece of legislation in the correct manner. I say that because in enjoying this debate I have recognized the difference, subtle though it may be, between seeking to give wider powers to a regulatory authority, namely the Central Bank, and, at the same time, criticizing a piece of legislation which, on the other hand, seems as if it provides very little protection to depositors. To my mind, I see no conflict between giving the Central Bank powers wide enough to ensure protection of depositors and, at the same time, giving the banks enough opportunity to run their operations effectively.

**3.30 p.m**

The objective of this Bill is that of modernizing the banking legislation in keeping with the introduction of trade liberalization, as well as the complementary freeing-up of the foreign exchange regime and the overall objective of establishing Trinidad and Tobago as the business and financial centre of the Caribbean.

I should like to address this in the context of its implication to trade liberalization. I say that, Mr. President, because many of us see this mainly as the regulation of the financial institutions. I see this as being the bedrock on which investments, which must come from savings, are going to come into a system, or in an environment which requires a freeing-up as well of regulations and of the institutions that regulate them.

I say that because without investment, there is no way we are going to create jobs. And when I speak here about investment, I refer both to domestic and foreign investment. For us to have investment, it must have started as savings, but we fail to realize that foreign investment means foreign savings. This country cannot assume that it can attract foreign investment and, more specifically, foreign savings if we, as a country, do not have a culture and a habit of saving for ourselves. We are not going to have local investment unless we predispose ourselves to a culture of savings.

This Bill, therefore, seeks to ensure that, in advocating a culture of savings, the banks or financial institutions are regulated adequately to ensure protection of depositors.

Let me just leave for consideration of hon. Members in this Senate the fact that financial institutions need to be regulated a bit differently from the way, maybe, trade and other retail organizations need to be regulated. It is easy for us to speak in terms of fair trade. It is less difficult for us to speak in terms of financial institutions and the way they regulate them.

I think history has shown us that our laws must be capable of timely responsiveness. In dealing with financial institutions, one has to remember that the question of confidence is probably the most critical element in ensuring that we can respond quickly to unusual situations. Therefore, in seeking to delegate some of the powers away from the Minister of Finance I consider this to be extremely bold. I say "bold" because the Minister of Finance obviously ensures, through the appointment of the Board of Governors of the Central Bank, that he has people who are quite capable of ensuring that the Central Bank performs under the law as it obtains, at any given time.

Mr. President, many of us seem to think that the Central Bank, to which these responsibilities will be delegated, will be acting in ways that are inimical to the financial system. I cannot believe that we would sit and make laws assuming that the laws are going to be carried out by the worst of us. By that I mean we cannot

*Financial Institutions Bill*  
[SEN. CAPILDEO]

*Tuesday, June 1, 1993*

assume that the laws we make are going to be made only for the people who hold these positions. Instead, the laws must be able to obtain and must stand the test of time. To do so, it means that one must have confidence, not just in the institutions that we have, but also in the people who are required to run these institutions.

Whilst there has been great credit given in the amendments that have been proposed, my own feeling is that some reasonable compromise will emerge and out of that, we shall have a system in which the Central Bank will be capable of responding much more quickly to the needs of financial institutions—particularly ailing financial institutions—and ensure that, if possible, we can arrest their further decline.

The reason why confidence has played such a tricky part in the history of our financial institutions is the fact that many a time the type of measures that we have tried to impose under the present laws has been so archaic that it did not lend itself to time responsiveness. In this case, I see the delegation of powers to the Central Bank as being a very desirable thing, almost a requirement for these times.

The financial institutions must be the backbone of the trade and economic reform that we are pursuing because without that confidence, the trade environment which we try to create at this time will not come about. It will not come about because the financial institutions presently are allowed to operate in an environment which, to some people, appears to be a little too lax. Therefore, this Bill seeks immediately to address that particular problem.

I have just returned from what is known as a reverse OPIC mission and I can assure members of this honourable Senate that the two questions that kept coming up time and time again from US investors have been:

- (1) What sort of financial institutions protection can you give us?
- (2) What are the laws that govern financial institutions, what are they like; how current are they?

We are dealing with US investors who themselves have suffered the trauma of having financial institutions in the US fail or belly-up; some of them have themselves been subjected to earth-shattering confidence.

The other question—and I just mention it as a moot point—is the question of intellectual property rights, because they want to ensure that any technology that is their own is safeguarded against plagiarizing or copying.

It is obvious that if we do not pursue a Financial Institutions Bill that is accepted by the international investment community, we would really have serious difficulty in attracting foreign investment into Trinidad and Tobago.

It is from that perspective I say that I not only commend the Minister of Finance for bringing this Bill at this particular time, but, more importantly, I also ask that the Senate consider this Bill in a spirit of compromise, particularly with respect to the amendment, to ensure that the passing of this Bill becomes timely for us. I say "timely" because I expect that there would be some reaction coming out of our reverse OPIC mission, which I had the honour to lead, and on which there were 25 businessmen from Trinidad ranging from small or micro businesses all the way up to large conglomerates, who were seeking joint venture partners and to attract companies in the US through whom they hope to market their goods and services out of Trinidad and Tobago.

It is the type of venture which the Trinidad and Tobago Government has been encouraging and which has been well received. I can assure you, Mr. President, that the type of reception that the mission received from both businessmen and the regulatory government authorities in the US, shows clearly that we are on the track to ensuring that the private sector is the engine of growth in Trinidad and Tobago and that the private sector takes that lead both in terms of local and foreign investment.

**3.40 p.m.**

Mr. President, one of the objectives that we seek in trade and economic reform has been to try to remove our dependence on oil and the energy-related sectors to the non-oil sectors. I have sought, in my mission to North America, to focus a great deal on the investment opportunities that are available to joint venture companies—joint ventures between both the private sector locally and the foreign or US companies. It was obvious, the measure of interest that was generated by OPIC. I was able to address as many as 70 different companies in the US, which were represented by well over 90 different individuals, and those 70 companies indicated a serious interest in investing in Trinidad and Tobago.

Many of them were particularly pleased with the success that we had with respect to the divestment of Fertrin and the Trinidad and Tobago Urea Company. It was because of that particular divestment that many of the companies began to appreciate the many opportunities available in investing in Trinidad and Tobago. Many of these companies had, themselves, not even heard of the Arcadian

*Financial Institutions Bill*  
[HON. B. KUEI TUNG]

*Tuesday, June 1, 1993*

Partners, but were particularly curious to know that companies like Arcadian Partners and NUCOR, who had never before invested outside the US, had selected Trinidad and Tobago for their first major overseas investments. It is because of these policies that companies whose interests range from food to petro-chemicals and the hospitality industry as well, were all curious to know a little more about Trinidad and Tobago.

Mr. President, you would be surprised to know how little the US investors know about Trinidad and Tobago, and I say that because we seemed, in the past, to have shut ourselves away from investment; and for that we now have the job of trying to ensure, not only that all our laws are relevant and up-to-date, but more importantly, that they are known by US businessmen, and that our history as a democratic country with English-based laws which are adequate and meet our current needs is also known.

