SENATE

Tuesday, October 25, 1994

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 to Sen. the Hon. Joan Yuille-Williams and Sen. the Hon. Russell Huggins to be absent from today's sitting of the Senate as both of them are out of the country on official business.

I have also granted leave to Sen. Prof. John Spence to be absent from sittings of the Senate during the period October 29 to November 11, 1994 as he would be out of the country attending a meeting of the Commonwealth Agricultural Bureau (CAB) International Board.

SENATORS' APPOINTMENT

Mr. President: I have been advised that His Excellency the President has appointed Mrs. Norma Lewis-Phillip to be a temporary Senator with effect from October 25, 1994 and continuing during the absence from Trinidad and Tobago of Sen. the Hon. Russell Huggins.

I have been advised that His Excellency the President has also appointed Mrs. Eloise Bertrand to be a temporary Senator with effect from October 25, 1994 and continuing during the absence of Sen. the Hon. Joan Yuille-Williams.

OATH OF ALLEGIANCE

Senators Norma Lewis-Phillip and Eloise Bertrand took and subscribed the Oath of Allegiance as required by law.

VENTURE CAPITAL BILL

Bill to provide for the establishment, regulation and administration of the Venture Capital Industry, brought from the House of Representatives [*The Minister of Finance and Tourism*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate [*Sen. Dr. The Hon. L. Saith*]

Sen. W. Mark: Mr. President, I have a little concern. I would like some clarification on this matter. Under the amended Standing Order No. 48 there is a period of 15 days that must elapse. I am trying to get clarification from you when

the Minister says that the Bill would be taken at the next sitting of the Senate. Is that next Tuesday? If it is, I would like you to guide me on this matter in terms of the 15-day period.

Mr. President: I thought that you had explained the matter yourself.

When the Minister says the next sitting of the Senate, at the end of each sitting the Leader of Government Business moves that the Senate be adjourned to whatever date, and the Senate agrees, or disagrees, with that date, that becomes the next sitting of the Senate. The Standing Order that you referred to about 15 days, is precisely why the Minister is moving the motion. This has become almost standard procedure for the whole life of this Parliament and the last year of the preceding one because an amendment was made to change it from what prevailed in the Senate for over 30 years and what still prevails in the other place, that a period of five days must elapse and the Bill goes down for the next sitting.

The Bill has in fact been read a first time. The Minister is merely moving that the next stage be taken at the next sitting of the Senate, so that it would be automatically put down on the Order Paper for that date. I hope the Senator understands the situation now.

Question put and agreed to.

PAPERS LAID

1. Report and accounts of Telecommunications Services of Trinidad and Tobago Limited for the year ended March 31, 1993. [*The Minister of Planning and Development (Sen. Dr. The Hon. Lenny Saith)*]

2. Report and accounts of Telecommunications Services of Trinidad and Tobago Limited for the year ended March 31, 1994. [*Sen. Dr. The Hon. L. Saith*]

3 Report of the Auditor General on the accounts of the Agricultural Development Bank of Trinidad and Tobago for the year ended December 31, 1993. [*Sen. Dr. The Hon. L. Saith*]

4 Report of the Auditor General on the accounts of the Government Employees' Provident Fund for the year ended December 31, 1993. [*Sen. Dr. The Hon. L. Saith*]

CONSTITUTION (AMDT.) BILL

Bill to amend the Constitution of Trinidad and Tobago [*The Minister of Planning and Development*]; read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate.[*Sen. Dr.The Hon. L. Saith*]

Sen. W. Mark: I have something to say.

Mr. President: Does it concern the same thing you asked? I hope that you are not going to speak on the Bill.

1.40 p.m.

Sen. W. Mark: No, Mr. President. I would like to get some clarification on this matter. The Opposition is of the view that because of the importance of this particular piece of legislation it requires public comment and, therefore, we are proposing that the Government does not, at this time, introduce this Bill but have it put out for public comment. Can I make that intervention on this matter?

Mr. President: All I can tell you, Senator, is that under the Standing Orders every Bill that is introduced is published. *[Interruption]* I know what I am talking about. I am glad for the opportunity to say this because, apparently, people throughout Trinidad and Tobago believe that unless a notice appears in the daily newspapers saying that comments are invited on the draft of some bill which the Government is contemplating, no one can comment on the bill. However, the provision in the Standing Orders that every bill introduced in Parliament must be published in the *Gazette* as soon as possible afterwards, is to afford everybody in the country the very opportunity to comment on that bill.

Sen. W. Mark: May I ask the hon. Leader of Government Business to delay the second reading of this Bill for three months, because of its importance, so that the population can have a greater say in the matter?

Mr. President: As I have said on previous occasions, things like that are better settled "behind the Chair," as we would say in parliamentary jargon. There will be a time when it will be appropriate for you to move such a motion in accordance with the Standing Orders. The Bill will be published and everybody in Trinidad and Tobago May comment on it.

Question put and agreed to.

DEVELOPMENT LOANS (AMDT.) BILL

Bill to amend the Development Loans Act, Chap. 71:04 *[The Minister of Finance and Minister of Tourism];* read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [*Sen. Dr. The Hon. L. Saith*]

Question put and agreed to.

CENTRAL BANK (AMDT.) BILL

Order for second reading read.

The Minister of Finance and Minister of Tourism (Hon. Wendell Mottley): Mr. President, I beg to move,

> That a Bill to amend the Central Bank Act, Chap. 79:02 and the Financial Institutions Act, No. 18 of 1993, be now read a second time.

Hon. Senators will recall that, in 1993, we introduced and passed the Financial Institutions Act and then, in 1994, we passed the regulations related thereto. I had announced, at the time of presenting the banking legislation, that I would be presenting the Bill which is now before this Senate. It was somewhat delayed due to a long list of bills dealing mainly with crime, but we now have a steady flow of economic bills before this Senate—at least two were alluded to at an earlier stage of this sitting—and there would be the securities legislation later this year.

The Act which set up the Central Bank was passed in 1964 and it laid down the major duties then of the Central Bank. It defined its relationship with the Central Government, with the commercial banks and other financial institutions. It laid out several procedural matters, and since then there have been some amendments to that original piece of legislation, largely dealing with matters relating to the rate of exchange, the fixing of rates of interest, provisions which gave the Central Bank special powers of intervention especially in relation to the financial institutions—that is the non-banks—which, at a certain stage in our history, were in danger of failing and then, most recently, the Act was amended in connection with the abolition of the fixed exchange rate regime.

Almost 30 years has gone by since 1964, and it was considered that a more thorough rather than piecemeal amendment to this Act was now due, and the proposed amendments were undertaken in that spirit. Now a central reason for the Central Bank's existence continues as has always been. The philosophy has not changed, neither have the basic principles which guide the Central Bank, but we are introducing a number of amendments now which essentially seek to streamline the functions of the bank so as to make it more efficient and to provide a flexible framework for it to pursue major functions, especially in the conduct of monetary policy. The amendments reflect historical, economic and political changes.

Essentially the bank is set up to issue and redeem currency, notes and coins; to act as a banker to the Central Government—to give it monetary advice; to

maintain and influence the volume and regulate credit as part of its monetary operations, and to undertake continuous economic surveillance and research and to report thereon.

The Central Bank does not act, of course, in a vacuum. It acts in an economic sphere in which the Government and other financial institutions as well as the commercial world are operating. In that changing environment there is now need to make certain other changes as well.

The changes which are incorporated in this Bill are now going to be outlined and I will give you, in synopsis, what those changes are, and then get on to dealing with some of the more minute details of those changes. First I will deal in broad outline with some of these changes.

Among the principles behind the amendments is the elimination of certain sections of the Act that are just no longer applicable because of the passage of time. For instance, a certain section of the Act which talks about Barclays Bank DCO, which used to print our notes, is no longer relevant. That is no longer so; therefore we are changing it. Since 1977 Trinidad and Tobago has left the sterling area and therefore we are deleting all references to that.

Also we are streamlining all matters pertaining to the board of directors and their appointments and to provide for a minimum number of meetings which should be held annually by the board to ensure that the bank carries out its statutory obligations.

1.50 p.m

We are making provisions for the Minister to prescribe a Code of Ethics for the bank:

In addition: to give the board of directors the powers to fix salaries of the Governor, the Deputy Governors and Directors, subject to the approval of the Minister.

To allow for the transfer of pension rights of employees to state enterprises and to other organizations.

To provide for disputes between the bank and its employees to be referred to the special tribunal established by the Civil Service Act.

To facilitate the bank in the conduct of open-market operations. In this regard, further legislation for treasury notes will be introduced.

To limit the amount of coins which may be accepted as legal tender. Some people cause much hassle by attempting to pass huge amounts of coins. That delays commerce and we are trying to limit the amount of coins that one can pass as legal tender at any one time.

To require prior permission of the bank to reproduce bank notes for advertising.

It is a somewhat grey area, except in the case of forgery, how people may reproduce bank notes or similes of bank notes. It is clear when forgery is intended that one may not do so, but sometimes for other reasons, advertisement and so forth, bank notes are copied and we are seeking to regulate that practice.

To increase the authorized capital of the Bank from $30 million to $100 million in the light of the larger financial portfolio that the bank now manages.

To provide for the incremental increase in the paid-up capital of the Bank with the establishment of a special reserve fund to build up adequate reserves and to make provisions in the event of losses being incurred in any financial year, for losses to be met from the reserve funds, and such funds are to be set up from future profits before transfers are made into the Consolidated Fund.

To restate clearly the business which the bank can carry on and to include a few more powers and to reiterate clearly businesses that the bank cannot carry on.

To empower the bank to take immediate action as it deems necessary in the interest of the financial system in the event of civil disorder, natural disaster or massive economic crisis.

To provide the bank, its directors and officers immunity from suits in the case where the bank is acting in good faith.

This is not an immunity where it can be proved that there was a deliberate act of bad faith, but it seeks a normal immunity that is granted to central banks all over the world.

To remove the total prohibition on disclosure of information by the Central Bank in certain circumstances, and if necessary, in the interest of the financial system or the bank, to have matters heard *in camera*.

Very often, very sensitive matters may need to be discussed in court and so forth; we would want to have that *in camera*, lest the disclosures have very undesirable consequences, especially on the health of any particular banking institution.

During the debate on the Financial Institutions Bill, 1993 certain changes were made in the legislation in the course of the debate. I regret to report that not all of those changes were accurately recorded and we are seeking now to bring certain amendments by this Bill, that will, in fact, relate to that Financial Institutions Act and make certain corrections that we want thereto, also, to remedy a particular mischief that has occurred in more recent times. I will refer to that in more detail later.

I also wish to state that this Bill before you has again been the subject of very extended discussions among the Central Bank, the Ministry of Finance and the major financial players in Trinidad and Tobago. In several instances there were changes recommended to the draft we had put forward and those changes have been incorporated, but there have been some recommendations that we have chosen not to accept. I would like to highlight a few of them. For instance, it is felt by some of the bankers that in fixing salaries and so forth, the Central Bank should not have to refer the matter to the Minister. That we disagreed with for reasons which I will state later.

There is a question too, of the Government's appointees to the Central Bank's Board not having a vote. We believe that they should have a vote but there is a feeling among some of the commercial interests that that might dilute the independence of the Central Bank. We believe that two government appointed directors among nine directors would not have that undesired consequence.

I now turn to the Bill and its specific provisions. In clause 3 (amended section 2), the term "statutory authority" appears in clause 18 of the Bill and provides for the Central Bank to make appropriate arrangements for the transfer on secondment of its employees to another organization. Such organizations will include statutory authorities. The definition is the same as that in the Statutory Authorities Act, Chap. 24:01 save for the exclusion of the reference to "local authority". This specific reference in the words "local authority" is unnecessary as the term "municipal council" includes local government bodies such as the City of Port of Spain, City of San Fernando and the Borough of Arima.

In clause 4 (amended section 3), there is a new paragraph which is intended to provide for the continuous review of all legislation affecting the financial system and developments in the field of banking and financial services. Changes in the financial system are frequent and it is important that the Central Bank be given a specific responsibility to ensure that the legislation is providing the necessary framework within which the financial industry can grow and thrive in an organized and structured manner.

In that same clause 4 (amended section 3), there is a provision which gives protection, as I mentioned earlier, from lawsuit to the bank, its directors and employees where they act in good faith in the performance of their functions. A similar provision, as I had indicated, is found in the UK Banking Act, 1987.

Such immunity is confined to damages and would not serve to exclude acts of omission shown to be in bad faith; neither would this section exclude a right to judicial review. Such provisions for limited immunity are necessary for the efficient functioning of any serious regulatory authority which should be able to make decisions without fear of recrimination.

2.00 p.m.

I turn now to clause 5 which provides for the Central Bank to have two deputy governors instead of the one at this time. This is in keeping with the modern trends that an institution should have at its apex, a broader base.

The functions of central banking have become very, very complex especially their increasingly sophisticated management operations, as well as commercial tools and items such as derivatives and so forth that are quite complex and more and more central banks are having to become specialized and have specialist knowledge available at the top. This is all part of the globalization that is taking place and the very, very rapid financial flows.

New central bank legislation has already been amended to create additional positions so as to strengthen top management. The Federal Reserve Board comprises several vice-presidential positions. The Australia Central Bank legislation provides that the management of the Reserve Bank shall comprise the Governor and two Deputy Governors. Brazil, Sweden, Thailand, Poland and Czechoslovakia have similar provisions. The Jamaican legislation has provision for five Deputy Governors and Barbados legislation for two Deputy Governors.

Subsection 5(3) of the existing Act provides that public service directors should not vote at board meetings, but, as I have indicated, we are proposing that they now be allowed to vote.

Section 7 of the Act is repealed and substituted by:

"(1) The Governor, Deputy Governors and the other directors shall be appointed by the President by instrument in writing.

(2) The Governor shall be appointed for a term of five years.

(3) The term of office of a Deputy Governor shall be for such period as the President may fix...

(4) The ordinary directors and the public service directors shall be appointed for a term of three years.

(5) All directors shall be eligible for reappointment."

There is no fundamental change in this section except to include presidential instead of ministerial appointment for public service directors. The provision that the Governor be appointed for a term of five years has been retained. The Deputy Governors are to be appointed for such periods as the President sees fit, and all other directors are to be appointed for a term of three years.