I say that, because I want us to remember, Mr. President, as people who make laws, we make sure that they are really relevant to the times and if we focus on the way we have been making laws in the past and fail to make that quantum leap into the future, I think our laws will remain stuck in the past. It is on that premise that I particularly congratulate the Minister of Finance. I, myself, am quite pleased to hear that the Minister of Finance is happy to delegate these powers and duties to the Central Bank as an institution to ensure that the laws can remain applicable and relevant as we go forward.

You see, Mr. President, many of the bye-laws which the Central Bank is being empowered to make are really, in my view, nothing more than guidelines that have been used and which change from time to time—guidelines which recognize the state and size of the economy. I say that, because whilst the law might talk about 25 per cent today, one must recognize that 25 per cent may have no bearing on an economy that is one-tenth the size it is now; or may have no bearing as well on an economy that is 10 times the current size; and therefore that 25 per cent may very well have to move with the times. So that it is really, in my view, nothing more than a benchmark set up at this time, but which as time goes on will change. It means that, rather than have to suffer through a Bill that changes percentages from time to time, it is much better to have regulatory authorities make these changes if they seek to do nothing more than to protect depositors whose funds are sitting in banks.

It is therefore my considered view, Mr. President, that this particular Financial Institutions Bill will operate as precisely, maybe, as transparently as we can

imagine, because it will allow the Central Bank, which is not just a power unto itself but, more importantly, is a responsible part of the entire financial regulatory authorities—I say that, because if one should consider for argument's sake, the way the banks have acted since the removal of exchange control restrictions, and more importantly, the floating of the Trinidad and Tobago dollar, one would understand that we must avoid the temptation to over-regulate and take away powers from institutions only because we feel that we need to be the ones that say whether it should be 20, 25, 30 or 40 per cent.

I admit that a period of four years seems more attractive than a period of four months to ask the banks to put their house in order. But I think that no period that we settle on—and I am sure every Member of this honourable House could find a convenient number that is acceptable to him or her. All we seek to do is to ensure that there be little financial trauma to the financial institutions, and we must understand that too long a period would mean that the law becomes a mockery; and too short a period would subject these financial institutions, the banks in particular, to financial trauma from which they might not recover, or from which they may need from time to time to ask for extensions.

So Mr. President, I would think, having put the collective wisdom of the Senate to work, it is an opportunity to ensure that any period that we come up with would be acceptable and reasonable and would ensure that very little financial fallout would take place as a result of the passage of this Bill.

**Sen. Spence:** Mr. President, I have been trying to follow the thrust of the hon. Minister's argument by listening very attentively. But I find it very difficult to determine just what the thrust is. He seems to be arguing that there should be less regulation of our own system, but yet he is supporting a Bill which, clearly, is seeking to put greater regulation in. I am not saying at the moment that I agree with one or the other, but there seems to be a contradiction which I cannot quite follow in his thrust on this Bill.

The second point that confuses me is the concern of the foreign investor with the stability of the local financial institutions. Now it would seem to me that that could only be their concern if it was their intention to borrow on the local financial market. I had assumed that the whole point about getting foreign investors in, was that they would bring their capital in. Indeed, the savings that you would be using would be other people's savings; rather than that, they would be competing with local investors in the local financial sector. So, again, I am

*Financial Institutions Bill*  
[HON. B. KUEI TUNG]

*Tuesday, June 1, 1993*

confused by the arguments that he has given. I wonder if he could clarify those two points' please?

**Sen. Daly:** I, too, am trying to follow the thrust of the Minister's plea for compromise. I wonder whether he has directed his mind to the distinction that I am seeking to make in my amendments between one percentage for individuals and one percentage for borrower groups?

**3.50 p.m.**

**Sen. The Hon. B. Kuei Tung:** Mr. President, I am sorry that I have caused some confusion in the minds of hon. Senators. On the one hand, I am not saying that there should be less regulations. I am saying that the regulations as they obtain at any given time must be such that they can react in time to assist. Let me put that into perspective. If you had, for argument's sake, a bank that had operated outside of these particular guidelines and found themselves in trouble, the one role that you want your Central Bank to play is that of being able to fix it quickly. Therefore, I am arguing that I admire the Minister of Finance who is prepared to say that you do not have to wait until you find him to get concurrence. Instead he is prepared to allow the responsibility to fall on the shoulders of the people in the Central Bank to carry out their functions quickly and ably. That is the point I am making. I am saying that you need regulations, but you need to put the regulations as fairly and squarely as you can on the people who are best able to carry out those regulations. That is one answer.

On the question of foreign investment, obviously a foreign investor wants to know what kind of financial regulatory framework you have. He wants to be assured that the banking system is known and understood. There have been countries in which investors have gone in, in which they assumed that there were the normal internationally accepted standards of financial institutions and laws that apply, which had not been applied, and they have been asking: "What sort of financial institutions laws do you have?"

That is the point I am making. I am not sure whether they intended to be borrowers or depositors. I am saying that US investors, as a normal course of their coming into any new country, would ask for those two things. One is, what sort of laws do you have governing your financial institutions, and the other, what sort of laws do you have governing copyrights or intellectual property rights?

Basically, I am suggesting that the Minister of Finance, in delegating all of these regulations to the Central Bank, is saying that he has confidence in the



Board of Governors, as well as in the Governor of the Central Bank, in carrying out the functions that are required under this Financial Institutions Bill without necessarily having recourse to him. This is one of the criticisms that have been raised on the other side about the Minister of Finance having delegated all of this authority and responsibility. This, to my mind, seems to be a desirable thing in the context of the kind of environment that we want to create here.

I say, an environment, because I would assume that the Minister would want to see that the policies carried out by the Central Bank are clear and transparent and known. But we seem to think that putting responsibility in any body or bodies, as the case may be, is a daring thing. I say, "daring", because in the past most of our laws had to be implemented at such a high level that, generally, they have not been properly enforced. I say that because the laws seem to by-pass public officials who ought to ensure that the law is carried out. I say, "by-pass", because it is easy for a public officer to say that because it requires the approval of a Minister to do such and such an act, "It is not my fault; I do not need to carry it out; it has to be the Minister."

Instead, laws should clearly state what are the responsibilities of people in the public service. Public servants should not excuse themselves from carrying out their functions by saying, the law says it must be approved by a Minister, or they must be told by a Minister, or the Minister must get involved. I do not think that laws which require Ministers to carry them out have been the best form of law.

In trying to understand the new environment that we seek to create, I think we must appreciate that you will have a framework within which the Government wants to work; you will have laws which require that the Ministers be held accountable. But more importantly, you would want to ensure that public officers are held accountable, and that they do not state that it is for the political directorate. The same interference that we seem to be afraid of, is the same interference that we are trying to obviate by ensuring that the laws can be carried out in as transparent a manner as possible.