Section 9. This section is amended by including the Tobago House of Assembly among others that would be disqualified from holding the post of Governor, Deputy Governor or director of the bank along with parliamentarians and others. It just includes the Tobago House of Assembly to tidy up.

Clause 12. This is a new provision which flows from the requirement under section 60, that directors, officers and employees of the bank should conform to a code of ethics to be approved by the Minister. This clause provides that where a director fails to comply with provisions in the code of ethics, this will be a ground for termination of his appointment. I can report that a code of ethics has been drafted and is being finalized following consultations and discussions.

Again, Section 14 has been repealed and is replaced by the following provision:

"The Governor, Deputy Governors and the other directors shall be paid such remuneration and allowances as the Board, with the approval of the Minister, may determine."

This, in fact, gives them much more freedom than they had in the past, but we still have the Minister having to come in on approval.

Mr. President, I believe that this is a transition that ultimately one may want to remove that power as I contemplate a situation in which the Central Bank, with the upper echelon for instance of the public service, have to be extremely well paid to discharge the very onerous and complicated functions that they, at this time, perform. Our history is such, that at this stage the Minister must have some purview over what is obtaining in the Central Bank as relates to the topmost echelons of the public service lest there be total discord, but I clearly see this as a transition, away to a period where the Central Bank will be totally independent in this matter.

Section 15 has been amended to provide that only the Governor should be the Chairman of the Board, and shall preside at meetings of the board. This clause also provides that the board must meet at least once in every two months, and not less than nine times in any calendar year. This is proposed, as past experience of the bank has been that it is difficult to organize meetings in certain months of the year. A minimum of nine meetings, which must be held at least once every two months, ensures that the board is required to meet to consider its statutory responsibility. If necessary, the board can, as it now does, meet more frequently.

Section 16 is amended so that provision is made for a director to be fined should he fail to declare his interest in a matter that comes before the board. The existing legislation did not provide a sanction for breach of this provision.

Section 18 is amended to reflect the present position with respect to the pension scheme, as well as modern thinking with respect to terms and conditions of employment. The amendment would also allow for greater flexibility in the packages that employees could be offered.

Section 19 of the existing legislation provides for secondment of employees only to or from the government service. The amendment allows for greater flexibility in that the bank may source employees from a wider pool on secondment and the employees will have their pension and other rights preserved. Similarly, the Central Bank may also be able to provide experienced employees on secondment to these organizations without disturbing their employees, pensions and other rights.

"Part IA" is a very long section and it deals in great detail with a number of "personnel" matters that I do not propose to go into in much detail here. This comes from the background where the Central Bank found itself and its employees outside the regular workings of industrial relations, and this amendment now seeks to regularize these practices in relation to a number of its employees, estate constables and so forth.

Sen. W. Mark: Mr. President, I just want to get a clarification here. Could the hon. Minister indicate to the Senate whether there is any precedent, seeing that he was quoting so extensively to justify earlier provisions? Is there any precedent worldwide for Part IA insofar as the rights of workers are concerned to third-party independent arbitration? Whether for instance, there is any precedent in what is being proposed in Part IA.

Hon. W. Mottley: Mr. President, I do not have that reflected in my notes, but I can get the information so that I may make it available at a later stage of the proceedings. That is the precedent in relation to other jurisdictions.

Let me perhaps in summary guide this House in relation to some of these "personnel" matters.

2.10 p.m.

The Industrial Relations Act provides, at section 2(3)(d) that members of staff and employees of the Central Bank are not workers. Central Bank employees are not, therefore, subject to the jurisdiction of the Industrial Relations Court in respect of disputes that may have arisen.

Section 4(2C) of that Act contemplates that the Special Tribunal established by the Civil Service Act is authorized to hear and determine disputes arising in the Teaching, Police, Fire and Prison Services, as well as in the Central Bank. Section 69 of that Act further provides that Central Bank employees, as well as members of the public service, may not take part in any industrial action.

The companion piece of legislation, which is necessary to establish the procedure for referral of disputes arising in the Central Bank to the Special Tribunal was, in fact, never passed. The Bill which was prepared lapsed and was never reviewed and, therefore, this accounts for the Central Bank staff being, so to speak, in limbo.

The Central Bank has therefore recommended that industrial disputes involving all Central Bank employees be dealt with by the Special Tribunal. It is now proposed that the procedure established under the Police Service Act, Chap. 15:01 and the Supplemental Police Act Chap. 15:02 for the referral of disputes to the Special Tribunal be incorporated into the Central Bank Act to remedy this situation.

As I made mention earlier, Mr. President, in relation to section 21 of the Act, all references to Barclays Bank DCO are being removed from the legislation.

Section 24 of the Act: At present, only notes issued by the Central Bank are exempt from the payment of stamp duties. The Central Bank is required to pay duties on notes and coins which arrive in the country, but are not officially put into circulation, that is, notes that are not issued. The intention of the amendment is to remove altogether the requirement for the payment of these stamp duties.

Section 26: Under the existing legislation there is no definition of legal tender. An amendment to section 26 will impose a limit on the quantum of coins which

will be treated as legal tender for the payment of debts. As I mentioned earlier, the Central Bank has frequently received complaints, from merchants and others, of people who come up to counters, sometimes, with thousands of dollars in coins and cause considerable hassle. We would therefore seek to limit, in any one transaction, settlement in coins.

Section 29: It is proposed that where persons intend to reproduce or use any part of the design of notes and coins of Trinidad and Tobago for private or commercial purposes, the permission of the Bank should be sought and then the necessary follow-on of a sanction; where that is not followed, a fine of $100,000 or imprisonment.

Section 32: This section is to be deleted since Trinidad and Tobago is no longer in the sterling area. That is just a tidying-up provision.

Section 33: This section specifies the type of assets which the Central Bank may hold to cover the value of currency in circulation. Again, references to "sterling" and "United Kingdom" are removed.

Section 34: At present, the authorized capital of the Bank is a mere $30 million, of which only $2 million is paid-up. The provisions of the Act require at the end of each financial year that the net profit of the bank for that year be placed in the General Reserve Fund. When the amount of the General Reserve Fund equals the authorized capital, the residue of the net profit is paid into the Consolidated Fund. The authorized capital of the Bank may be increased by resolution of the board, with approval of the Minister and such a resolution requires ratification by Parliament.

The establishment of the Special Reserve Fund is intended to ensure that there are adequate reserves, and to make provision in the event of loss being incurred in any financial year. The size of the Special Reserve Fund is to be fixed by the Minister. The Central Bank was given an option approaching an amount not exceeding 10 per cent of the profit of the bank in any financial year in either the General Reserve Fund or the Special Reserve Fund. When, however, the contribution to the General Reserve Fund equals the authorized capital of the bank, no further contribution to the General Reserve Fund is to be made. After such contribution, the balance of the profit is paid into the Consolidated Fund.

Here, Mr. President, we seek a balance between providing reserves for the Central Bank in the light of their operations and risk, and the possibility of loss in some years, as against the requirements of the Treasury to have pockets of the Central Bank siphoned off into the Consolidated Fund to finance our general

expenditure. We think the formula we have worked out here serves the competing interests well.

Section 36: This is a noteworthy section. This section was first amended by Act No. 2 of 1986. It originally read as follows:

> "(t) trade in coins or notes, establish subsidiary companies, purchase, acquire, lease, sell, let or sublet or otherwise dispose of real property, lend, borrow or invest in securities in addition to those hereinbefore specified in this section, so however that such loans, borrowings and investments do not exceed ten per cent of the total assets of the Bank, provide for value for the benefit of the Bank, the State or a State agency, organ or department, computer, maintenance and security services and may do any banking business incidental to or consequential upon the provisions of this Act and not prohibited by this Act."

That paragraph could only be interpreted by the "likes" of Sen. Daly for huge fees and, therefore, we are trying to simplify this somewhat. The amendments break up this complex paragraph into separate clauses, (t), (u), (x), (y), (z), (aa) and (bb).

Sen. Daly: Aye, aye.[*Laughter*]

Hon. W. Mottley: The Central Bank has an important role to play in its function as a Bank and must, therefore, have complete authority to participate in any banking transaction on behalf of its main customer, the Government, in the same way that a commercial bank might. As a result of trends in the international financial markets and the need to develop new instruments for open market operations, especially following upon the removal of exchange controls, the Central Bank, in its monetary operations, now has recommended the expansion of its broad definition of "authorized business" in some circumstances to remove any doubt as to the banking business that it may conduct.

These amendments now allow the bank to one, participate in derivative transactions; two, to issue bonds and other instruments in relation to the exercise of monetary policy. The Central Bank's functions in respect of monetary policy have become increasingly important, as I have just mentioned, in relation to liberalization of the exchange regime and the need not only to have the heavy-handed instruments of varying reserve requirements, but to intervene through the system of open market operations, and extending the range of instruments available to the Central Bank so to do. Three to give guarantees in respect of any

activities in discharge of its functions under this Act or the Financial Institutions Act.

Mr. President, this is an important series of amendments which seeks now to make clear the Central Bank's capability to do business in some of these new areas.

2.20 p.m.

Section 37: This provision merely seeks to tidy up amendments that were passed in Act No. 2 of l986.

Section 44A seeks to change the authority to fix interest rates from the President of the Republic to the bank. This is a normal function for the Central Bank to discharge rather than for the head of state.

Section 44D: These new subsections are to be included to empower the Governor of the Central Bank, with the approval of the Minister, where circumstances permit, to take such action as he deems necessary in the interest of preserving the financial system, in the event of internal disorder, external contingencies, natural disasters or critical financial and economic crises which require immediate action.

Section 56: To avoid the situation of sensitive information or information that is prejudicial to the national interest getting into the public domain, it is proposed that court matters should be heard *in camera* on the application of the Central Bank and supported by a certificate under the hand of the Governor, that evidence prejudicial to the security of the bank or the country may be adduced in the course of such hearings. Such a certificate shall be conclusive and should not be open to question by any court. The rationale for such a provision is based on the sensitive nature of the financial system. The mere reporting publicly of certain evidence with respect to a financial institution can be sufficient to cause a run on that institution and the Governor is the person best able to determine the potential for damage. It is proposed that he should be given a discretion to determine that the evidence to be given might be harmful—very pragmatic measures, Mr. President.

Section 48: This amendment corrects an error which arose as a result of drafting changes which were made during the debate on the Bill but which were not fully captured. I am referring now to the Financial Institutions Act. We have left now the Central Bank, central piece, and now attempting in the course of this legislation to deal with certain matters really related to the Financial Institutions Act. So that clause 48 of this Bill is an amendment which corrects an error which

arose as a result of drafting changes which, as I said, were made during the debate on the Bill but not fully captured.

Then in the same vein, the Central Bank has recommended the inclusion of a new provision to prohibit a person—and this is within the financial institutions now, not in the Central Bank—who is a director, controller or manager of a bank or affiliated financial institution, from acting or continuing to act as a director, controller or manager or from being in any way concerned in the management of another bank or affiliated financial institution, unless the bank or the financial institution has first been granted a permit to be a controlling shareholder under section 39 of the Financial Institutions Act, l993.

It is important if the Central Bank is to be able to effectively supervise the financial system that this amendment be approved. The Central Bank must be concerned with the motives of potential controllers of financial institutions, and must be alert to where there might be possible conflicts of interest in the conduct of those institutions' business. The possible exposure of an institution to new risks not previously foreseen can arise as a result of the acquisition of a controlling interest. The Central Bank must be concerned not only with changes in ownership and control of an institution but also in any other action that may subject an institution to increased risk.

One risk that has been identified and that can cause the same type of mischief is through the use of interlocking directors and management. This will result in the control of the institution through indirect means. The potential for abuse and insider information is self-apparent. So that the grant of a permit would signify that the Central Bank is aware of the relationship between the institutions, in that one institution controls 25 per cent or more of the voting strength of another, and once that Central Bank approval is granted, then it is assumed that the Central Bank is aware of the risks, and, therefore, has the whole matter under some degree of surveillance.

It should be apparent that in a small financial system such as ours where directors are known to each other—not vast areas of space between the few players in our system—it is clear that much mischief can take place through collusion. The power and influence that any one person can wield, therefore, must, in this connection, be contained.

Section 35(2) states:

"Where information is provided to a third party, the person on whom information is given must be advised of the fact that such information was

disclosed and of the person to whom it was disclosed, except in the case of a criminal charge or in matters involving national security."

The Central Bank has recommended that the words "criminal charge" be replaced by "court proceedings". This amendment substantially broadens the type of proceedings referred to in this section and would cover matters before the Tax Appeal Board under the Financial Institutions Act and give notice to affected parties thereto.

The amendments recommended to section 62 will result in the section reading as follows:

"With effect from December 31, l979, the provisions of the Money Lenders Act do not apply to licensees."

These words will have retroactive effect so that the Moneylenders Act will not apply to licencees from December 31, l979, the date on which the Moneylenders Act came into force. I think this is another very pragmatic matter and it needs some repetition. The amendment in section 62 will cause the Moneylenders Act not to apply to licensees under the Financial Institutions Act, and it will have retroactive effect, going back to licenses from December 31, l979, the date on which the Moneylenders Act came into force.

This is a practical measure that has come about because certain parties are seeking, through this particular device that appeared to have been a lacuna in the legislation, to claim that certain debts that they owed to financial institutions are not valid because the Moneylenders Act was in application. We are trying to correct this mischief.

I know that there is some sensitivity about retroactive legislation, but we have had to seek to balance the interests in this case between the very, very important matter of the protection of depositors' funds versus our natural proclivity of not wanting retroactive legislation, and we have come down, in this instance, in seeking to remedy a potentially serious loophole in the law which could allow the non-repayment of a vast number of loans owed to a number of financial institutions. I hope Members will understand the implications.

2.30 p.m.

"Part II, Exempted Activities—insurance companies registered under the Insurance Act." This is a new provision which will exempt insurance companies from the necessity for a licence under the Financial Institutions Act, 1993. Insurance companies were exempt from the need for a licence and from the

provisions of the Financial Institutions Non-Banking Act, 1979. The exemption will be in respect of certain activities of an insurance company, or certain classes of business performed by an insurance company, that fall within the definition of the business of a financial nature.

Insurance companies will not require a licence from the Central Bank insofar as they—

(a) collect funds in the form of deposits or premiums for the purpose of insurance business;

(b) perform the business of a mortgage institution;

(c) perform the business of a trust company; and

(d) perform the business of a unit trust.