Mr. President, I should like to deal with a few of the shortcomings that I have observed in the previous legislative framework, especially as they concern the financial sector. I refer in particular to the Banking Act and the Financial Institutions Act. The first one was the limitation of the role of the Central Bank in relation to the conduct of monetary policy and prudential regulation. In my view, the Central Bank is being perceived by Members of this Senate as a sort of

monster that sits and puts in laws and guidelines which hurt the financial institutions. In my view, the financial institutions have, generally, been able—I speak in particular about the non-bank financial institutions—to avoid the rigid discipline that the Central Bank intended, and which has caused, ultimately, the collapse of a number of non-bank financial institutions. It is because of the lack of that regulatory framework that the Central Bank has found itself in great difficulty in controlling the operations of these non-bank financial institutions.

It is, therefore, critical for us to give the Central Bank sufficient power to ensure that the non-bank financial institutions, in particular, are in a position to operate within the guidelines set by the Central Bank. It is important for us to give them enough teeth to ensure that these non-bank financial institutions operate within those guidelines as set by the Central Bank. We have seen many depositors lose all of their savings, merely because they have been lured into believing that there are enough checks and balances in place to ensure their protection.

I want to say that we have to be careful that we do not overplay the role of the deposit insurance. I say this because one of the safeguards we have is the Deposit Insurance Act.

**4.00 p.m.**

More importantly, we have to be careful that we do not say that—seeing that there is some measure of deposit insurance—we can ignore the role that the Central Bank plays in regulating all financial institutions, because, it is that particular role that depositors turn to when they look for safeguard mechanisms; it is that particular role that the Central Bank has to play that ensures that confidence is built into the system. Mr. President, as Minister of Trade, Industry and Tourism, I am aware that confidence is a characteristic that affects business, small, micro, medium or large. If there is a lack of confidence, even by the small depositors in non-bank financial institutions, it sends a signal throughout the entire business community that hurts business. It is my view, therefore, that the role of the Central Bank should be such that they are given enough power to carry out their function and to provide that safeguard mechanism that depositors look to it for.

Mr. President, another inadequacy of the previous legislative framework was the issue of the definition of powers of the Inspector of Banks in particular. I know that much has been said about the amount of power that is now being given to and will reside in the Inspector of Banks, but in my view, we need to be able to have a Financial Institutions Bill that clearly defines those powers. I accept that

the Inspector of Banks is going to be the first individual in the banking system who becomes aware of problems in any financial institution; I accept that the Inspector of Banks is going to be the person who starts seeing trends developing and whose actions are going to be critical to ensure that confidence reigns in our economic structures.

I say that because if the Inspector of Banks, as I have just said, fails to act, acts too slowly, or is hamstrung by legislation that requires procedures which are outside his scope, a number of things will happen: One is that he may fail to act too soon because he is too tentative; he may fail to take the action because he is not given those powers under law; or, more importantly, he may act so late that the demise of that institution could not have been avoided, in which case, we are back to the question of protection of depositors' funds. We are back to asking ourselves how much do we trade-off against giving powers as opposed to giving up the protection of depositors.

A third area I have already touched on, is the lack of clear mechanisms to allow for the resolution of crises in financial institutions in an effective and timely manner. This has been evidenced, as I have said, by the number of non-bank financial institutions which have collapsed. If we do not have clear mechanisms that allow these institutions, particularly institutions which find themselves operating outside of these guidelines, we tend to find that there is a lot of confusion; there is a clear loss of confidence in that institution. And that the ripple effect of that lack of confidence begins to impinge upon other financial institutions.

Mr. President, we have to be careful that in seeking to criticize the amount of power that we are giving to the Central Bank, we are not in essence sacrificing some of the protection and safeguard mechanisms that we need to provide for depositors.

Finally, a general failure to guarantee the security of savings deposits of the general public. Those are some of the weaknesses that I have observed in the previous banking Act, and which this Financial Institutions Bill seeks to address. It seeks to bring the two pieces of legislation together to be replaced by one Bill. It seeks to provide, together with other laws, a framework within which business generally can operate; a framework in which the laws provide for legislation which is current; understands the setting in which we find ourselves and which addresses a number of the inefficiencies which reside in previous legislation.

*Financial Institutions Bill*  
[HON. B. KUEI TUNG]

*Tuesday, June 1, 1993*

More importantly, it should be seen as a part of a package of legislative reviews which has to be done at the same time. I refer to other pieces of legislation such as the Securities Industry Act, Company Law, which has already been introduced in the other place; Foreign Investment Act, and, of course, the Insurance (Amendment) Act. All of these, in my view, are going to create the kind of framework within which business, generally, would be able to operate more effectively. I cannot help but repeat that this Government expects that the private sector will take the lead. Government, instead, would ensure that the environment that is created is one in which business flourishes not on the basis of patronage or protection, but on the basis where the rules are applicable fairly; where they are known up front, and enforced as clearly and as transparently as possible.

**Sen. Daly:** Mr. President, having made that stirring plea about the private sector, would the Minister identify for us where the funds to generate business in the private sector will come from when these restrictions go into effect?

**Sen. The Hon. B. Kuei Tung:** Mr. President, earlier on I talked about the question of trying to develop a culture for savings. I intimated that until we cultivate a nation that understands that, we would not be able to invest other people's money; that we should start by first investing our own money; that, therefore, we need to cultivate the practice of savings, and that we must understand as well, that foreign investment is really nothing more than foreign savings. But, one has to be careful.

Mr. President, I would say that whereas the private sector needs to be encouraged to take the lead in investing locally, one has to remember that at the end of the day market forces will not be the only check and balance that we have with respect to the market place. I say that because one could perceive that the private sector, in taking that lead, would have a sort of free rein within which to operate. But, that free rein that we look for is dictated by a number of other checks and balances. Therefore, the laws that we put in place have to be an integral part of some of those checks and balances which ensure that the private sector, whilst it is given every opportunity to grow, does not engage in practices which are inimical to the national community as a whole.

In other words, Mr. President, in saying that we want the private sector to take that lead, we are not saying that Government abandons its role of ensuring that the laws are effectively policed; we are not saying that laws will not be put in place to ensure that the private sector, which obviously we want to take that lead,

continues to operate within an environment which is highly regulated. And I say "highly regulated" not in the sense that they are constrained by laws, but as much as knowing that the laws exist and that the laws will be properly effectuated.

**4.10 p.m.**

Earlier on I spoke a little about some of the safety features that this Bill contains to ensure that depositors' confidence is maintained. I have no argument as to whether a \$15 million capital is a correct figure. I do not know whether a bill that requires that a minimum paid up share capital of \$15 million may be the correct figure.

I recall in my day, when I was managing an insurance company the sum that was suggested was \$3 million. There were insurance companies at that time operating with paid up capital of less than \$3 million. It was noted that the companies that had the largest paid-up share capital were the ones that had the largest market share of new policies that were being sold.