These are provisions, in relation to the previously passed Financial Institutions Act and, therefore, tidy up certain drafting errors as well as introduce certain new provisions which, in the light of experience since the passage of that Act, were felt to be sufficiently germane and urgent to bring to the attention of this Senate at this time.

I commend the Bill to the Senate.

Question proposed.

Sen. Wade Mark: Mr. President, we on this side want to approach this debate, having regard to its importance.

We need to put this Bill in some perspective. We have to also examine, in some detail, its constitutionality. We want to look at the question of the greater powers and authority being vested in the Governor and the board of the Central Bank, particularly, under clauses 35, 37 and 45.

We have no problem with greater independence—I want to let the Minister know that from the outset—but we also want to address the issue of greater responsibility and accountability to the Parliament and to the people of Trinidad and Tobago. We would like to introduce some very sweeping amendments, particularly to clause 20 of this Bill, in an effort to ensure that people's fundamental rights are not abridged or violated.

Mr. President, when we look at this Bill, we recognize that the Government has more or less given a deadline of December 6 to get many pieces of legislation through this Parliament.

I refer to the In*vestment Sector Reform Programme; Loan Policy*, that was entered into between the Government of Trinidad and Tobago and the Inter-American Development Bank. In that sectoral loan policy document, one of the arrangements that the Government arrived at with the IADB was, of course, to upgrade the supervision and regulatory mechanism of the Central Bank.

What we have before us today—as we are going to have in a very short while again—is a series of financial and economic legislative matters that the Government would be seeking to ram down our throats without giving sufficient time to study them.

One must note that this revision of the Central Bank Act was in train since 1990, yet just last Monday the Government passed on this comprehensive and very detailed piece of legislation to the Opposition and Independent Senators, and as the people appointed by the President, we are supposed to do justice to this piece of legislation within 10 days.

We understand, given the circumstances, that we have a responsibility to execute, but we are not happy at all with the haste with which the Government is determined to treat legislation in this Parliament, even as we commence our first working session. We want to register our total dissatisfaction with the speed with which Government is seeking to introduce legislation without giving the Opposition the necessary time to study these matters.

The Government is also seeking in this piece of legislation to give the Governor, and the board of the Central Bank, greater authority, responsibility and powers. The Minister indicated that there is need to give the Central Bank greater independence. They want to get the politicians out of the way and give the Central Bank—the technocrats, the professionals—greater independence, particularly, in determining monetary policy for Trinidad and Tobago; of course, consistent with Government's fiscal agenda.

What we have seen here, and what we have no difficulty with as an Opposition, is giving the Central Bank and the Governor of the Central Bank, in this instance, the kind of authority, and autonomy, to ensure that the financial and economic ship of state is floating very calmly in the event of economic hurricanes, for we have so many hurricanes these days that we need to have somebody there to weather the storm in an effort to give direction. We have no difficulty with that.

What we have some difficulty with on our side, is that at the same time that we are giving greater responsibility, authority or power to the Central Bank, and

in this instance, the board of the Central Bank, manifested through the Governor, we still do not have—although it seems as though we have been arguing for decades—the establishment of appropriate mechanisms that can make the Governor of the Central Bank accountable to the Parliament of Trinidad and Tobago.

What we have here is a situation where greater power and authority is being vested in this particular board, and there is no concomitant accountability mechanism being promoted by the hon. Minister to ensure that the people's rights and interests are being safeguarded.

I am not the best fan of America, as Senators know, but there is a federal reserve system with a federal reserve board there. In the United States of America there is a committee system where, for instance, the chairman of the federal reserve board, who is equivalent to our Governor here, has to appear before a committee of both the Senate and the House of Representatives twice yearly, in February and July, to give the Congress, in terms of accountability, where the economy is heading, trends in the society, wages, inflation, salary, employment and so forth. We do not have such a system here.

We are saying, whilst we have no difficulty in providing greater authority and power to the Central Bank, and to the Governor in this instance, we are insisting that there ought to be some mechanism for greater accountability to the people of Trinidad and Tobago, and that must be done through the parliamentary system in terms of a joint committee that we have been advocating for so long.

2.40 p.m.

Mr. President, it seems to me that it is only when the UNC, in spite of attempts against it, takes power in this country that we would be in a position to establish the necessary mechanism to deal with a system of parliamentary democracy.

I want to proceed extremely cooly on this matter. When we look carefully under clause 5 of the Bill, we see where the board is to be made up of two deputy governors. The hon. Minister of Finance attempted to justify why it is necessary to have two deputy governors at this time—globalization, complexity of the whole system, monetary management and operations, rapid financial flows, all sorts of airy-fairy reasons as to why we must have a second deputy. We do not understand the corporate politics of the Central Bank, but if there is a need for a second deputy governor at the level of the Central Bank, we do not believe that some of the reasons that have been advanced are sufficient.

We believe that they may be necessary but in terms of sufficient conditions for that kind of second intervention, we have some difficulty with it. We would like the hon. Minister to really level the playing field and let us understand what is the real rationale for this new second appointment that is being promoted at this time.

Recently Trinidad and Tobago floated its currency, so-called; we have a fixed float; it is managed and controlled on a daily basis—and when we had this fixed float in April 1993 a division of the Central Bank was closed down; that is the Exchange Control Division. We are trying to understand, in an atmosphere where there are more people being employed—and I have no problem because I am for full employment—you have less responsibility being given. We have been trying to understand in a real way what is the reason for this second deputy governor. We are still not convinced of the need for a second deputy at the Central Bank. We do not want to get too much into the politics of the Central Bank, that is for another place and time, but we still believe that the hon. Minister needs to come with some better reasons in justification of a second deputy.

The hon. Minister indicated a while ago that he had discussions with the bankers, and they were saying to him that as it relates to salaries, the board should be the determining body in the final analysis in fixing salaries and allowances, because, they fear the politicians—they want to get the politicians, hands out of the Central Bank,—but in clause 7(1) the entire board is to be appointed by the politicians. When they talk about the President they are talking about the President acting on or in accordance with the advice given to him by the Cabinet and the executive authority in Trinidad and Tobago.

Here it is they are talking about greater independence for the Central Bank but at the same time what do they have? They have the Cabinet appointing the governor, the deputy governors and the other directors. That is what this clause really means. What we suggest, and in keeping with the Minister's thinking in terms of giving the Central Bank greater independence and greater autonomy, is an amendment to clause 7(1).

We serve notice at this time that we would like the President, in accordance with section 80(1)(a) of the Constitution, to be the agency responsible for appointing these people. We want him to exercise deliberate judgment, the President of the Republic. If the Government is not satisfied with this amendment, we have a second one where the President, after consultation with the Prime Minister and the Leader of the Opposition, will appoint the governor, the deputy

governors and the directors. We want that institution called the Central Bank to have that degree of autonomy and independence.

We propose an amendment to clause 7(1) in accordance with section (80) (1)(a) of the Constitution which gives the President the authority to exercise deliberate judgment in the appointment of persons. That is the first area that we would like the hon. Minister to examine and to take on board.

At clause 14 of the Bill that is before us, the Minister is telling this Parliament that the board is to determine allowances and remunerations, but with his approval, and he is hoping that not too long in the future they would be able to do it on their own, if I understand his drift carefully. If these people are going to be above everyone else, it becomes even more important for them to be accountable to the Parliament of Trinidad and Tobago.

Mr. President, the Salaries Review Commission is responsible for setting your salary, for settling parliamentarians' salaries, the Prime Minister, the President of our Republic. Why do we want to have a situation in which there is an amendment where the Minister is seeking to determine, with his approval in the final analysis, wages or salaries and allowances? We are not satisfied that the Salaries Review Commission cannot do their job. We have not been sufficiently convinced that the Central Bank officers, directors in this instance—and we are dealing with the directors—are so above society that there cannot be an agency such as the Salaries Review Commission determining their allowances and salaries. This is an area to which we would like the hon. Minister to pay some attention.

We feel that the Salaries Review Commission is the appropriate body to deal with this particular matter and not leave it up to the board. Mr. President, you know how our Minister operates.

Clause 18 states:

> "The Bank shall provide pension benefits for officers and employees of the Bank, whether in the form of a pension scheme or other deferred income schemes."

We are trying to understand what is the real rationale behind this. Why are they moving away from providing just pension benefits and are seeking to qualify it now, whether in the form of a pension scheme or other deferred income schemes? What is the basis for this kind of change?

We have had the recent experience of many pension funds where—at present, there is a battle at BWIA and the Government is claiming that it has the right to

workers' surplus pension. We are wondering if there is something more to it than meets the ordinary eye in this instance. Is the bank getting into the whole annuity arrangement? Is that their intention?

I think the Minister needs to let us know what is the real basis for this addition or amendment that is being proposed under clause 17 of this Bill. We are not happy with this particular clause at all.

2.50 p.m.

We are very concerned about clause 20A particularly as it relates to "Part IA" under the heading "Personnel".

The hon. Minister has indicated that the Ministry of Finance, along with the Central Bank and other bankers, had extensive discussions on this piece of legislation. I wonder to what extent they had consultation with the employees of the Central Bank. Do they matter? I am charging the hon. Minister with ignoring completely the views and opinions of the workers at the Central Bank by hastily bringing to this Parliament a piece of legislation that is inconsistent with sections 4 and 5 of the Constitution.

The evidence I am going to adduce here, firstly, deals with *The Staff Monitor*. This is a publication that is produced by the Central Bank Employees Association. In this document on page 2 there is a heading: "Proposed Amendment to Central Bank Act".

> "A document containing proposed amendments to the Central Bank Act was passed to the Association for comment, less than twenty-four hours before the said document was due to leave the Bank on its way to another place.
>
> It is apparent that the Bank is of the opinion that the draft amendments as they relate to staff representation are either incapable of improvement or that there is no need for meaningful consultation with the Association."

They did not consult with the workers of the Central Bank on this very important clause of the proposed amendment. We ask the question, why? [*Interruption*] I am sorry. It is Volume 1, Issue 2, October 24, 1994. As we deal with clause 20A, I would like to say to the hon. Minister that we have to appreciate the background, the genesis of this clause that we are dealing with.

Sixteen years ago, on Friday, October 13, 1978, three Bills, major pieces of legislation, were brought before the Parliament of Trinidad and Tobago. One was

to amend the Industrial Relations Act of 1972; the other was to amend the Civil Service Act of 1965, and yet still another to amend the Central Bank Act of 1964.

Both the Industrial Relations (Amdt.) Bill, 1972 and the Civil Service Act, 1965, which established the Special Tribunal, which is referred to in the Bill, were passed. However, Bill No. 31 of 1978 was deferred when it came for second reading, it did not get second reading in the Parliament. This has led to the employees of the Central Bank being in a state of complete limbo in terms of effective representation for their workers as outlined in this particular Bill.

We are saying that the Government has to bring certain amendments to the Bill before us. Before we deal with those amendments we are suggesting, we have to appreciate that if we are to understand some of the provisions in the legislation that condition and influence industrial relations—we want to inform the hon. Minister—that the Constitution of Trinidad and Tobago, the Industrial Relations Act of Trinidad and Tobago, the Civil Service (Amdt) Act, the Trade Union Act and the Central Bank Act are all critical in assessing this particular clause 20 that is before Parliament at this time.

The Government of Trinidad and Tobago has ratified Convention No. 87 of the International Labour Organization on Freedom of Association and Protection of Right to Organize; and Convention No. 98, which is the Right to Organize and Engage in Collective Bargaining.

I am trying to establish that this particular clause would have to be deleted, and appropriate amendments put in its place; and the necessary specified majority for this Bill to become law must be incorporated. The Bill in its present form seeks to deny workers of the Central Bank the right to equality of treatment before the law and the protection of the law. It also seeks to deny the rights of individuals to equality of treatment from a public authority. The Constitution of our country is extremely clear on this particular matter. Equality demands that like be treated alike.

In exercising its function, I indicated that the Parliament of this country passed a number of measures in 1978.

Under section 4(2C) of the Industrial Relations Act seven groups of employees are authorized to take their disputes before a special tribunal. They are the Public Service, Police Service, Fire Service, Prison Service, Teaching Service and the Supplemental Police. They have the authority to access this special tribunal. However, because of the fact that Bill No. 31 of 1978 was deferred, the employees of the Central Bank were denied access to section 4(2C) of the Industrial Relations Act.

It is clear that the employees of the bank did not receive equality of treatment from the Parliament in the exercise of its function. The absence of equality of treatment becomes even more obvious when one considers that some of the employees of the bank have access to the special tribunal. I am talking about the security officers who are members of the Estate Police Association and have access to this special tribunal.

I do not believe that the drafters of this piece of legislation intended to perpetuate the inequality that the Central Bank workers have been experiencing for all these years. Under the Industrial Relations Act as it relates to this particular section, I want to indicate to you certain relevant sections that would at least provide the Minister with some indication as to the need to change and amend Part IA.

3.00 p.m.

Section 3(d) of the Industrial Relations Act says:

"(3) ...no person shall be regarded as a worker if he is—

(d) a member of the staff and an employee of the Central Bank established under the Central Bank Act."

Section 4(2C) says that the Special Tribunal is empowered to hear and determine disputes arising in the Central Bank as if those disputes arose in the essential services.

Section 21(1) says that:

"For the purposes of this Act there is hereby established a Board to be known as the Registration Recognition and Certification Board."

Section 23 (1) states that the Board—not the Minister of Finance—shall be charged with the responsibility for the certification of recognised majority unions. Here we have a Bill before Parliament giving the Minister of Finance—where he comes into the picture, we do not know. This is a constitutional violation of the rights of the workers of the Central Bank to join an association of their choice, and it is in contravention of the Industrial Relations Act.

The IRA was passed in 1972, with a special majority. What the Government is trying to do is to parachute into this Central Bank (Amdt.) Bill a very critical provision on how to settle industrial disputes involving the workers of the Central Bank and seeking under this amendment to disguise the need for a special majority of three-fifths. This Bill is violating the rights of the workers of the

Central Bank, and those workers are citizens of Trinidad and Tobago. The Minister has put into this Bill what would give him the authority to grant recognition to associations at the Central Bank. That is in violation of our Constitution. It is in violation of the Industrial Relations Act. Only the Registration, Recognition and Certification Board has that responsibility.

Section 40(1) says:

> "Where a trade union obtains certification of recognition for workers comprised in a bargaining unit in accordance with this Part, the employer shall recognise that union as the recognised majority union; and ... the employer shall, subject to this Act, in good faith, treat and enter into negotiations with each other for the purpose of collective bargaining."