I am suggesting to this honourable Senate that at least with a \$15 million figure, it is the start of offering some measure of protection to would-be depositors. I am suggesting that anyone of us can sit and pull any number out of a hat and say that that is the correct figure, but unless we start with sufficient paid-up capital, in my view, we are going to find very soon that smaller paid-up capital would become irrelevant in terms of a depositor's base, because actually the depositor's base grew much faster than paid-up capital which would become obsolete quickly.

I will give you an example. If, for argument's sake, it was designed to have a particular ratio of share capital to depositors and that base is too small, every time the depositor's base reaches that ratio, it means you have to come back and ask for it. In my view, we have to move with the times. Today the \$15 million figure may be applicable, but we may find that by next year, the current figure should be longer.

At least we have to start from somewhere by saying let us offer depositors some measure of confidence by talking about a minimum paid up share capital that whilst it strikes us as being large—let me be honest with you—I do not know how many small businesses want to start a bank. I heard Sen. Mansoor explain—shouting to the top, here we have the second largest conglomerate complaining about the small man not being able to start up a bank. I have difficulty in

*Financial Institutions Bill*  
[HON. B. KUEI TUNG]

*Tuesday, June 1, 1993*

understanding how a small man would think that one of the services he would want to start business with would be a bank.

I would assume, that a bank by its very name and operations would be something that would either start on a basis which affords—

**Sen. Mansoor:** Mr. President, I was speaking in terms of the performance of the services of a financial nature, not necessarily a bank in terms of collecting money. I think you are misrepresenting what I said.

**Sen. The Hon. B. Kuei Tung:** I am very sorry about that.

**Mr. President:** I thought you were winding up a little earlier, but some of the interruptions seemed to have necessitated a little longer time.

Your speaking time has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. J. Rahael*]

*Question put and agreed to.*

**Sen. The Hon. B. Kuei Tung:** I am sorry. I did not mean to mislead. I just meant to give a rather extreme example to support my point.

Whilst there are some financial services that are not or cannot be classified as banking, and whilst there could be an argument that maybe a smaller base—I am only making the point that generally bills of these kinds really do not address that type of entrepreneur, that is, the small business entrepreneur who ultimately, whilst he may desire to start something like this, even a non-banking financial institution, may find it difficult to be able to attract depositors into an organization which requires some minimum size to ensure its guaranteed success.

I agree that the Bill would not guarantee success for any institution. No bill or no law is intended to guarantee success of its operations. What it is intended to do is to set the framework within which these institutions would operate. Bear in mind too, that the \$15 million was set for banks as well as non-banking financial institutions deliberately.

As I said, the experience that I bring has to do with the insurance companies, where even insurance companies go through a raging debate as to how much is adequate share capital. I imagine that that debate is also raging among the banking community. I suspect it would never be over. In other words, banks that find themselves below the \$15 million mark would find that the mark has been set

much too high for them, and banks that are really over it may find that the \$15 million may end up being too low to allow confidence in such operations.

It is on that note that I would like to summarize my contribution. The question of confidence is a question in which I have more than a passing interest. I say that because without confidence, particularly in the financial sector, I think it is going to be extremely difficult to create an environment in which all businesses—small, medium and large—would flourish.

It is on the whole financial institution network that business depends. It depends on it because many people who have tremendous skills continue to find it difficult to start new business and without guidelines that allow the banks to pursue lending operations which are supportive of new businesses, it would be difficult for these small businesses to ever start.

From my experience, having observed what happens in the United States, we would need to see somewhere in the region of 600 to 800 new small businesses start up each year for us to be able to see the growth and development of the private sector. As I said earlier on, whilst the Financial Institutions Bill cannot guarantee the success of these small businesses, without these small businesses being encouraged and having an opportunity to operate in that environment, we are not going to see the jobs that we expect.

It is therefore my hope that this Senate would see it fit to consider this Bill at this time as one which is critical to creating that environment, as one which should be perceived as being non-threatening to the banks and financial institutions, and as one which allows banks and financial institutions to be regulated properly.

**4.20 p.m.**

I shall end by saying that I am quite satisfied and pleased with the responsible way in which the banks, in particular, have reacted to the removal of foreign exchange restrictions and to the manner in which they have managed the floating of the Trinidad and Tobago dollar.

I thank you very much, Mr. President.

**Sen. Everard Dean:** Mr. President, I think I shall just take the 10 minutes on the clock.

I would like very much to support this Bill but after the eloquent, incisive and informed contribution Sen. Daly, I now have grave doubts as to whether I should lend my support to the Bill as presented.

I, too, should like to make a few observations because I feel, like Sen. Mansoor, that the concept of the Bill itself is a very noble one, for I see it as an instrument to protect the depositor, and a very important first step in keeping with the Government's expressed intention to make Trinidad and Tobago the financial centre of the Caribbean.

My first observation is that the Financial Institutions Bill, 1993 was not given the widest possible public exposure. It seems to me that this Bill had a selective public, in that certain sections of the community were given every opportunity to study the first draft and offer comments, while the rest of us were not given the same opportunity.

As one who is involved in the financial services co-operative, my organization and I made oral and written requests to the Minister of Finance for a copy of the draft, but, as usual, we were ignored. If we are to ensure success on the move for making Trinidad and Tobago the financial centre of the Caribbean, then we must also ensure that the public is aligned to that vision.

My second concern is that, in some areas, the Bill tends to be somewhat autocratic; it is authoritarian in some sections. For example, Part II, clause 11 (1), (2) and (3)(e). Senators Daly and Capildeo already referred to the clauses, which, in their opinion, may be unconstitutional, and I am guided by those comments.

My third concern is with respect to clause 24(2). If it is that this subclause seeks to achieve a high level of transparency, then I believe we should go the full length and require all licensees to advertise the true cost of lending and borrowing and not leave it to the individual to have the right to obtain the true cost of such borrowing. The borrower should know this even before he goes to the licensee. Perhaps what is needed at this stage of our development is a Truth in Lending Act and I would make a call right now for that Act. I am sure that the United States government, through the ambassador to Trinidad and Tobago will be more than willing to provide us with expertise, because the United States has such legislation which has been working for them for some years now. The Minister, in his presentation, did refer somewhat to legislation passed by the US Congress.

My fourth concern is that clause 38(1) gives too much authority to the Central Bank and I agree with the point of view that such authority should be vested in the



Minister of Finance, on the advice of the Central Bank. It seems to me that the Bill is designed to place too much power in the hands of the Central Bank, leaving very little or no room for the policy makers, who, in this case, will be the Minister of Finance, to question and be questioned on very important issues.

While I understand the independence of the Central Bank to be crucial, I know that such independence should apply only to operations, and matters of policy must of necessity remain in the hands of the Minister who is accountable to Parliament.