There is nothing in this section, Part IA, under “Personnel”, that compels the Central Bank to meet with the Association. Do you know why? Because the certification of recognition of the union in question is not coming from the Registration, Recognition and Certification Board; it is coming from the Minister of Finance. This is despotism: this is one-man rule. We are saying that we need to amend the appropriate section in an effort to ensure that workers' rights are not in fact trampled upon.

Section 40(2) says further:

> "A recognised majority union or an employer that fails to comply with this section is guilty of an industrial relations offence and liable to a fine of four thousand dollars."

If for some reason, the Minister, through his board, refuses to recognize an association, can they be fined $4,000? Is the board liable?

Section 51(2) says:

> "All disputes in essential services shall be reported to the Minister by the parties thereto,"

Section 69(1)(e) says that members of the staff and other employees of the Central Bank, established by the Central Bank Act are prohibited from taking industrial action.

When there is a situation where workers are prohibited from taking industrial action, they are classified as an essential industry or an essential service and these are identified in the First and Second Schedules of the Industrial Relations Act. Mr. President, I must let you know that under both these Schedules, the Central Bank is not included.

Yet we are told under the IRA that the workers of the Central Bank are not workers; they cannot join a trade union of their choice, and in the Schedule, which gives them the right to go to a tribunal in the event of a breakdown in negotiations between parties, from 1978 to the time that we speak, legions of abuses, victimization, discrimination could have taken place, because the workers in this instance did not have the right to go to the special tribunal; and we are coming 16 years later to try to correct it in a half-hearted fashion.

In 1990, the Central Bank Staff Association wrote the International Labour Organization on the whole question of the violation of their rights as workers. Since 1991 and thereafter the reports by the experts on the application of conventions and recommendations have been calling on the Trinidad and Tobago Government to take the necessary steps to ensure that the deficiencies involved in the particular matter are addressed. What the Government has been doing since 1991 is indicating to the ILO that when they revise the Central Bank Act, they will establish the necessary mechanism to ensure that those workers' rights are safeguarded. The Government did not discuss this matter with the ILO. If they wanted expert advice, the ILO is the same organization that they went to. They did not use the expertise of the ILO to get the necessary advice or guidance.

Article 8(2) of the ILO Convention 1987 states:

"The law of the land shall not be such as to impair, nor shall it be so applied as to impair the guarantees provided for in this Convention."

Article 3 of Convention 98 states:

"Machinery appropriate to national conditions shall be established, where necessary for the purpose of ensuring respect for the right to organise as defined in preceding articles."

Article 4 of Convention 98 states:

"Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation ... with a view to the regulation of terms and conditions of employment by means of collective agreements."

3.10 p.m.

The Government, for some reason has not followed the advice of the ILO under Conventions 87 and 98. The Government of Trinidad and Tobago has denied, over the last 16 years, a section of our population at the Central Bank

what I call the fundamental principle of natural justice. They have been denied the fundamental principle of natural justice which stipulates that a man may not be a judge in his own cause. Not only must the adjudicator be free from bias, but there must not even be the appearance of bias.

The absence of an independent third-party arbitrator propels the bank's management into the role of prosecutor, judge, jury and appeal court whenever an industrial relations offence is committed; and Mr. President, the situation becomes even more alarming when it comes to dismissal of personnel. I should have thought that after 16 long years of suffering, of the denial of people's rights to just representation, the Government would have gone back to 1978 and looked at that Bill. This 1978 Bill that I have before me provides the mechanism; the workers are satisfied with this; and we are proposing, Sir, that these amendments, these provisions, be taken wholesale from this Bill and placed in clause 20 of the Bill before us.

That, to my mind, will go a long way in providing for those workers, even though they are still being denied representation of their choice. They cannot go to my union, they cannot go to the Bank Employees' Union, they cannot go to some other trade union under the Industrial Relations Act, but we are saying, even if they are denying the workers the right of choice of association and trade union representation, for heaven's sake, give them the minimum! Give them the minimum that was promised and that is contained in the Bill of 1978!

I want to tell the hon. Minister that we on this side will be submitting appropriate amendments to clause 20 "Part IA—Personnel" that will take into account all the provisions and more of this 1978 Bill which, to my mind, satisfy to some extent *[Interruption]*. I am not totally satisfied, but it will satisfy the workers and to some extent give them some justice in the context. They must be able to register their collective agreement at the level of the Industrial Court. They must be able to go to the Recognition Board and get certification of recognition. No Minister of Finance must operate by fiat and determine which association will be recognized.

That is not good, Sir, and if our hon. Minister is a democrat, I cannot see how he could sit here and seek to promote despotism! I think he is an honourable Gentleman to some extent. We would like the hon. Minister to understand that these amendments before us, under "Part IA of clause 19 of the Bill, starting with section 20A is the most controversial clause. I believe if the Government had left out clause 19, we would have dealt with monetary policy totally. What the Government is attempting to do is to divert us away from clause 19 (Part IA).

This is why I am spending my entire contribution on that clause; other colleagues will deal with other aspects. I am suggesting that if the Government wishes to get our support on this measure, comprehensive amendments would have to be made.

Secondly, the appropriate specific majority must be inserted in this Bill before it is passed in this Parliament. It requires a three-fifths majority. We are saying on this side that the amendments to "Part IA—Personnel" of clause 19 confer on the Minister of Finance the power to grant and to withdraw recognition from worker representative bodies in the Central Bank. That is wrong; it must be withdrawn. It designates the Minister of Finance to be the conciliator or mediator in the settlement of disputes occurring at the Central Bank. The Minister of Finance has no *locus standi* in labour affairs; he speaks more than the Minister of Labour and Co-operatives, but he does not have the authority under law to deal with these matters. The Minister of Labour and Co-operatives is the authorized Minister to deal with labour relations in Trinidad and Tobago, not the Minister of Finance. We want the Minister of Finance to be removed completely from this matter.

These amendments give the Minister of Finance the authority to refer unsettled disputes in the Central Bank to the Special Tribunal. It gives parliamentary authority to the Minister and to the bank—as you know—to develop a code of ethics, and consequential punishments to be applied to the employees of the bank.

I am a unionist, and recently the First Citizens Bank sought to promulgate a code of ethics that violated our industrial relations agreement. We are still speaking on that issue. One cannot issue a code of ethics without consultation and there is no mechanism in the provisions here to ensure that there will be consultation between the recognized associations, the bank in question, and the Minister of Finance. What we have is another edict being issued and who “vex, vex”; who get fired, get fired.

The Government probably wants Trinidad and Tobago to become a despotic state, but right now we still have a democracy, and whilst we have a democracy we would fight to ensure that people's rights are upheld.

Mr. President: The Senator's speaking time has expired.

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

Question put and agreed to.

Sen. W. Mark: Thank you, Sir. We would like to indicate to this honourable Senate that the proposed amendments to the Central Bank Act must be seen against a background of the denial of equal rights to workers as enshrined in our Constitution, as well as stated in the Industrial Relations Act and ratified by ILO Conventions 87 and 98. It seems to me that the amendment that is being proposed is designed to place the employees of the bank in further bondage. If this is not the intention, then we would like the hon. Minister to indicate why he is attempting to violate the constitutional rights of workers by seeking these amendments without declaring this Bill unconstitutional, and therefore requiring a special majority.

We would like the hon. Minister to recognize that the Bill in its present form would not get our support. We are serving notice. We want to indicate that there are elements in this Bill, particularly under "Part IA starting with section 20A that are not acceptable to us.

3.20 p.m.

We would also like the hon. Minister to look at the Code of Ethics that is contained in clause 45 of the Bill. We believe that we need to have an amendment here, where this Code of Ethics could in fact come into effect only after consultation with the appropriate recognized majority union along with the bank and the Minister of Finance in this instance. We would like the hon. Minister to take note of these provisions we are advancing.

Mr. President, I must let you know that in the so-called motherland of England, the workers of the Bank of England are recognized by a union of their choice. In Barbados the workers of the Central Bank of Barbados are recognized by a union of their choice. It is the Barbados Workers' Union that represents those workers. In Jamaica the Central Bank workers are represented by a trade union of their choice. It is the Bustamante Industrial Trade Union.

In Trinidad and Tobago, the Government of the country wishes to determine which association must represent workers at the Central Bank. Mr. President, this is unprecedented. There is no precedent in the Commonwealth Caribbean for this kind of draconian measure that the Government is seeking to introduce in this Bill, none. I have looked at it and I have not been able to see a single instance where in the Commonwealth Caribbean we have such an arrangement.

Mr. President, we would like the hon. Minister to understand and to recognize that on our side, insofar as the powers that they are going to grant to the

Governor, the greater authority that is going to be invested in him, we have no difficulty with that, but we want him to be accountable to Parliament. We also want to indicate to him that insofar as the appointment is concerned, we would like to have the President in his judgment appoint these people. We are going to introduce an entirely new clause 19 of the Bill to reflect the provisions of Act No. 31 of 1978, to ensure that at a minimum level the workers are given some degree of justice in the instance of the Central Bank.

Finally, we want to serve notice that from our reading of this Bill, it requires a special majority of three-fifths if it is to become law, since it violates the workers' specific rights under Specific Rights, sections 4 and 5. If the Government does not accede to that arrangement, this matter would be tested in the High Court. Just as the Health Authorities Bill is now before the High Court— this Bill is unconstitutional, and if the Government does not put into it the special majority of three-fifths to get passage and it rams this Bill down our throats, this Bill will be taken to another place. We serve notice on this issue.

We are prepared to make necessary compromises, but we are not prepared to compromise our Constitution and the rights of our citizens.

The Government of this country is engaging in clever drafting with its skilful and clever draftsmen who are seeking to bamboozle the population—but not this Senate, not this Opposition—into supporting draconian legislation that requires a specific majority, covering it up in the way it has done in this piece of legislation. I want to inform the hon. Minister that whilst we do not have any serious objections to the other provisions of the Bill, this particular clause is offensive, it is vicious, it is unacceptable and must be removed. New amendments must be proposed as we are suggesting, and the specific majority must be incorporated in order to get the support of the Opposition on this particular matter.

Sir, with these few points indicating our concern, I want the Minister to know that we are going to make the entire Bill available to him. I do not think it is necessary, but we will have to do it according to the procedure, to have the necessary amendments made and circulated in accordance with our submission.

Thank you very much.

Sen. Michael Mansoor: Mr. President, I had expected that on the publication of this Bill, there would have been a somewhat clearer indication as to the relative powers of the Government through the Ministry of Finance as opposed to the power of the Board of the Central Bank in the matters over which the Central Bank has jurisdiction.

I would like to submit that from a philosophical vantage point, this is the most significant issue when one comes to amend something as important as the Central Bank Act. Essentially, what power, if any, should the Minister of Finance have over the affairs of the Central Bank? I was heartened to hear the Minister indicate that the tendency, or perhaps, the attitude of the Government, is to leave more power with the Central Bank rather than less. In other words, I believe the Minister was indicating, when he talked about the matter of the salaries of the senior officers of the Central Bank, that it would have been some sort of preference on the part of the Government to leave that to the Board of Directors of the Central Bank rather than have the matter come to the Minister.

I want to suggest that the basic issue that we face when we look at this Bill is really, how much power do we give to the Governor of the Central Bank and its Board and how much power do we leave with the Minister? I think that this Bill does not clearly define that. In some cases, it keeps the power with the Minister; in other cases, it gives to the Governor of the Central Bank and its Board, but I believe that there is a problem of ambiguity in terms of who really runs the affairs of the Central Bank.

I suggest that the reason for this ambiguity remains with the reality that if the Minister does not control the Central Bank maybe the Central Bank would become a power unto itself and would not be accountable to anyone. So that while I express some disappointment in terms of a clear philosophical direction in this Bill, I hasten to add that I understand why. However, this ambiguity does give rise to certain apparent inconsistencies in the legislation.

The clear demarcation of power, if you will, is not really a matter of esoteric concern; it is a matter of real concern, because the Central Bank in its dealings with, for example, reserve requirements of commercial banks does affect interest rates, and interest rate policy in the country. That in itself is a very important instrument of economic policy and the ambiguity is a source of concern.

Also, it becomes very real when one looks at section 46 of the Central Bank Act, which now says that advances to Government have to be controlled and that the Central Bank may only lend up to 15 per cent of Government's recurrent revenue and capital receipts.

For as long as I have been in this honourable Senate I have always known or suspected that this limit has, in fact, been exceeded. I do not know the current state of affairs, or whether or not the Government was ever able to bring its advances within the requirement; the Minister of Finance will be able to tell me; but I think that as a matter of normal behaviour this limit has been exceeded on several occasions, if not all occasions; I do not know.

The problem of the control of the Central Bank remains a real issue. Without wishing to be controversial, it is very clear that if advances to Government on short-term accounts are not controlled by the legislation, one has to ask the question, well, what really happens when a government wishes to spend a bit more money rather than less in an election year, for example? So that section 46 of the Central Bank Act, which I believe remains unchanged, does bring to the fore this tension between the power of the Central Bank and the Minister of Finance.

I ask the Minister: Is it a fact that section 46 is not being observed? Why was an opportunity not taken on this occasion to change the 15 per cent to a more reasonable level? In some countries it could be as high as 30 per cent; I believe that is the Jamaican figure. I want to leave that alone for the moment and say that the ambiguity continues and I would ask the Minister quite specifically, whether or not section 46 is being observed.

My preference, if such were possible, would be at all times to strengthen the Central Bank as an institution and to unfetter it as much as possible from the Cabinet or the political directorate. I think that position is one which would be supported perhaps, by a number of persons, provided at all times that having strengthened an institution, having made it more autonomous, there is some accountability at some level, maybe directly to Parliament. However, as a general rule, my preference would be to strengthen the Central Bank and make it as autonomous as possible, if not totally autonomous. One of the real ways of making any institution autonomous, is to hold its purse-strings.

I have before me the financial statements of the Central Bank for the year ended December 31, 1992. I do not have 1993 with me. When I look at the balance sheet of the Central Bank I have to make some comments, some of which, I think, have been addressed in the legislation. The first has to do with the absolute capitalization of the bank. At the present time the authorized capital is $30 million, and I commend the Government for increasing it to $100 million.

3.30 p.m.

We are looking at less than US $17 million as the authorized capital of the most prestigious financial institution in the country. I ask the question: Why limit it to $100 million? It seems to me that it is a very low figure, given the realities of today's economy; and what concerns me is the way this authorized share capital is intended to grow. I refer to page 20 of the Bill, at the top there, subsection (5):

> "(5) Notwithstanding subsection (3), the paid-up portion of the authorised capital shall be increased each year by not less than fifteen per cent of the amount to be paid into the Consolidated Fund..."

So that there is some provision for an increase in the paid-up capital, but I would want to make the submission that it is all too slow, and that the paid-up capital of the Bank should be increased, immediately, to at least $100 million.

Now, with respect to the balance sheet of the Central Bank at the end of December 1992, there are a few other questions which arise; and the first is: What will be the disposition of the item "Other Funds" which make up $373 million at the end of 1992? Because in that figure is an amount for the Building Fund, and I would like to ask the question: Why leave the amount in a Building Fund under what might be considered some sort of liability? Why not use that amount, in fact, to increase the capital of the bank on the assumption, at all times, that these funds are there and have been provided by past administrations? So that one has to wonder whether or not the intention is to leave in those "Other Funds" the amounts which are called a Building Fund. I would like the Minister to address that point.

I now come to the creation of these special reserve funds because what has happened in this clause is that having put limitations on the authorized capital and on the way the paid-up capital is going to be increased, we now have the creation of special reserve funds and the continuation of the general reserve fund. Also, there is provision for the creation of the special reserve funds and a requirement that "an amount that does not exceed ten per cent of the net profit of the Bank" be put into any one of the reserve funds, either a general fund or a reserve fund, or any of the reserve funds which the bank may create, the rest of the money going to the Consolidated Fund. Effectively, this is a control, if you will, by the shareholder, the Government, on the disposition of the profit of the Central Bank.

Now, if one looks at that particular subsection in conjunction with subsection (6) which says:

> "When the sum standing to the credit of the General Reserve Fund equals the authorised capital of the Bank, no further contribution to the General Reserve Fund shall be made,"

but the reality is that this particular provision will be frustrated because all that has to be done is that amounts will be transferred to the special reserve funds before the general reserve fund hits the level of authorized capital.

So that the legislation in itself is contradictory, or ambiguous, because one can get around the increase in the creation of these funds by simply not increasing the general reserve fund to $100 million, leaving it below $85 million and, therefore, perpetually increasing the special reserve funds. I point that out to the Minister for his consideration, because it seems as if, almost by design, this is what has been done.

I come back to the very essential point. It is my feeling that the Central Bank should be allowed to build a capital base at a far greater rate than what is contemplated in this legislation. By saying that only 10 per cent of its profit can be put into these general reserve funds or special reserve funds and by limiting the increase of the paid-up capital to 15 per cent of what is put into the Consolidated Fund, I believe that the Minister and the Government are putting a fetter on the growth of the capitalization of the Central Bank, and I want to suggest that a Central Bank with an authorized capital of TT $100 million (less than US $17 million), with very real fetters in terms of ability to raise its capital base, is not going to strengthen this financial institution.

So that I would ask the Minister for his information on this matter and whether it would not be better to allow the general reserve fund to be increased by an amount not exceeding 10 per cent of the authorized capital, initially, so that it would not be dependent upon the profitability of the bank in any year that there would be a greater and faster capitalization of the Central Bank.

One other concern with respect to the capitalization issue is that at the top of page 22, subsection (8), it says:

> "Where the General Reserve Fund and the Special Reserve Funds are insufficient for the purpose referred to in subsection (7), the Bank, with the approval of the Minister, may carry forward and recoup the losses from future profits before further payment is made into the Consolidated Fund."

Now, I would hate to think that we would ever come to the stage where the losses of the Central Bank are so great that they cannot be covered by the general reserve fund and the special reserve funds. However, if that unhappy event ever took place, I hope there would be more capital going into the coffers of the Central Bank, rather than the carrying forward of losses, and I really believe that subsection (8) is, perhaps, misguided, because it could create problems which I cannot foresee at the present time, however, I cannot envisage a situation where we would want to put into legislation provisions that allow the carrying forward

of losses and making provision for recouping losses from future profits; not for the Central Bank. It is just inconceivable that that situation could be tolerated.

3.40 p.m.

To summarize on the capitalization issue and on the creation of these funds, I would like to make the point that I believe that the rate of the increase of the capitalization of the bank is far too slow and that we should have some specific and immediate increase in the levels of capitalization that now exist.

I come to clause 35 of the Bill which says that the Central Bank may fix the maximum and minimum interest rates payable on fixed deposits and other deposits and that the bank may also set maximum rates for loans and advances. This effectively gives the Central Bank the ability to determine the spread of commercial banks.

I would hope that this particular clause would only be invoked in very rare circumstances where the Central Bank would have to effectively determine the spread of the commercial banks by fiat. We are, at the present time, trying to create a situation where we speak of Trinidad and Tobago being a financial centre with financial institutions being welcomed here.

One has to wonder whether placing this type of power in the hands of the Central Bank is really necessary. Would it be looked upon as some sort of fetter for commercial activities? Do we have such little faith in commerce and banking practice in this country that we do not believe that the forces of competition would take care of excessively high interest rates one way or the other, bearing in mind at all times that one of the primary determinants of the level of interest rates is, in fact, the requirement of special reserves, or deposit reserves on the part of the commercial banks?

I believe Sen. Daly has sought to limit the bank's power somewhat by asking for an amendment that would give the Minister power to have some sort of overview of this particular clause of the Bill for this section of activity. I would submit that this is not necessary at all, that we can rely on the forces of competition to deal with minimum deposit rates and maximum lending rates, and that the real power that the Central Bank has over interest rate policy resides in its ability to set the reserve requirements for the commercial banks.

I would like to come back to the question of advances to Government and to note that it would appear that in the financial statements of the Central Bank, the advances to Government give rise to, what appears to be, its largest source of

income, which is basically interest charges on the exchequer account or the advances to Government.

It therefore seems that, really, the operation of clause 46 in terms of the limitation of the amounts that the Government can borrow from the Central Bank on short-term account, is a very important dynamic in terms of the overall sphere of operations of the Central Bank; because in many ways it is a matter of in and out. The Central Bank charges what appears to be prime rates on advances to Government and it gets it back out by way of payments in the Consolidated Fund, after, of course, the expenses of the Central Bank which, in l992, included provisions of some $232 million in the main for advances to doubtful debts.

According to the l992 financial statements, the Central Bank had a doubtful debt provision of $198 million, which in real terms would appear to be financed, in the main, with its income from local assets which has to be the advances to the Central Government. So in many ways it is a question of in and out and the funding being used to provide for doubtful debts. The question arises: How does the Central Bank get into a position where it has doubtful debts of this magnitude?

Mr. President, with these few words, I would like to ask the Minister to provide the guidance which I have sought.

I thank you.

Sen. Martin Daly: Mr. President, on the whole I support this legislation and I commend the Government, in particular, for the speed with which it has reacted to the various loopholes and other difficulties that have appeared since we passed the Financial Institutions Act. I think this is very commendable, because many times we pass legislation and we do not review it often enough. This is a first, in my experience. In order to make the point of why it is such a good thing, perhaps if someone had reacted to the loopholes in the habeas corpus law many years ago we might have had some very interesting events recently. That is just an aside to make the point that it is important to update legislation in the light of one's experience.

However, there are some things in this Bill about which I am unhappy and I have circulated what I hope to be realistic amendments, and it is in relation to those amendments that I would like to say a few words.

First of all, I believe that the immunity which the Minister has defended so well, which appears on page 3 of the Bill, that is subclause (4), still needs to be limited further. In my amendment I am suggesting that the Central Bank should

be liable, not only if and when it acts in bad faith, but it should be liable in damages if it acts recklessly, and the Minister's advisers will tell him that the test of what is reckless is a far higher and far more difficult test for a litigant to meet than ordinary negligence.

So in the first of my amendments I am proposing that the Central Bank remain liable in damages if it acts recklessly, as well as if it acts in bad faith, and for the reason I have said, it would still provide a useful immunity. However I really do not think that—God forbid—reckless conduct on the part of some officer of the Central Bank should escape liability in damages.

The other amendments which I am suggesting deal with the section on "Personnel," and with the crucial question identified by Sen. Mansoor, of the relationship between the Central Bank and Government. That, to me, is very crucial and I will deal with that very briefly.

Dealing first with my amendment in relation to the "Personnel" section, which starts at Section 20A, I have great sympathy for the position advanced by Sen. Wade Mark. That is to say, I think it would have been better for the draftspersons—since they are now going to offer limited collective bargaining status to an employees' association—to have gone along the road suggested by Sen. Wade Mark; that is to say, provided for the recognition of the relevant association to be processed by the Registration, Recognition and Certification Board.

3.50 p.m.

I am very disappointed that the appropriate amendment, although it was spoken about, was not circulated. I think it is something the Government could look at without in any way interfering with what I take to be its objective that it does not want to bring these workers formally under the Industrial Relations Act, giving them the ability to strike. I think it would still be possible, because I, too, am uncomfortable with the Minister being the person to recognize the association, but to my disappointment, although it was spoken about for some time, the written amendment has not been forthcoming.

Likewise, in dealing with personnel requirements, I think it would have been better if the collective agreement that is arrived at between the association and the Central Bank could be registered under the provisions of the Industrial Relations Act. I note that there is a subclause making that agreement legally binding, but the Minister's advisers would tell him that collective agreements are peculiar creatures in law; they are not usually regarded as enforceable in the conventional courts of law.

To provide for the collective agreement being legally binding, but not providing any mechanism for its registration and, therefore, its enforceability in the Industrial Court, is really to offer a very hollow privilege to the workers of the Central Bank, because providing that it is legally binding does not deal with the important question of how you then enforce it. I still think it is acceptable that in common law one cannot enforce a collective agreement in the ordinary courts because many of the things that it deals with are too vague.

Many of the provisions are not sufficiently certain to be dealt with in the ordinary courts to really make it legally binding without providing for registration and enforcement in the Industrial Court. I urge the Opposition to bring forward that amendment so that we can look at it constructively.

What my amendments deal with, and I respectfully suggest that they would still need to be considered even if the amendment from the Opposition is forthcoming—I do not think that the matters that may be the subject of collective bargaining agreements procedure between the employees and the Central Bank are sufficiently well defined. I believe that they are too limiting: therefore, I am proposing an amendment. There is a typographical error in it which has been drawn to my attention and which I will point out.

I refer specifically to Part IA (Section 20B) on page 12. I think it is insufficient that the procedures for consultation and negotiation be confined to the classification of jobs, compensation, salary groups and the various things listed there. I think it is important to widen the matters that might be the subject of collective bargaining, or as it is described here, consultation and negotiation, by taking the wider definition of what constitutes a collective agreement and collective bargaining out of the Industrial Relations Act. The phraseology which I have used in my proposed (e)—

> "the rights, privileges, or duties of the Bank or of the recognised Association or the Estate Police Association, or of the employers..."

I ask Senators who are looking at my amendment to note that that is a typographical error, it should have been "employees" and not "employers". I thank Sen. Mahabir-Wyatt for bringing it to my attention.

> "...employees and Estate Constables and for the regulation of the mutual relationship between the Bank and the recognised Association, or the Estate Police Association."

As I said, that is not unusual; it is to be found in the Industrial Relations Act in the Definition Section II, and it very definitely broadens the matters which are the subject of the collective bargaining processes in terms which are readily understood by industrial relations and labour law practitioners.

Likewise, in clause 20B(1)(f), I am concerned that the grievances are confined to matters listed in subclauses (c) to (e) above. I think that is going to severely limit the type of grievance that is going to be brought to the Minister or, ultimately, to the special tribunal. I am, therefore, proposing an amendment which would do two things. It would connect the type of grievance, first of all, to the wider concept of collective bargaining, which I have already introduced in my amendment and also, make it clear that anything arising out of or connected with the employment relationship, could be brought up as a grievance.

Again, I have taken some of the language from the Industrial Relations Act to make it quite clear, for example, that someone's dismissal or suspension could be brought up with the Minister. I feel reasonably confident that the way it is drafted now would not catch the termination of someone's employment. I can see, for quite low fees, appearing on behalf of a union taking the point that the Act does not cover this.

I think it would be very unfortunate if someone were suspended or fired and it could not be taken up as a grievance with the Minister or the special tribunal. I think we need to make that clear; that is why I am proposing the amendment.

In my view, we then get to the much wider question, and to the one identified by Sen. Mansoor, which is what really is going to be the distribution of power in relation to economic policy and monetary policy between the Central Bank and the Government. I am afraid that I am very critical of this legislation because I think it completely fogs the issue whether or not the Central Bank is going to be made more autonomous or whether it is going to be a creature of the Government subject to Government's direction.

The fogging of that issue is very easily demonstrated when one looks at clause 35 which deals with interest rates. There is something there which is completely illogical, in my view, which is that the bank, on its own, may fix the maximum and minimum interest rates payable on deposits and so forth, and in the next subclause the Bank may set the spread only after consultation with the Minister. That shows the fogging. Which is it going to be? In one case the bank is going to do it on its own and in the other case it is going to do it after consultation with the Minister. In my view that is totally illogical and inconsistent.

I am proposing an amendment to bring both of those clauses in harmony. There are several options. The bank can be given the power to do it on its own in both cases; power can be given to the bank to do it after consultation in both cases, but I am going a little further for reasons which I would explain, and in language which I have borrowed from the Financial Institutions Act. I have not plucked any of these proposed amendments from the air; I have tried to follow the tried and tested paths.

In the Financial Institutions Act, in critical places, the relationship between the Minister and the Central Bank is regulated by the Minister receiving the recommendations of the Central Bank. I am proposing an amendment in relation to this clause on interest rates that in both cases the Minister does it after receiving the recommendations of the Central Bank.

4.00 p.m.

First of all, it makes the clause consistent, and secondly and most importantly, it deals with the important question of accountability. This is where, with some trepidation, I would like to elucidate a bit further on what I see as the philosophical issue that has been raised by Sen. Mansoor. Like him, I am in favour of making the Central Bank stronger and more autonomous of the Government. I have grave suspicion like him, that at election time the Central Bank does not resist the blandishments of the government of the day and assists them to 'run something,' and, therefore, for that reason alone I would like to see the Central Bank more autonomous.