My fifth concern is, notwithstanding the liberalization or floating of the dollar—the Easter Monday debate—I see clause 27(1), (2) and (3) state as follows:

"(1) The Central Bank may permit any licensee to hold working balances in any specified foreign currency in excess of the maximum amount set or determined for such currency under subsection (2)."

It goes on:

"(2) The Central Bank may, from time to time, prescribe the manner of determination of the maximum amount of the working balances which licensees may hold in foreign currencies generally or in any specified currency or currencies".

I ask the question, Sir: Is the dollar really floating, or is it still tied somewhere?

Some time, in the not too distant future, we shall have the establishment of cambios. It is important to know what will happen when cambios are put in place.

Notwithstanding that, I am particularly pleased to see that one of the fears of the co-operative credit union movement has been positively dealt with under Item (5) of the Third Schedule, as I see among the exempted institutions:

"Any undertaking registered under the Co-operative Societies Act",  
which, of course, includes credit unions.

However, I see under clause 63(2):

"The Minister, on the advice of the Central Bank, may from time to time amend the Third Schedule by Order published in the *Gazette*."

I would hope that if it becomes necessary, to amend the Third Schedule, as it relates to Item 5, the movement to which I have the honour to belong would be

*Financial Institutions Bill*  
[SEN. DEAN]

*Tuesday, June 1, 1993*

invited to enter into dialogue and be given the opportunity to make representation before any action is taken.

Notwithstanding the exception, credit unions must ever be alert because changes sometimes are made overnight without warning coming like a thief in the night.

Despite our so-called impasse with the Government last October, the credit union movement is committed to enhanced integrity and financial performance. Just as this Bill seeks to protect depositors and position our national financial sector to make Trinidad and Tobago the financial centre of the Caribbean, similarly, our credit union movement requires an Act which will make it the co-operative financial centre of the Caribbean and protect its shareholders.

Mr. President, the Co-operative Act is crying out for fundamental changes, which will enhance our operations and make us better able to serve our members.

I would like to take this opportunity to appeal to the Government to make the necessary time to work with us, the leaders of the movement, on the revision of the Co-operative Societies Act.

I am pleased with many provisions of this Bill and I support the whole idea of safety and soundness. I also support the need for prudential criteria but I disagree with the methods suggested for those criteria.

I hope that many provisions of this Bill would be incorporated in any revised co-operative legislation. As I said earlier, I fully support the concept of the Bill, but I also support the views expressed by Senators Daly, Mansoor and Capildeo. If I am allowed to "Seukeranize" a bit, I urge the Government to take cognizance of the contribution made by those hon. Senators and I urge and plead with the Government to set up a team of persons, probably an interministerial team from the Ministry of Finance and the Ministry of Labour and Co-operatives to meet with leaders of the credit union movement, to discuss plans for the enhancement of safety and soundness of credit unions in the context of a revised Co-operative Societies Act.

Thank you.

**Mr. President:** The sitting will be suspended for half an hour. The Senate will resume at 5.05 p.m.

**4.34 p.m.:** *Sitting suspended.*

**5.05 p.m.:** *Sitting resumed.*

**Sen. Prof. John Spence:** There is no doubt that I support the thrust to regulate the financial sector more closely. I certainly believe that our laws should be developed in order to achieve that objective. I would say, on the whole, my support is for a regulated system, and this is why I am not always convinced that the headlong rush into liberalization is in the long run beneficial to our advancement. Certainly I support a more efficient system; so that regulation with efficiency, safeguards and accountability is the thrust that I would be attracted to.

With respect to this particular Bill, I am persuaded by the arguments, both of Sen. Daly and Sen. Mansoor, that there seem to be some basic provisions in the Bill that need to be addressed. The first of these would seem to be the fact that the Central Bank would not be responsible to any other agency in this operation and, indeed, there seems not to be built into the Bill even an internal mechanism for supervision. So, although I would support Sen. Daly's amendment, which suggests an internal mechanism, I would think that perhaps this does not go far enough, and we should look at the Banking Act in the United Kingdom, in which there is a Board of Banking Supervision. This is the Banking Act, 1987.

The Board of Banking Supervision consists of three *ex-officio* members, namely, the Governor of the Bank for the time being, who will be chairman of the board, the Deputy Governor, for the time being, and the Executive Director of the Bank, for the time being, responsible for the supervision of institutions, authorized under this Act, and then six independent members.

It would seem to me that that provision in the Banking Act of the United Kingdom is one that we could quite seriously address. I hope that we are moving in the direction of more comprehensive discussion on the Bill rather than just making deliberate amendments off the cuff. Perhaps this is the sort of provision that should be looked at.

Also, the Bank of England has to issue reports to the Chancellor of the Exchequer, the Minister of Finance, and these reports have to be laid in Parliament. I see no reason why those two provisions should not also be put into our Act. That would be my support for the position—and perhaps even going a little further—which Sen. Daly has taken.

With regard to the points that Sen. Mansoor has made, it seems to me that we really do have a very important issue to be addressed here. I hope that I am not being overly suspicious, but the fact that the Government side seems to be saying

*Financial Institutions Bill*  
[SEN. DEAN]

*Tuesday, June 1, 1993*

that there will not be a period of disruption, even if these provisions go through, makes me then wonder what other circumstances could intervene in order for there not to be a disruptive period.

If we are saying that the present loan portfolios of the banks would have to be drastically altered in that many banks would have to off-load parts of their portfolios, and if it is the case that these cannot be taken up by other banks, then it seems to me that the only way we can avoid disruption is if there is knowledge that there will be new banks licensed from external sources. It seems to me that if those off-loaded loan provisions are to be taken up so that we do not get a disruption of the activities of the private sector—I am given to understand, for example, that at least one of our institutions which has a number of subsidiaries would have a loan portfolio of some TT \$500 million.

**5.10 p.m.**

Now I think that the largest loan that our largest bank, as we were shown by Sen. Mansoor, would make to such an institution would be \$50 million. There are seven banks. Even if you assume that the others could also loan \$50 million—but they cannot because there would be lesser holdings in the other banks, \$350 million—what happens to the other \$150 million this institution now has to borrow? If we are saying that there is not going to be disruption, it seems to me that we must also be saying that some knowledge on the part of the Government is present, which would be able to allow them to know how this provision is being made; and therefore I feel that there may be banks waiting to step in. Therefore I would ask the question: Is this the way we want to go in Trinidad and Tobago? Are we deliberately setting up a system which would mean that our local banks cannot cope and which, therefore, would mean that we have to have additional foreign banks coming in to take up part of that banking commercial activity?

Now having said that, I recognize that if one is after protection of the investor or the depositor, then one must have some ratio of assets to loans in order to ensure that the individual investor or depositor is not disadvantaged should one of these large loan portfolios collapse. I clearly am not a financial person so cannot adjudicate on that point. But again I am persuaded by Sen. Mansoor that we might look at the calculations somewhat differently with respect to assets and, therefore, address that issue. It seems to me that we should pay particular attention to those two areas that have been raised—one, the responsibilities of the Central Bank in reporting to some other agency, which is supervisory in nature; particularly Parliament in the final analysis; two, that we should be sure that we do not disturb

the financial system by the provisions we are making; and three, we should know whether it is our intention to encourage the intervention of additional foreign banks.

But on the more general question, Mr. President, the relationship of this Bill which the hon. Minister of Trade pointed out was one part of a package. He used that opportunity to advance ideas about liberalization in other areas. It would seem to me that one has to be very careful if at the moment in our thrust to put this package of measures together, we would not be going down a path which would be extremely disruptive of the whole of our productive sector.

I say this in particular regard to the agricultural sector and in reference to an article which was written in the *Sunday Express* of May 30, 1993 with respect to Inter-American Development Bank loans. Now, of course, I cannot say whether the points made in this article are correct or not. All I can say is that with respect to the agricultural sector, the present situation is particularly worrying. I appreciate that this is not the time and place to go into that issue in very great detail, but as I say, I only take the lead because the hon. Minister of Trade was putting this Bill in the context of an overall thrust.

I am saying, in the context of that overall thrust, one of the very great concerns that I have is that in our efforts to obey the dictates, if this article is correct, of the international lending agencies we may, in fact, make a number of decisions which would reduce our productive base rather than increase it—certainly it is the case in the agricultural sector—and that we may, in fact, set up a future for ourselves which is not in keeping with the sort of country that we would want to have. For example, much has been made on the making of Trinidad and Tobago the commercial and financial sector of the Caribbean, and we seem to place a great deal of emphasis on this. Now to my mind a commercial and financial country which does not, as well, have a rural sector to balance this activity is not the sort of country that I want to see for myself in the future.

So if one takes this Bill in the context of the overall thrust, if that is the context in which it is being seen—and, indeed, this article even implies that the bringing of this Bill is part of the conditionalities of the Inter-American Development Bank loan. So the fact that this Bill has come, if that is the case, then I must assume that the other things that have been specified to be done with the agricultural sector may also come; and that is why I find it necessary at this

*Financial Institutions Bill*  
[SEN. PROF. SPENCE]

*Tuesday, June 1, 1993*

point, even briefly, "to take in front" and to say that we should not, indeed, embark on any of these loans unless we have studied carefully, with our own resources—not like the Maxwell Stamp study, with an external agency—the consequence of these changes in our system which we may be entering into, not because we think they are good, but perhaps in a more hurried way, because we are being urged to do so by the need to accept loans from the multilateral agencies.

So Mr. President my position is to support certain changes in this Bill. In the context of the wider thrust of the Government, I am alarmed at the possibilities for the agricultural sector if that total thrust is continued to be engaged in; and I would hope that before any further thrust in those directions, we will ensure careful study of all the effects.

Thank you.

**Sen. John Rooks:** Mr. President, the Financial Institutions Bill, 1993 seeks to repeal the Banking Act Chap. 79:02 and the Financial Non-Banking Act, 1979 and to replace them by a single Act in which more comprehensive and stricter provisions relating to the regulation of financial institutions engaged in the business are made. It is a pleasure to see one Act replacing two. We need to see more of this and modernize the contents of the law books, as many of the laws are outdated. It is a great pity that this Bill did not come a few years earlier to protect our citizens who lost heavily through the failure of several financial institutions, including International Trust, Southern Finance, Summit Finance, Trade Confirmers and BCCI.

At first on reading the law, I was amazed to see the level of control that the Central Bank will have over the banking and financial institutions. With all the controls and the very heavy penalties for non-compliance, I expected to see some detail on what group in the Central Bank would have the authority to enforce the provisions listed. At least I expected that there would be a committee of Members of the Board, with the Governor as Chairman. I strongly recommend that a suitable clause be added to the Bill so that there is no doubt as to where the authority lies. The Inspector must understand that he reports to the Board Committee and they will deal with the institutions. Even more important than that, regulations of the Board should be subject to an affirmative vote of Parliament.

After listening to Senators Daly and Mansoor who, by their training in law and accounting, make the presentation that I have prepared pale into

insignificance, I had concerns in much the same areas as theirs but they were able to express themselves much better than I ever could.

As I read the Bill it appeared to me that by it Parliament was abdicating its duty as the chief legislative body in Trinidad and Tobago, as the Central Bank is being given absolute authority to make any bye-laws they choose without reference to Parliament. Even the Minister is only given a bare mention in clause 64, where he is allowed to make regulations on the advice of the Central Bank. I do not think that this Bill is progressive and certainly not liberalized as there are more controls now than there ever have been, and the Central Bank is not answerable to anybody.

I see no reason for giving the Central Bank the authority to hire and fire directors, controllers and managers of the various banks as they see fit. The banks have been running their business for many years; they know how much to lend, when to lend it, and to whom to lend it. It is not just a straight dollars and cents issue, but the integrity of the various companies they are dealing with comes in to part of it. This is like going to a computer, where there is no chance for any consideration being given to the integrity of the bank and the causes and reasons for their loans. Therefore, Mr. President, whilst supporting the Bill, I strongly support the amendments submitted by Senators Mansoor and Daly.

Thank you.

#### ADJOURNMENT

*Motion made*, That the Senate do now adjourn to Tuesday, June 8, 1993 at 1.30 p.m. [*Hon. L. Saith*]

**Mr. President:** Before putting the question, I have to inform you that Senator Hosein has obtained leave to raise the following matter on the motion for the adjournment. The matter is the urgent need to construct a bridge at Upper Malick, Barataria. The debate, as usual, will allow the Senator raising the matter 15 minutes to deal with it, and the Minister will have the same amount of time to reply.

#### Malick River Bridge

**Sen. Muntaz Hosein:** Mr. President, before I begin, I see the Minister is not in his seat. I wonder whether that is by design or [*Interruption*] Whom am I talking to, Mr. President?

Mr. President, I have the painful duty to come to this Senate once more to speak on a matter that I raised some time in May last year. You will recall the

*Financial Institutions Bill*  
[SEN. PROF. SPENCE]

*Tuesday, June 1, 1993*

history-making motion on the adjournment of the House during that period about the plight of the people of Upper Malick and the hardships that they suffered, dating back from 1956 to then. Successive Ministers had pushed these people around from pillar to post. Letter after letter was written, and you will recall Mr. President, that I had extensively quoted from those letters. Delegation after delegation. They had gone through all of the ministries, Mr. President, before I was asked to come to their aid. In May 1992 I brought this matter before us, and the Minister who, I am very pleased to see, is in his seat now, promised this Senate and the people of Malick that he would build that bridge for them and construction was to start in August of 1992.

**5.25 p.m.**

You will recall that he advanced an argument that before the bridge could be built, a silt trap was necessary. You will recall that I brought photographs of the Government's record of silt traps, that they were never cleaned and many of them that were built remained inactive, especially in the areas of Laventille.