In his very first budget presentation this Minister had cause to comment on the unfortunate, too easy monetary policy that he had found that had prevailed in the period before he came into office, and he gave us very solemn assurances as to how he would correct the "running of something" that apparently had taken place.

I know the answer to Sen. Mansoor's question and, I am quite sure the Government has not brought it within the 15 per cent as yet. That is the problem. That is one example where the Central Bank may be a creature of the Government and simply not resisting blandishments of the Government. My difficulty is, if we are going to make the Central Bank stronger and more autonomous, which is what I would like, we also have to ensure that it is accountable. I have spoken on many occasions about the runaway horses in airports and television stations in this country. We do not want to create another runaway horse in the form of the Central Bank. So, if we are going to give the Central Bank more power to make it more autonomous, we must have a mechanism to make it more accountable. We do not as yet, in our constitutional arrangements, have such a mechanism.

The Opposition talks about parliamentary committees. Maybe there is something in that, but that is the difficulty. Therefore, although I would like the Central Bank to be more autonomous, in the absence of some constitutional mechanism to make the Central Bank more accountable, I have chosen in my amendments, which I recommend to the Government, that the Minister continue—albeit after the recommendations of the Central Bank, so that they play a key role—to take the action and, therefore, can be readily accountable through Parliament for the action that is taken. It may seem inconsistent, but that is why I would like it done that way.

If the Government now, or in some future time, can think out the problem which I think is very, very important, of how we make independent bodies accountable, then we can release these powers fully to the Central Bank. It is a problem. There are ardent discussions about how to make the service commissions more accountable, to give one example. We have not as yet come up with a solution and, similarly, therefore, if we give the Central Bank all these powers, and they set interest rates—it may even be at a divergence with Government's policy—how on earth do we make them accountable?

Indeed, very respectable commentators will tell you that in Germany for example, the Bundesbank was doing things with interest rates that were in complete disharmony with the policy of the Government of the day, and I know this Government in particular, having regard to its views about service commissions, would not like that at all. Likewise, there are commentators who would tell you that in recent times in Venezuela, the Central Bank was doing things that were not consistent with government policy, and that may or may not have precipitated the banking crises that took place there.

Therefore, I am totally against clause 35 which permits the Central Bank, on its own, to fix the maximum and minimum interest rates for the reason that, to put it colloquially, if they do stupidness we cannot make them accountable. I would be happy, in the ordinary course of affairs, to give them that kind of power, but we do not as yet have the machinery for making them accountable. Therefore, whatever they do we have to make the Minister of Finance accountable. However, in order to make their position stronger, I would like to go further than saying the "Bank may do it after consultation"; I would prefer to say “the Minister would do it after the recommendation of the Central Bank.” I believe “recommendation” carries a greater degree of moral authority than a mere “consultation.”

I believe it is important to have the Minister there in the procedure so that we can have some degree of accountability either by questions in Parliament, by motions, whatever it is, where the Minister is linked to the actions of the Central Bank and, therefore, as a result of that link he can be put on the carpet in a Parliament, if necessary. That is the reason underlying the amendment which I have proposed in relation to clause 35.

I am afraid that I am more realistic than Sen. Mansoor. I recognize that the Government is not going to leave interest rates to market forces, and indeed, why should it? This is because section 44(A), to which the Minister referred, gives the Cabinet—the "President" there means the "Cabinet"—the power to fix the interest rates. So, it is hardly likely they are now going to dilute that position. My amendment is tinged with what I consider to be a very important degree of realism. I am trying to meet the Government's point on this but in a way that we will not have the Central Bank being able to fix interest rates and not be accountable.

Likewise, the same philosophical thread runs through my other proposed amendment which is clause 37, section 44D. Again, I commend the person who drafted this legislation for meeting a situation that very nearly arose in this country in 1990.

As one of the persons responsible for successfully dealing with the amnesty, I also happen to know—and I have waited four years to make this boast—and of course in due course I would disclose what other advice was given in 1990 and not taken, but that is for another forum. I am just waiting on the appropriate bids for the book that is required.

We had a very difficult situation—the amnesty was not the only difficulty which arose in 1990—where banks were closed—and there were cases about this in the Industrial Court in relation to the payment of employees' wages. There was a very difficult situation where the Governor had to be meeting with the heads of the banks in order to determine how and under what conditions to reopen the banks.

God forbid, if there was a situation where the Governor found himself where he could not consult with the Minister of Finance or anybody who was appropriate in the Cabinet, it is entirely right that there should be a provision where the Governor should be able to act on his own. This is a very real live situation which we have experienced not too long ago and, therefore, I believe it is an important and it is a good provision, but we come back to the central question of accountability.

If the Governor is going to act on his own and, indeed, even if he is going to act with the approval of the Minister either as a result of a natural disaster, internal disorder or particularly in the case of a financial crisis which relies on the Governor's opinion, I believe the country has to be told what it is that prompted the action that was taken under this section. Therefore, I have borrowed my amendment from the provisions relating to states of emergency which I was able to persuade the Government to accept in the debate on the Economic Sanctions Bill, to provide that within 14 days of taking this kind of action, the governor must deliver a statement to the Speaker for the information of Parliament.

I have not gone so far as requiring that the statement be debated but I believe if the governor were to form the view with the approval of the Minister that there was a financial crisis in the country which required intervention under this provision, it is absolutely essential, and, indeed, it would be undemocratic if some official statement were not made about what prompted the action.

4.10 p.m.

For that reason I am requiring in my amendment as a subsection (7) that in those circumstances it is mandatory for the Governor to deliver a statement to the Speaker for presentation to the House. There is also a typographical error. It refers to the "government" rather than the "governor" but that is the intention that lies behind that. It is simply to ensure—not any particular governor or Minister—that if a situation arose where this kind of action could be taken, the power would not be abused or used in bad faith or for some clandestine purpose.

The Government would have to come and tell the country, through the Parliament, why it did that. That is consistent with my concern for accountability when this type of action is taken. It is accountability that lies at the heart of the amendments which I am proposing, in the latter half of my amendment.

There are one or two other small matters which I would like to raise. I certainly hope that the association would be consulted about the Code of Ethics before it is brought into force. I do not think we need to write it into the legislation, but I think it would be important that it be written.

I also have misgivings about the fact that the Minister would have to approve the salary of the Governor and the Deputy Governor. I think implicit in all that I have said about wanting the Central Bank to be strong and have greater autonomy, lies my objection to the Minister having to approve salaries. Once the Government controls the purse strings it is not very difficult to exercise some kind of undue influence over the Governor and Deputy Governor, in making sure that

they are its creatures and do what it says even though it proclaims they are autonomous.

I do not quite understand what the difficulty is. I understand that the Minister is saying that he does not want any imbalance or discrepancy in public servants' salaries, but here we are talking about the top office holders. That immediately suggests to me—I am not concerned about the directors because I take it that their fees are nominal as they normally are. I am not concerned about fixing remuneration for the non-executive directors.

I should have thought that in relation to the Governor and the Deputy Governor there was a very strong case indeed for making their salaries the subject of a deliberation by the Salaries Review Commission. What is the problem with that? That is the existing body that deals with the salaries of top people. Why does the Minister have to retain this control over the salaries of the Governor and the Deputy Governor? If it were not this Minister I might suggest a very robust and sinister answer why he wants to retain control. He wants to retain control, at least, until 1996 or sooner for the reasons to which I have adverted before.

I think the case of freeing the salaries of those two top officials from the approval of the Minister is almost unanswerable. There is a very simple solution. Make it subject to review by the Salaries Review Commission. After all, this is one commission that the Government has no problem with. It moves very swiftly to have the Salaries Review Commission deal with any top posts which it thinks is for the good of the country.

Since the Government has no problem with the Salaries Review Commission—in fact it is rather in favour of it—generally speaking the Salaries Review Commission seems to come up with rather conservative answers. Indeed, they might be so conservative that it may not achieve the Government's result in this particular case. In any case, the Salaries Review Commission is liked by the Government and has demonstrated its conservatism. I have not prepared one, but it would be very easy for the Minister's advisers to come up with some amendment to effectuate this. I really think it is a test to the Government's good faith.

I think it is very important to tell the population that it is moving towards making the Central Bank stronger; we are in a transition period and we are ultimately going to remove the power. When I look at my notes and I see "ultimately", I get blurred. "Ultimately" translates itself into 1996 or 2000. I think it is an important test to the Government's good faith to deal with it.

There are one or two other small matters. I have not prepared an amendment on this because it is a small matter. I noticed on page 15, clause 20H (5) states:

> "The Minister may make Regulations setting out the conditions to be satisfied and the procedure to be adopted for the recognition by the Minister of associations formed pursuant to subsection (1)."

I repeat my problem with that. It is not this Minister. We do not make legislation for individuals. If a Minister did not like the cut of a particular association the employees had joined, he could very easily frame regulations that might make it impossible for that particular association to gain recognition. Indeed, that is another reason why it would be best to introduce the Recognition Board as the authority that would recognize the union particularly as that would require, necessarily, making the Central Bank employees under the Act.

Finally, in the subclause immediately before that, the draftsman really has gone overboard. Section 20H (4) states:

> "The Minister shall withdraw recognition from a recognised association that fails to comply with any of the requirements of subsection (3)."

Not even the Recognition Board has the power to withdraw a recognition certificate in the conventional labour law . I am very unhappy with that provision as well, because again, one could see where mala fide not in good faith, a Minister might, under cover of complying with subsection (3), withdraw recognition from a recognized association. I am very unhappy with that clause as well. I emphasize that the way to solve the problem is really to put the recognition procedure in the hands of the Recognition Board without necessarily making the employees of the Central Bank workers under the Act.

With those few suggestions I would like to support this Bill and repeat my commendation that the authority, presumably for which the Minister must take the credit, has responded so well to many of the commercial difficulties that we have experienced in recent times. As a commercial lawyer, it is very pleasing to see that the law is keeping pace with good and bad experiences that we have had. I spoke a little about the 1990 experience.

I hope that the Bill would be supported. I do not think that on this occasion we have the considerable leverage of a special majority. I hope that would not make the Government resistant to accepting some of the amendments which I have proposed.

Thank you very much.

4.20 p.m.

Sen. Muntaz Hosein: Mr. President, an overview of this Bill shows that on the one hand the Minister seems to want to give autonomy to the Central Bank, while on the other hand there are provisions that restrict the bank. Therefore, it seems that he is holding back.

Let me say from the outset that I am for making the bank stronger and more autonomous, but at the same time, let me say that I am for accountability, especially to the Parliament. We cannot on the one hand give such sweeping powers to anybody and yet have a problem with the accountability of that organization, in this case the Central Bank, via the Central Bank Governor. The Minister might want to look at the way in which this Bill has been drafted to see whether his thinking needs to be clarified.

I would like to draw the attention of the Senate to the question of cross-directorships and to congratulate the Minister on this issue. The question of interlocking directorates is one which we have been putting to the Parliament and the nation for some time now, and it seems to me that the Government has now recognized that what we were saying during the past several years is really a fact.

Notwithstanding the views of some of the commercial banks—and I read in the newspapers only recently of one particular commercial bank which had been talking about the shortage of qualified personnel to fill these vacancies and giving that as one of the reasons for cross-directorates. I felt, therefore, that the Minister of Finance showed some strength in putting this particular clause in the Bill. It is my view that by putting in this clause we will be giving greater opportunity to other people within Trinidad and Tobago to become directors of banks, and we will be opening the door of that private club which now exists in the banking institution. I think it is to the credit of this Minister for having brought this particular clause in the Bill.

I want to draw the attention of the Senate to clause 5 which states:

> "The Bank shall be managed by a Board of Directors comprised of a Governor, not more than two Deputy Governors and not less than six other directors, two of whom may be public service directors."

I ask the question: why "may be"? I thought, perhaps, there may have been an error in the drafting, and it should have been "shall be" public service directors. I take it that it is very important that we have the public service directors coming from the Ministry of Finance and the Ministry of Planning and Development. It is

very important that they be members of the board. I hope that the Minister in winding up will tell me that that is an error. We on this side feel that it is important that these two appointments be made on a regular basis and not be left to "may be". I see in that that perhaps at some particular period they will dispense with one or two of them and, therefore, they will not be directors. I hope that will be clarified.

I now move to the question of the general reserve fund, and I want to know what is the amount at present. I see that as a clever way by the Government of accessing additional funds. I have no problem with the Government accessing additional funds because I know that it is strapped for funds now and it is glad of that. I only want to say that I hope that these funds will be properly spent.

I totally agree with Sen. Mansoor when he made the point that $100 million capitalization for the Central Bank is far too small. I think in this age, $100 million is really a joke. I think the minimum should be $250 million. Perhaps the Minister would give us his views on that.

I take issue with Sen. Mansoor's seeming suggestion on clause 35 that the fixing of interest rates and so forth should be dealt with by market forces in the banking sector. I do not think that should be done because I believe there is a cartel existing in the banking industry now which is not working to the benefit of the country. One can see quite easily what is happening with the rates on the US dollar. There is very little difference, if any at all, between the rates of the various banks, which suggests to me that there is some collaboration and, therefore, a cartel.

Looking at the interest rates as well, one can observe that if we leave the banks to do their own thing, things will not work in our best interests. It is good in theory and perhaps good for more advanced economies, but we are quite young and perhaps we cannot give that kind of power immediately. Maybe in 50 years from now we would reach that stage.

When you read this part, you will see the question of rates and fees charged by the banks. This brings me to some of the fees charged by banks. If you have ever had to borrow money from the banks, there is something called a finder's fee which is charged. You go in the morning for a loan and they say: "Well we can access this loan, but there will be a finder's fee," and by the afternoon you get a telephone call saying that they have found the money, but you have to pay a finder's fee. This is the kind of difficulty we have with commercial banks and I am hoping that the Central Bank and the Minister will bring some kind of control and pressure to

bear on commercial banks for these kinds of immoral fees which they are charging customers. A customer is in no position to tell whether the funds were there or not, but you have to pay the fee.

There is another fee that banks have started to charge now. If you have a savings account and you want to withdraw some money, but you send your son with a signed withdrawal slip because you are indisposed, that transaction costs you $15.00 because you did not go in person.

Mr. President: Sen. Hosein, I know you have just started and I am sure you have much more to say, but I think we should take the break at this time.