Notwithstanding that I had made that contribution and advised the Minister, he advised this Senate that a silt trap was the way to go. Seeing that he is a professional in that area and he had the advice of professionals within his ministry, I, for one, believed that perhaps my arguments might have been wrong, and maybe this Government knows something that I did not know; this Minister with his super plan must be right. Because, after all, he is a professional and he has the benefit of so many professionals within his ministry, so I gave him the benefit of the doubt.

Lo and behold, the silt trap was built, it was completed in October, 1992. When I saw what that silt trap has done to the people in that area, I am convinced that I am more right now than I was in May last year.

I have some pictures here that I would like the Minister to look at. I understand that he was up there and I am reliably informed that he saw. Mr. President, you have to see this to believe, that right in the middle of a village of 4,000 people, this hon. Minister puts a silt trap and this is the result of it. Every dead dog, every snake, every rubbish heap comes down with the water in this river. It is such a mess. At one time when I did not see the Minister present today, I thought he was ashamed and was not coming.

The only thing that is happening is that the ministry cleans the trap. But when they do that they throw all the rubbish in the road and it takes up to two, three and



four months for them to remove the rubbish. The rubbish shown in the picture here has been there for three weeks. It has not been removed. Can you imagine the stench that comes from that trap, and the diseases that these people are subjected to?

I tried as best as I could to understand the relevance of the silt trap so I did a little research, only to find out that the real reason for the silt trap is not for the benefit of the people of Malick; it is for Amar and Roundabout Plaza lower down the road. So they have stopped all the nastiness from coming down to Amar's place and overflowing down there, and put it by the people of Upper Malick. That is the reason for the silt trap there can be no other reason.

In this country, when you are poor, dog is better than you. That is the kind of condition that the poor people of Upper Malick are subjected to. All they are getting from the Minister is: "Mañana, tomorrow, shortly, you will get it done."

But I must thank the Minister on behalf of the residents; he did put a walkway. I must give him credit for that. Although I believe it is probably going to fall into the river just now because it was badly constructed in the first place. But then again, we are dealing with professionals. So I would like to give him the benefit of the doubt. I hope when it falls into the river, nobody is on it.

When the silt trap was completed in October, the people were told that the bridge cannot be started because it cannot be accommodated in the LID Programme. So no bridge was built after that. LIDP has now become URP—or is it BURP—one of them. URP came into the area and they began on March 1. From March 1 to April 5, there was no work done for that whole period. It is the same old "la hay". Do you know the term "la hay"? That is all they were doing, "la haying" in the area.

**Mr. President:** I am sure that Members of the Senate are familiar with the term, but you are using a lot of languages that do not conform to the Standing Orders. "Mañana" and now "la hay."

**Sen. Hosein:** I will be guided by your ruling, Sir.

**Mr. President:** Not by my ruling. It is the Standing Orders that require the proceedings to be conducted in the English language.

**Sen. Hosein:** Mr. President, the word, "la hay"—

*Malick River Bridge*  
[SEN. HOSEIN]

*Tuesday, June 1, 1993*

**Mr. President:** I know, and I am sure Senators know it. But before you start using any more foreign languages—

**Sen. Hosein:** Thank you, Mr. President. It is very kind of you.

You know, they were told that it was lack of funds—Mr. Shortly there—why the URP people had to go.

But the best is yet to come. Instead of making the bridge for the people, do you know what they did? They removed the work shed. The eight steel beams that the people had donated to them, they took them and went with them. All the steel rods, they also went with them.

I want to know from this Minister if his ministry is involved in this kind of behaviour. The residents are not aware whether these things were stolen by the URP people or what happened. Are they going to be compensated? What are they doing with the people's steel beams and all the materials which they had there? I want to mention for his benefit, some of the materials which were there and are now missing.

Two shovels; an agri fork; sledge and a handle; a rake and a handle; a line; a hay fork. I do not know what they are doing with a hay fork, but anyway. Wood—six pieces, 2x4x14; six pieces—2x2x14; six pieces—1x4x14; one roll BRC; one box concrete nails; five pounds assorted nails; two wheelbarrows; one crowbar; five pounds assorted nails; another two pieces of wood. They had a lot of wood up there, Mr. President. Six lengths quarter inch steel; more wood again, Mr. President; six pieces—4x4x16; a plank; one water tank; seven square mouthed shovels; two agri forks; one straight cutlass; pickaxe handle; three wheelbarrows; six buckets; one broom and handle; one sledge hammer and handle; two door hinges; 20 sheets of ply; 20 kilos assorted nails.

**5.35 p.m.**

Mr. President, the residents want to know why these materials—steel beams and everything—were removed from the site. Why was the shed broken down? There is a dichotomy as to what the Minister tells the people and what they see happening. He is telling them "Shortly, everything is going to be all right; they are going to be building it", and at the same time they break down the shed and carry away all the materials. When the last group of workers worked from March to April, I understand that a few of them were weeding around somebody's fence—I think that is the extent of the work done on that project.

Mr President, you will remember that when the Minister promised the residents that they would start building the bridge in August of 1992, I told him that he would not make promises in this Senate to me and those people and not keep them. Also, should he do that, I would come back at him with another motion. Mr. President, do you know what is happening now? We are now in the month of June so the next thing we would hear from the Minister is that it is now the rainy season so nothing could be done about it. This is the record of this Government.

I must admit that the Government has at least done a little better than the previous successive governments. I have to give them credit for that. The little foot bridge is appreciated, but when one counter-balances that with the stinking mess of the silt-trap, one really wonders whether the good balances the bad. It appears to me that the bad has it. This Minister, I hope will have some good reasons for what he failed to do and I assure him, that the days for making promises in this Senate to this Opposition and not fulfilling them are over. He get up and do his work or we will be on his back every single day.

Thank you, Mr. President.

*[Applause from public gallery]*

**Mr. President:** I am not going to put anybody out of the Chamber today, but all those who are in the public gallery must maintain silence at all times. You cannot applaud, or show your approval or disapproval of the proceedings in the Parliament.

**The Minister of Works and Transport (Hon. Colm Imbert):** Mr. President, as you will be aware, the Motion before this Senate relates to the matter raised last year regarding the problems that residents are experiencing in an area at Upper Malick, Barataria. But since the Senator appears not to be totally informed of the history of this matter and all the circumstances, and, indeed, the facts, I think it is necessary for me to give some further background information on this matter.

The bridge in question is one that crosses the Malick River, as I have stated before, to allow residents of Upper Malick to gain access to their houses. The area in which the houses are located is not part of a planned development, and I think that is something that needs to be emphasized. The houses were constructed in an unplanned manner, and in earlier times no established roadway existed. But, it is through developments of this nature that I am sure all the major cities of the world

*Malick River Bridge*  
[SEN. HOSEIN]

*Tuesday, June 1, 1993*

developed; initially they were unplanned and over time they were reorganized; infrastructure upgraded and developed to become major population centres.

In this particular a path was used—that was in the past—to gain access to houses, and pedestrians at that time would cross the river whenever the water levels were low enough. It was a natural ford the river as it were. The roadway ended across on the eastern side of the Malick River. As time progressed and the number of houses increased, and the need for a proper roadway increased, the path has improved into a crude roadway that was used by the few residents who became owners of vehicles. Again, these residents could only cross the river when the water level was low. And the need for a bridge now arises.

This is the history of the matter. It is not to say that there was a bridge and it fell down, nothing like that. It is an unplanned development; the population has increased over time and they have now come to a point where a bridge is necessary. It is necessary for this Senate to be aware of that.

My understanding is that representations were made to the ministry for a bridge in 1987 and at that time the ministry responded by indicating that they would participate in a self-help project to construct the bridge, by providing design and supervision services, while the residents would provide the other inputs for the bridge. At the time, the residents indicated that they were able to obtain steel girders to be used in the construction of the bridge—this was in 1987 and the years immediately following.

However, the design of the bridge could not accommodate the steel girders that were sourced by the residents, and, eventually, suitable steel beams were obtained by the ministry for use in construction of the bridge. So, I wish to correct a misconception. The steel beams—this is my information—that were on the site until recently were supplied by the ministry.

**Sen. Hosein:** Jenson Fox supplied the beams.

**Hon. C. Imbert:** He was a Parliamentary Secretary in the Ministry at one time.

The work that was required to be done could not have started, however, as work that would have affected the construction of the bridge was being done in the river.

Mr. President, you will recall that on the last occasion, I spoke about the need to construct a silt-trap to reduce the effect of flooding in this particular area and

the general environment. I am happy to report that silt-trap is completed, and from the information that the Senator has provided to this Senate, it is functioning very well. The purpose of a silt trap—

**Sen. Hosein:** Mr. President, on a point of clarification. I would like to just correct the Minister: I never said that the silt trap was working very beautifully. He is misquoting me.

**Hon. C. Imbert:** Mr. President, I am not at any time indicating that the Senator stated that the silt trap was functioning very well. That is my interpretation, because, the Senator has indicated that it is trapping debris. That is the purpose of a silt-trap. For the benefit of the Senator, silt traps are constructed to trap silt, mud and other debris that would travel down the natural water course, and would tend to raise the invert level of a water course, thereby causing flooding because it would reduce the hydraulic capacity of the river.

**5.45 p.m.**

Unfortunately, as happens quite often when silt traps are newly constructed in areas, the poor environmental practices of residents result in an accumulation of garbage, as the hon. Senator has described very well. Some of the garbage is accumulated in the silt trap, I understand other forms of garbage quite often end up in our rivers such as old tyres, unusable refrigerators and things of this nature.

I believe the onus is on the Government to educate the public to desist from throwing debris into the rivers, because the situation would arise which he has described so well, where the silt trap which should really be functioning to trap the finer sediment particles, is trapping large solid objects. We have already started an educational programme in this particular area to advise residents not to throw garbage and large objects into the river—my colleague said dead dogs. In that way we can maintain and clean the silt trap properly.

I am grateful that he has reported that we have in fact cleaned the silt trap. I was very surprised! From previous experience, I should have thought that he would have said that we have done nothing. I am glad that he has reported that we have cleaned the silt trap, and we intend to continue cleaning it and removing the debris within the limits of our available resources. I am glad he has brought to my attention what appears to be a problem with an accumulation of debris that was recently cleaned out of the silt trap, and certainly I would look into that matter and see what can be done.

*Malick River Bridge*  
[HON. C. IMBERT]

*Tuesday, June 1, 1993*

I am also happy that the Senator has reported that we did something at the site. We have constructed a pre-stressed concrete walk-over with steel pipe guard rails to protect residents from falling into the river. My understanding is that this walk-way is functioning quite well. I visited the site not too long ago, as he obviously has informants in the area who would advise him of my movements, and in the opinion of my engineers and in my opinion, the walk-way is adequately constructed and will serve the residents of the area for many years.

Let me move on now to the whole question of the removal of steel beams and other materials. Last week, it was reported to me that there had been an unfortunate incident on the site. I sincerely hope it was not as a result of misinformation or mischief, deliberate or otherwise, because the Ministry of Works had decided to alter its design for the bridge in order to expedite its completion. This is a vehicular bridge. We have already constructed a foot bridge.

What we have decided to do is to continue the rubble masonry paving of the river between the silt trap and the lower stretch of the river, construct two concrete abutments and use pre-stressed concrete elements that we have in stock to complete the bridge. We believe that using this method we can complete the construction of the bridge during the rainy season and also in a far more efficient manner than the original design.

My information is that a crew from the Ministry of Works came to the site to remove the steel beams which were no longer required, and some person or persons advised the residents that we had abandoned the job; that we had forgotten about them; that we were not going to build anything there, and incited them to the point that somebody threw a stone or some other missile at the crane that had come to remove the steel beams and broke the windscreen. This is serious!

Nevertheless, despite the fact that this incident occurred, the Ministry is continuing with the construction of the bridge and I can only conclude that the Senator has not visited the site recently.

**Sen. Hosein:** On a point of order. I was there on Sunday.

**Mr. President:** That is not a point of order. The Minister was very patient and sat down while you spoke. Could you give him a chance. It is an opinion he is expressing. He did not say that you did not go. That is not a point of order.

**Hon. C Imbert:** From our limited resources we have decided, after consultation with the Member of Parliament for the area, that we shall assign one of the Unemployment Relief Programme projects to the construction of this bridge. The total cost of construction is estimated at \$237,000. Work started on May 24, one week ago. This is why I am surprised at the statements made by the Senator that nothing is being done. He said that he visited the site on Sunday. I do not know. Maybe he was in the wrong place.

On further investigation, my understanding of the incident I referred to was that not only was some mischief propagated that we were abandoning the job, but there was also some mischief about employment practices on the project itself, being an Unemployment Relief Programme project. I think that some persons were trying the usual practice, the usual strong-arm tactics to incite violence in order that they, their friends and supporters, would be the sole beneficiaries of employment on the project. This is quite usual on our projects, and I report that we would have none of it. We shall employ people equitably in the area. We would not give in to any threats from thugs or others in the area.

We estimate that with the construction work, if all goes well and there is no disruption and there is a smooth flow of work, that we can complete the bridge within the next eight fortnights of work, which means approximately four months. We expect therefore—we are now in June—that towards the end of September, the bridge will be completed. Embankments would be constructed on either side to raise the road up to the level of the newly constructed bridge.

I hope that when this bridge is completed the Senator on the other side would bring a motion in this Senate to compliment the Ministry of Works on the fine work done in constructing it.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 5.55 p.m.*