4.30 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

Sen. M. Hosein: Mr. President, when we broke for tea I was pointing out to the Senate this question of the fees being charged by the banking institutions in Trinidad and Tobago and the inappropriateness of such fees. I was also referring to the $15.00 withdrawal fee if one did not go in person. This is a new fee being charged.

It is instructive that if one protests the $15.00 withdrawal fee, the bank is likely to waive it. It is important therefore that the Ministry responsible for information—and I am glad hon. Minister Draper is here, perhaps he could take up this matter and inform the public that they ought not to pay such fees, and that if they refuse to pay it, it would be withdrawn. I am aware that it has been withdrawn in more than one instance. Public pressure must be brought to bear on these types of fees. I hope the Central Bank will also bring pressure to bear and see to it that these fees are removed.

This brings me to clause 35(2), and I want to point out the question of the foreign exchange spread. One would see why there is good reason to control the activities of the commercial banks as they relate to exchange rates and interest rates. There is a spread of between 8 and 8½ per cent between moneys that are lent and moneys that are deposited. It goes as low as 2½ per cent for moneys deposited with the banks and that amounts to about 35 per cent of the total deposits of the banks.

Today if one looks at the higher spread, one would be looking at well in excess of 17 per cent interest. The average spread is 8—81/2 per cent and if one looks at the published balance sheets of these banks one would see the exorbitant profits. I know some of my colleagues might call it indecent profits; I prefer not to

use that word, I would say exorbitant profits. This ought to be controlled especially when one looks at the banks and their lending policies. It is important to look at that.

I wonder whether the Minister and the Governor of the Central Bank would not want to look at the lending policies of some of these commercial banks. When some people go to some of the commercial banks to borrow money, especially in the case of small and medium-sized businesses, documentation of all sorts is required.

It is necessary to have some kind of documentation, but one must have a feasibility study done, one must have money of one's own to deposit, one must have collateral; and when one has all of that—one would say that one has a certain start-up of one to one; if one wants to borrow $100,000 one must have $100,000 in the bank. Then they would say, okay your feasibility looks all right, and then they come back and ask for collateral. They find it is all right. They then say, "We want something called a personal guarantee", and they do not only want it from the borrower, they also want it from everybody else—wife, children and so forth. When they have finished with you, you are tied up like a crab on a Sunday morning.

If that were the case with each person wanting to borrow money from the commercial banks, I would have no problem with that, but I am aware that it does not happen with some people. A few years ago, one of my fellow directors in a company came to me and said, "Let us buy some sewing machines," I said, "But we do not need any." He said, "Let us go and take a look because there is another company that is in receivership." We went. Fortunately, we met the receiver there on the day particular. When we examined the machines and the other assets of this company which were all in a huge garage, they amounted to less than $100,000 in value.

Unsolicited, the receiver told us that this company was owing the bank $700,000 and further to that, there was no collateral involved. That same company was owning foreign creditors $1.2 million. No collateral was asked for by the bank and these people were allowed to carry on business with assets of less than $100,000. It opened my eyes to what was happening in the society. When one looked at the directors, it was instructive to see that they were six very prominent persons. Strange enough, they came from one grouping. For obvious reasons, Sir, I would not disclose the grouping. I heard about these things but this is the first time I had information about what was really happening in the banking sector in Trinidad and Tobago, and that what we had been hearing was really true.

I know the banker, but I would not call any names. I confronted the banker and I asked him how could he allow X, Y and Z to happen, when the bank kept calling and harassing my good friend who had not exceeded his limit. He said, "No, no, no, do not blame me, it is not my branch, it is the next branch". That was the excuse.

If we do not have some kind of control over the banking sector, which has a stranglehold on the economy of Trinidad and Tobago, a stranglehold on the people of Trinidad and Tobago, and a stranglehold on a particular type of people in this society, all the small business efforts that we are making would be of no avail.

5.10 p.m.

If you are excluded from finance, this country cannot go forward, its people cannot go forward, and I bring that forward—I am very sorry that the hon. Minister is not here—but I am sure that his colleagues will tell him what I am saying. That is why I find myself diametrically opposed to what Sen. Mansoor said earlier on—to let market forces control. If we let market forces control, "we dead"; because that cartel would strangle us and the economy and you would see more obscene profits.

I want to go to clause 45(b). There is this question of the code of ethics and I want to support it. It is important enough for me to repeat what has been said before, because I find this particular clause to be of paramount importance regarding how it is going to be done. There is no provision in the Bill to consult with representatives of the employees of the Central Bank and they should have an input. Therefore, I want to impress upon the Minister—I know it has been said by, I think, more than one speaker before me, but I want to repeat that, so that he would be aware of its importance and would look at it very, very carefully.

I have also great, great difficulty with the Minister making rules for the Association of the employees. I find that just simply does not look right. It is almost indecent to say. "Look here, your employer must make the rules for an association of which you will be an integral part". He must make the rules as to how you should operate." However good those rules may be, however relevant those rules may be, it just is not right, because in the final analysis, it is the employer with whom you are going to sit down to negotiate salaries and wages and all the other conditions of employment.

On the one hand, the rights of the worker are taken away from him; he does not have an association of choice, he cannot go outside the Central Bank, so you

are restricting his choice. Sen. Wade Mark has already made his point on that, but I want to reinforce what he has said, because it is very important and I cannot understand why the Minister felt that he should make the rules for that association. That should be withdrawn from the Bill completely. I see no good reason why it should be done in this manner. Why should that be in the Bill in the first place? The employees of the Central Bank are intelligent people. Why can they not make their own rules and regulations? Why do we treat them like kindergarten children? We have to do it for them, spoon-feed them? I do not think that is the way it ought to be.

Finally, this question of accountability, I have to support the Senators who spoke before me on this. I feel very strongly about it. I feel that, yes, we must give the powers to the Central Bank; yes, we must clarify the ambiguities between the Minister and the Central Bank regarding who has the power and so forth. However, if we are going to give the Governor of the Central Bank the wide powers that this Bill says we must give him—I have no objection to that—he must be accountable to the people of Trinidad and Tobago; he must be accountable to Parliament; he must be accountable to a joint select committee of both Houses of Parliament. We cannot let him just go willy-nilly, doing his own thing and accounting to no one. We simply cannot have that.

Mr. President, with these few words I would like to say that these are some of the concerns we on this side of the House have with this Bill. We hope that the Minister will take our suggestions in the spirit in which they are given, that they will improve the Bill and that the Bill will improve the running of the Central Bank.

I thank you.

5.17 p.m.

Sen. Diana Mahabir-Wyatt: Mr. President, I am sorry the Minister is not here, because I have a few questions I should like to ask about the Bill and a few comments I should like to make. I can only hope that the Minister will be present when we are about to finish the debate, so that we would get some answers to some of the questions raised.

The first question that I wanted to raise in relation to the Bill was one which was raised by a number of other persons, and that has to do with the code of ethics referred to in clause 12 (amended section 12) on page 8 of the document we have before us. I was somewhat disturbed, listening to Sen. Wade Mark's contribution, to hear that as late as October this year the Staff Association had been given only

24 hours in which to take a look at the proposed code of ethics, which does not seem to bode well for other parts of this Bill which talk about consultation and/or negotiation. If this is based on fact, it is rather dismaying and, like other persons who have spoken in this debate, I hope something is done to alleviate that.

It really is important in industrial relations and in the management of human relations, generally, that consultation is not done in an offhand manner, but is seen to be done, and done genuinely, so that the people who are going to be covered by these rules take part in them, have ownership of them, and accept them. I was somewhat dismayed to hear that this had not been done.

Secondly, clause 14 (amended section 14): A number of persons have commented on the remuneration of the Governor, Deputy Governors and other directors of the bank, and how this should be done by the board, rather than by the Minister. In fact, the Minister did give us assurances that he wanted his own part in this to fall off after a while, so that the Board would be able to do it by itself. However, in the existing Act itself in Section 17(2), there is a clause which says that any changes to any staff salaries over $2,000 a month have to be done with the approval of the Minister. Mr. President, this is ridiculous.

That ancient kind of provision has appeared in several pieces of legislation that have come before this Senate. It is onerous on the Minister, and in terms of the Human Resource Department at the Bank; it takes a long time, is bureaucratic and has no part in legislation. The truth is, I do not think anybody in the Central Bank gets paid as little as $2,000 a month and no matter what amount you put in, it has taken—how many years for this to come before us? —I think the last one was in 1978? Sixteen years?

Sen. W. Mark: In 1976.

Sen. D. Mahabir-Wyatt: Okay, if you leave this in, 16 years from now $2,000 is not going to be enough to buy—presumably by then we will be buying Mc Donald's hamburgers! It is utterly ludicrous that we should burden our legislation with anachronisms like that. I would hope that the Minister could see his way to changing that to "salaries of staff employees to be approved by the Board," as it is in any other organization. To have this sent up to the Minister every time you want to go above $2,000 really does not make any sense. Well, the Minister is not here, but I am just hoping there will be someone who will pass this on to the Minister. *[Interruption]* Thank you, Minister Draper.

Thirdly, in relation to "PART 1A" which has been much commented on by Sen. Wade Mark, there are a few comments I should like to make. I should like,

first of all, to endorse and second the amendment circulated by Sen. Daly. Unfortunately, I do not have the amendments that were proposed by Sen. Wade Mark, so I cannot really comment on them, but I shall comment on what I recall he said. I think that Sen. Daly's wording, from an industrial relations point of view, is far better than the wording that exists in the Bill [section 20B(1)(d)-(f)].

The existing wording removes grievances which exist on the grounds of things like warnings, suspensions, dismissals from the ambit of what can be discussed between the Bank and the Employees' Association, which means that those things are just going to be swept under the carpet and not discussed. This gives rise to lowered morale, resentment and bitterness which build up among employees, and one gets lowered productivity, and all kinds of staff problems arising as a result. "Terms and conditions of employment" does not cover that.

Sen. Daly's wording, from an industrial relations point of view, is more preferable than what is in this existing section. I do accept the comments made about the excellent drafting in this Bill, but I think when it comes to this particular section, with the greatest respect, Mr. President, the drafters were not industrial relations people, because there are a number of things in this particular section that just do not fit when it comes to industrial relations.

The next one has to do with clause 19 (section 20B(2)) which says that:

> "The Bank shall from time to time consult and negotiate with representatives of the recognized association..."

It talks about (a) shall do so—

> "at the request of those representatives;"

but it does not give any time limit, which means that the representatives of the Staff Association can ask the bank, "Please, can we meet with you? We have something we want to discuss;" and the Bank can say, "Yes, we will do it as soon as possible, but it just is not possible at the moment;" and it does not have to be possible for weeks and weeks, while, again, problems and resentments build up. It is just not good industrial relations. I am surprised that people who are normally so precise in their calculations would not put in a precise time, say, within a period of seven days, or within a period of two weeks, the Bank would meet with the representatives.

Under clause 19 (section 20B(3)), I have to ask—and I did listen very carefully to what the Minister said—what is the basic concept behind the Central Bank wanting to use the Supplemental Police Act for the philosophy which is

going to underlie its industrial relations procedures? The supplemental police is a quasi military organization, and what you are saying here is that the Central Bank should be equated in some way to that kind of organization. I think, Mr. President, that with the greatest of respect, some of the problems that Sen. Wade Mark identified, quite properly, and some of the other problems which I am going to identify, arise out of trying to use a quasi military conception of industrial relations when it comes to relations between employees of a financial institution and their employer. It really does not jive.

In clause 19 (section 20D), Sen. Daly has already commented on the need for having a collective agreement between the parties recorded with the Industrial Court, and I do not think I have to follow up on that. I think that was absolutely clear. This is something wellknown to anybody who deals with industrial relations. We are having a problem in terms of drafting here. There are some rather stringent comments which have been made by Judges of the Industrial Court about the drafting of legislation that comes before them. One piece is the Retrenchment and Severance Benefits Act which one of the judges recorded as being the most sloppily-worded piece of legislation that has ever come before them and they hope it will be soon amended.

I would hate to think that this sort of allegation would be made in reference to a very elegantly drafted Bill like the one we have before us. However, not recognizing the basic fact that under our system of industrial relations an agreement that has not been registered by the Industrial Court really does not have any sort of binding force in court, is a serious mistake. I think, like Sen. Daly, that it should be registered by the Industrial Court.

In section 20E(1)—

> "Where a dispute is deemed to exist under section 20C, the Minister shall refer the dispute for settlement to the Special Tribunal within twenty-one days from the date on which the dispute was reported to him."

Good. The twenty-one days is in there, but Mr. President, there is no room for conciliation. When there is a dispute between an employer and workers of that employer, very often the whole thing is settled in conciliation. You do not have to go straight to arbitration. This is not what one does in industrial relations. This is the military mind, again, that either you agree, or it goes straight to arbitration, and nothing in between. Industrial relations is more like marriage. You have to bargain a little and negotiate a little, and come to some sort of agreement.

Conciliation is important. This is not a straight matter of military law where it is: do it, agree, or else, get somebody else to agree for you.

The Special Tribunal referred to here is, in fact, although it does not say so, done by a division of the court. The Essential Services Division usually acts as the Special Tribunal, I understand, and it is accustomed to dealing with conciliation as well as arbitration, and it is well practised at this. There is no reason why in section 20E(1) the Minister cannot be given the right, or the ability, or recommend that he send it first to the Special Tribunal for conciliation and, where that fails, on to arbitration.

On the next page, 14, where it comes to section 20H(1) it says:

> "Employees, other than estate constables, may form not more than two associations..."

Not more than two? Why is this limited to two? Why, all of a sudden, is the freedom of association which is granted to people in this country, under sections 4 and 5 of our Constitution, being abridged? Is it because everybody wants this to have to go to a three-fifths majority and to have to put something in the Bill about abridging the Constitution?

If we want to go along Sen. Wade Mark's way, I am sure that everybody else will agree, but when it says that employees—

> "shall...be recognized by the Minister as associations for consultation and negotiation..."

again I start to worry.

Recognition shall only be granted where certain conditions have been met; for example, normally in industrial relations it means that more than 50 per cent of the workers within one bargaining unit belong to the association. This does indicate, from what is drafted here, that you can have 10 per cent of the employees of, say, the junior staff of the Central Bank belonging to a Junior Staff Association, and the Minister can say, "Okay, that one shall be recognized." This is not good industrial relations.

In section 20H (3)(b), again, this draft is trying to abrogate the provisions of sections 4 and 5 of the Constitution of the Republic of Trinidad and Tobago. It reads as follows:

> "a recognized association may not admit to its membership an employee who is an estate constable or a member of another recognized association..."

5.30 p.m.

The Constitution of this country guarantees any employee the right to belong to any number of associations. Only one can be recognized for the purposes of collective bargaining. When you say, you can belong only to one, you cannot belong to any others, you are saying, "I am taking away from you your right of freedom of association." Any employee of any state enterprise or any public service department or ministry can belong to six registered associations if they want, but only one can represent them for purposes of collective bargaining. However, when you put this kind of thing in, what you are saying is, "Okay, let us amend the Constitution", or "Let us have a provision put into this (which is the alternative) to say that this Bill amends sections 4 and 5 of the Constitution of Trinidad and Tobago, and therefore we have to have the requisite majority vote".

You can, of course, leave in "employee who is an estate constable" because there are other provisions which are already provided under legislation for them, but you cannot stop people from belonging to an association. I would suggest the easy way of dealing with this—so we do not have to stay all night and have a long vote on it—is just to remove, "a member of another recognized association" because associations have to be recognized on all sorts of provisions, not just recognized by the Minister.

I am concerned also about section 20H (5) which I think has already been debated by Sen. Daly, where the Minister may make the regulations setting out the procedure for the recognition to be adopted by the Minister. This is himself to himself, and I really think that it would be preferable, simpler, cleaner, less complicated, if the recognition question were sorted out by the Recognition Board, as has already been recommended by Sen. Daly and Sen. Wade Mark.

Sen. Wade Mark suggested that we use the provisions of the old Bill, No. 31 of l978, but on looking through that, I realize that that Bill does not refer to the Recognition Board at all. It refers to the board of the bank. So what I am suggesting is that it go to the Recognition Board which has been set up for that purpose, is experienced; and does not necessarily have to mean that the employees of the Central Bank are recognized as "workers". It can be put into this legislation so that it is recognition granted under the normal provisions to employees of the Central Bank who want to have a representative association.

Under section 20I (2), this deals with the rule-making of the association and Sen. Hosein referred to this in his contribution. Every registered association, of course, must have rules, but the provisions which are laid out here for the rules indicate that:

"The Rules of the association and every amendment thereto shall be filed by the association with the Registrar General..."

Now, if the associations are not going to be trade unions—under the Registrar General, I understand from my colleague, Sen. Daly, there are certain categories; there is the registrar of companies; the registrar of trade unions; the registrar of births and deaths, and so forth—which section are you going to register this under, births and deaths; companies? Can it be trade unions? There is no indication here as to where it is going to be registered and therefore this is extremely ambiguous because it does not tell us what effect this is going to have. Suppose one of the rules has been breached, how is it going to be punishable? There is no legal provision for this the way it is drafted at the moment.

I am concerned about the provisions and the way they are drafted, because in dealing with industrial relations, I think that it is really important that the Central Bank should have smooth, stable industrial relations, that it does not set itself up from in front for trouble down the line which it seems to be doing here. I think unless these matters are taken care of, the Central Bank is really asking for difficulty when it comes to dealing with industrial relations with its various employees, and I would hate to see that happen.

The only other point which I wish to comment on, and it really is not so much a comment as it is a question, has to do with section 56 of the Act which is under clause 42 of the amendment, which deals with the point of having a special tribunal which will be sitting in camera, matters to be heard will be private.

I believe that the Minister said that the reason for this was in order to keep information private because otherwise it might provide a run on financial institutions. This is obviously in the interest of the banking community and I can understand that. I think anybody can. However, I want to knows "What about the interest of the depositors and the investors and the public?" When these investigations *in camera* are going on, where does the interest of the depositor come in?

I know that consultation was held with the leading financial lights in the country, the Central Bank and the ministry, but I would really like to know whether anybody was actually representing the interest of the depositors and the interest of the public. It seems to me that it has been, sort of, slipped under the carpet and nobody is really paying attention to that particular aspect. I think that when you come to financial institutions, generally, it is hard to deny that the interest of the public should come in at some point.

Thank you, Mr. President.

Sen. Surendranath Capildeo: Mr. President, I really wonder whether we are not all victims of a giant sting operation here. This must be the biggest parliamentary sting of all times, because about 10 days ago we received this Bill. This is some 35 foolscap pages on both sides, and it refers to the Financial Institutions Act which is another encyclopedic volume by itself; it refers to the supplements to the Financial Institutions Act; it refers to Act. No. 10 of l993; it refers to Act No. 2 of l986, all of some content; it refers to Act No. 34 of l978, and we, in the Senate, are expected to come here and comment intelligently on all 33 pages. I am no genius. So I am doing my country a disservice by speaking, almost completely unprepared, on a Bill which has had, and which will continue to have, tremendous impact on this country.

If there are voices on the other side which say, "Sit down, because you are unprepared", it is because those voices are totally irrelevant to the reality of our situation, where we do not have even, from the Minister of Finance, the courtesy of staying until the end of the debate.

[Minister of Finance returns to Chamber]

Sen. Capildeo: Thank you for returning, Mr. Minister, because, you see, I would like to find out, and I think the country would too, what is the philosophy of the Government behind the operations of the Central Bank. I have some notes here Sir, if you will permit me.

As I understand it, the Central Bank's fundamental purpose must coincide with our nation's general economic goals. It must be the encouragement of economic growth, overall price stability, full employment and a reasonable balance in the country's transactions with foreign countries. The activities of the Central Bank are guided by how it can contribute to the attainment of these objectives but unlike commercial banks, the Central Bank is not expected to operate to make a profit.

5.40 p.m.

I want to know what the philosophy of the Government is. Is it the policy that the system must affect the economy, principally, through its impact on the volume and cost of reserves needed by other banks? Because all the commercial banks are required to have reserves in the Central Bank. Is the Central Bank going to be set up like the Federal Reserve Bank, comprised of other banks? Or, is the Central Bank going to be a creature of the Government, controlled by the Minister of Finance as this Bill indicates?

From my understanding of the principle behind this Bill, the intention of the state is that the Central Bank will be a creature of the state under the control of the Minister of Finance. If that be the case, then what we ought to hear from the Minister is just what has been happening with the Central Bank over the past few years and what are its projections for the next few years.

Let me take Senators through the Central Bank Act Chap. 79:02 to demonstrate, if I can—if Senators can see the red ink—what has happened to the principal Act. The first page is filled with amendments, likewise the second page likewise the third page, likewise the fourth page. The entire Act is riddled with amendments. Look at it, Sir. Whole new sections have been imported into the Act and we are expected to come here and intelligently debate this Bill.

Above all, is the clear violation of the Constitution, of which the Minister is aware. The Bill violates sections 4 and 5 of the Constitution and no amount of subterfuge and clever drafting is going to get around that. One cannot draft around it because the people who drafted our Constitution envisaged such a scene. As Sen. Mahabir-Wyatt said, it would have been very simple just to include in the Bill the provisions to take care of that.

If the hon. Minister had looked at the 1978 Act, all that had to happen—and if I am permitted, I shall quote from the Explanatory Note of that Act—

> "The object of the Bill is to amend the Central Bank Act, 1964, to provide *inter alia*, for the setting up of the machinery for the settling of industrial disputes between the management of the Bank and its employees."

So, 16 years ago the PNM Government recognized that there was need for legislation to settle industrial disputes between the management of the Central Bank and its employees; 16 years later the illegitimate children of the PNM sit there to make snide remarks on matters which they cannot comprehend.

Sen. Ojah-Maharaj: The Senator is not prepared.

Sen. S. Capildeo: Far more if I were prepared; what would have happened to the Senator? Let us go through so that we would make it absolutely clear. There is no mystery in this. People have a tendency in this country, and it is almost amusing, to watch what is taking place with this country via the media. All of a sudden we are being bombarded with technical terms and jargon. The first thing was that we must have "a new economic climate; it is a global thing; we have to overturn the economy" and do certain things.

There is this mystique about having a Central Bank Act. It is a big thing. What is so big about a Central Bank? In fact, the central bank in good economic theory is something one frowns upon. In that manner, if there is a corrupt government, it can use the central bank to wage war on its own people. I want to know what the philosophy of this PNM Government is. Is it free enterprise? Or, is it pseudo-free enterprise, where there is this illusion that is created by the clause in this Bill that says no more interlocking directorates? Is there an illusion of free enterprise when in reality one has the Central Bank Act with all the coercive powers? This mysterious entity that the layman does not know anything about, that the Government referred to as a god up on a hill at which it bends down and says "Central Bank, tell me what is going on within your walls."

Nobody knows what goes on in the Central Bank. Nobody knew when that fellow Davidson was running with the EC Forms. Nobody knew how people were getting EC Forms approved. Nobody knew how people were getting foreign exchange approved. Nobody knew what was happening in the Central Bank and nobody knows up to now what is going on in the Central Bank. There is this mystique that venture capital is a big thing.

The central bank idea is 300 years old today. It began with the Bank of England in 1694. This is 1994 and we are fooling the people of this country and making them believe it is a big thing. These bits and pieces of legislation are big things that the people of this country must come to grasp as we have never seen them before. All these bits and pieces of legislation are so that the Government can go and borrow money later on. Let me not digress.

If the Minister wanted easy passage for this Bill all he had to do was to just include—

> "Whereas it is enacted inter alia by subsection (i) of section 13 of the Constitution that an Act of Parliament to which that section may apply may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and if any such Acts so declare it shall have effect accordingly."

All that had to happen was that this section could have been easily incorporated in this Bill, and then go on to spell out the terms and conditions for the settling of industrial disputes.

In clause 3 of the 1978 Bill, Part II, "Industrial Disputes Procedures", subclauses 20A, B, C and D, the whole relationship between the bank and its

employees is set out; the whole schedule is set out and everything is already laid out in print for mere minor amendments to be effected to bring it in line with this Bill, and it would have prevented all the doubts in our minds about whether or not we are in contravention of sections 4 and 5 of the Constitution.

I say, as it stands now, this Bill is in contravention of sections 4 and 5. I would ask the Minister to seriously consider looking at the 1978 Bill with a view to including clauses 20A, B, C and D, as amended appropriately, into to the body of this Bill so that the whole procedure of negotiations between associations as recognized by the Registration, Recognition and Certification Board under the Industrial Relations Act would be incorporated into this Bill. It would then become constitutional and might get our approval. As it stands there is no way we can support this Bill

5.50 p.m.

There is no way we can stand in this Parliament and agree to a piece of legislation that will deny workers the right of freedom of association. We cannot do it when there is in existence in our laws the Industrial Relations Act, which makes provision for such workers. I appeal to the Minister to look at the 1978 legislation. I would not bore him by reading out in entirety but I can assure him, it is a well thought out piece of legislation and the whole system and procedure of agreements between the bank and its employees is set out. Perhaps, he could get the parliamentary draftspersons to work on it rapidly, include it in the Bill today and he may have his wish. He would have to include also that he is going outside of the Constitution, and, therefore, requires our humble support. *[Interruption]* The mapepire is found in the balisier my Friend. It is not where the sun shines. *[Interruption]*

Mr. President, I believe—and I do not want to go over again, it is getting late in the day—that everything that could have been reasonably said within the 45 minutes has been said by other speakers, so I shall spare you the monotony and boredom of my voice.

I want to get the Minister to help me understand how he wants to operate the Central Bank. It is of importance to us, the country, the ordinary man in the street to understand the Central Bank, and what it is about. Is it about regulating the nation's money supply, and how he is going to go about it? It is one thing to come here with a Bill full of heavy legislation but no explanation to the public about what it means. People want to understand. We have to try to avoid, at all costs, social disturbance because of lack of understanding of peculiar pieces of

legislation with which we are now being afflicted. Is that what the Central Bank is about? Is it about the availability and the cost of credit and the foreign exchange value of its currency?

Are the principal objectives of the Central Bank to maintain monetary and credit conditions conducive to a high level of employment and production and a reasonable, stable level of domestic prices and an adequate level of international reserves? Up to now we are to hear what the Central Bank is doing about maintaining a high level of employment, a high level of production, a reasonable, stable level of domestic prices and an adequate level of international reserves. We have the dry bones of the Bill. We want to get the meat. People must understand. We want to understand, we want to know what the Central Bank is about.

Is the Central Bank going to be a fiscal agent of the Central Government solely? Is it going to operate our commercial banking system as it does at present, or is it at any point in time in the future going to include the activities of the commercial bank on a real and meaningful basis? Is the Central Bank going to continue to exist in its present form, or will it disappear one day when there is trust and confidence in the banking system, when the people and the financiers of this country would operate their own system? Or, is it that you envisage that we would never achieve that status and that the heavy hand of the state must always be on the Central Bank? We want to know. I want to set up a bank so I want to know. *[Interruption]* Why not? The sun never sets where I am.

I want to know and I want to get it clear, is the Central Bank being operated for public welfare or maximum profit? Is this legislation designed to operate the Central Bank for maximum profit or public welfare? We want to know these things.

Let me end, it is getting to 6.00 p.m. It is almost reaching the happy hour. *[Laughter]* The Minister understands me. The Central Bank's independence rests much more on the degree of public confidence in the wisdom of the Central Bank's action and the objectivity of the bank's leadership than on the legal provisions purporting to give it autonomy or to limit its freedom of action. I hope I have made myself clear that throughout what I have said this afternoon—I know some people are incapable of understanding what I have been saying—you have a job. *[Interruption]* I am not referring to Sen. Deodath Ojah-Maharaj. He is not even on my mind. He wants to beat Pamela. In the present human condition in our society there must be that degree of public confidence in the Central Bank, otherwise no legislation is going to work.

The only way there can be that degree of public confidence is, firstly, by putting the workers on a proper footing, so that they would be content; secondly, they need a certain amount of transparency—which we are not getting at all from the Central Bank—and above all, accountability. Do you see how Petrotrin is beginning to account since Sen. Barnes is there? We need to know what is happening with our money.

Thank you very much, Sir.

Sen. Prof. Spence: Mr. President, one question for the Minister. In clause 19 of the amendment, provision was made for transfer and secondment from organizations other than the government service. On the other hand transfer on a permanent basis is still linked only to government departments under section 20 of the original Act, (1) and (2). Was that intentional?

Motion made, That the Senate do now adjourn to Tuesday, November 1, 1994 at 1.30 p.m. *[Hon. G. Draper]*

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.00 p.m.